COMPETITION IN THE VIDEO AND BROADBAND MARKETS: THE PROPOSED MERGER OF COMCAST AND TIME WARNER CABLE

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

MAY 8, 2014

Serial No. 113–94

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COMPETITION IN THE VIDEO AND BROADBAND MARKETS: THE PROPOSED MERGER OF COMCAST AND TIME WARNER CABLE

THURSDAY, MAY 8, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:34 a.m., in room 2141, Rayburn Office Building, the Honorable Spencer Bachus (Chairman of the Subcommittee) presiding.

Present: Representatives Bachus, Goodlatte, Farenthold, Issa, Marino, Holding, Collins, Smith of Missouri, Johnson, Conyers, DelBene, Garcia, Jeffries, and Cicilline.

Also Present: Representatives Gohmert and Jackson Lee.

Staff present: (Majority) Anthony Grossi, Counsel; Ashley Lewis, Clerk; Ellen Dargie, Legislative Assistant for Rep. Issa; Jaclyn Louis, Legislative Director for Rep. Marino; Jon Nabavi, Legislative Director for Rep. Holding; Justin Sok, Legislative Assistant for Rep. Smith of Missouri; and (Minority) James Park, Counsel.

Mr. BACHUS. Good morning. The Subcommittee on Regulatory Reform, Commercial and Antitrust Law herein will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time. However, I do not think we anticipate a recess unless it goes fairly long, and then we will have one for everyone's convenience.

I now recognize myself for an opening statement.

Today's hearing is on the proposed merger between Comcast Corporation and Time Warner Cable. The purpose of the hearing is not to determine ultimately whether the merger should proceed as proposed, be modified, or denied. That responsibility lies with the other branches of the Federal Government, and, most particularly, involves the Department of Justice and the Federal Communications Commission. Rather, we are here to provide a public forum in which to discuss the potential benefits and harms to the American consumer and to competition that could result from a merger between the country's two largest cable companies. In doing so, the Committee will perform an important function for the public that is historically provided pursuant to its antitrust jurisdiction.

The transparency of the companies in an open hearing serves a vital role in any evaluation of a proposed merger's potential impact on consumers. One of the issues in the public examination of the proposed merger is how the size of the combined companies will impact competition and choice in the voice, video, and broadband markets.

As separate entities, Comcast and Time Warner now respectively reach most of the country, although they do not really compete directly against each other in individual markets. If the companies were to combine, the joint venture would be the largest pay television provider in 37 of the top 40 viewing markets, serve nearly a third of all TV audiences, and provide Internet service to nearly 40 percent of all broadband customers.

Size alone does not necessarily do harm to competition. In fact, large companies use their resources every day to invest in emerging technologies and achieve efficiencies in scale. In its filing with FCC, which is available for public review, Comcast stated that it would deploy capital to enhance broadband speed, expand the diversity of its programming content, and increase the avenues over which consumers can access content. Size, however, can in some cases result in the ability to influence markets in any competitive manner.

There have been cases in our country's economic history of companies which have used their achieved dominance to exercise monopolistic powers. Various parties have raised concerns about the potentially negative competitive implications of this merger, and we will hear from some of them today.

The purpose of my statement is not to fully lay out all the pros and cons of this proposed merger. That is what the hearing is for, to allow our witnesses to advocate. Let me conclude by saying this. There are those who remember when you could count the number of television channels you could choose on your fingers, and the number depended on the strength of your antenna. And you might recall struggling with the rabbit ears to try to improve the picture quality. We are long past that.

If there is any industry in America that has had a revolution in the past 20 years, is the cable and video business, telecommunications business, in a broader sense. We have gone from only over-the-air broadcast television to cable and satellite, and now to mobile and Internet streaming. Consumers have multiple choices. In fact, there are some people who are only getting their content from their Internet, and there are some services and channels only available online.

The structure and economics of the industry continue to rapidly change. So the challenge for policymakers and antitrust regulators is to determine how the consumer's interest is best served in this evolving and exciting environment.

Today's hearing will give our witnesses an opportunity to share their perspectives and experiences to face each other and answer the questions of Members of the Committee. It will aid the public record that American consumers will be able to review, and help the Committee as we continue in our ongoing oversight of the antitrust laws and their application by the antitrust enforcement agencies.

With that, I look forward to the testimony of our panel, of the esteemed witnesses, and turn to my Ranking Member, Mr. Johnson of Georgia, for his opening statement.

Mr. JOHNSON. Thank you, Mr. Chairman, and I would like to take a moment to thank both you and Chairman Goodlatte for your bipartisan approach to today's hearing.

This discussion today on the proposed Comcast/Time Warner Cable merger is a fresh opportunity for this Committee to continue its long history of promoting a dynamic, competitive marketplace and protecting the public interest through strong antitrust oversight.

The twin objectives of antitrust law are to promote competition in markets and to protect the public interest. The twin objectives are very important. Comcast does not compete directly with Time Warner Cable for broadband or video subscribers. There is also scant evidence that this merger will substantially increase Comcast's concentration in any single market. And due to the extremely costly process of building out networks within a competitor's territory, there is little to suggest that either company had planned to compete directly in any local market.

However, it is plainly clear that the proposed merger occurs at a time of immense disruption in the broadband and video marketplace. Through explosive growth of edge providers, like Netflix and Amazon, consumers have more video options. More than ever, these companies' recent success in original programming also suggests that competition between online video distribution and linear television will continue to grow and benefit consumers through increased choice and quality in video programming is implicated, and I believe that it will offer more choice and more quality.

Though still in its infancy, the broadband marketplace is also undergoing a period of staggering disruption. In 2013 alone, the fiber broadband marketplace grew 29 percent to 126.6 million subscribers globally, according to ABI Research. And according to findings earlier this week by Sanford Bernstein, an equities research firm, Google Fiber's early success in the Kansas City market demonstrates that their fiber service could scale into 30 million homes over the next several years. I am encouraged by the prospect of this expansion, especially considering Google's announcement earlier this year that it plans to roll out service in Atlanta and parts of Georgia's 4th Congressional District, as well as over 30 other cities.

Combined with similar services from AT&T and Verizon, the roll out of all fiber networks across the country promises more and better options for consumers online. It is my strong belief that technology is one of the most important tools for empowering all levels of society. We must keep an eye to protect future innovation within this marketplace, but also keep in mind the disruption already occurring in the video and broadband marketplace. I therefore encourage the Department of Justice and the Federal Communications Commission to keep this in mind as it considers the effects of the merger upon competition in the video and broadband marketplace.

Before I yield back to the Chairman, I would note that earlier this week, the Wall Street Journal reported that the proposed merger of Comcast and Time Warner is already having a ripple effect in the video and broadband marketplace. Many companies are already looking for new ways to compete for customers. It is my hope that the groundwork that we lay in today's hearing will serve as a strong foundation for future hearings on competition in the communications, video, and broadband marketplace. And with that, I yield back.

Mr. BACHUS. Thank you, Mr. Johnson. I would now like to recognize the full Committee Chairman—our Subcommittee on Regulatory Reform, Commercial and Administrative Law is a Subcommittee of the Judiciary Committee. And at this time, I recognize Chairman Bob Goodlatte of the Judiciary Committee for his opening statement.

Mr. GOODLATTE. Thank you, Mr. Chairman. The cable television industry and the Internet have become about as American as baseball and apple pie. We watch the events of our Nation, cheer on our teams, follow our favorite characters, and, on occasion, glimpse history changing before our eyes on television. The Internet is used to connect family and friends, doctors to patients, teachers to students. Cable and the Internet are portals from our homes and offices to the world and are vital components of our national economy.

Today the House Judiciary Committee will provide a public platform to discuss the proposed combination of Comcast Corporation and Time Warner Cable, which together provide cable and Internet services to a third of Americans. Given the importance of these services to our constituents and the economy, the transparency afforded and the record created by this proceeding is integral to the overall consideration of the merger.

As we discuss the proposed merger, we should be mindful of the ever-evolving nature of the relevant industries. The rapid technological developments that have taken place over the last 10, 20, and 30 years in the cable and broadband markets have been remarkable and unpredictable. We have seen the growth of cable from a nascent industry that just covered a fraction of the population and only offered a few dozen channels to one that reaches nearly every home in the country and delivers hundreds of channels, now even in 3-D, in addition to providing voice and Internet services.

Gone are the days of rushing to the living room to watch the news, sports, or a favorite show when it starts at 7:00, or 8:00, or 9 p.m. Now, consumers can watch content when they want it nearly wherever they would like. These improvements have not come without a cost. Cable bills have risen at nearly twice the rate of inflation annually over the last 17 years, including a nearly 6 percent rise just this last year. Consumers, who have grown tired of rising cable bills, have begun cutting the cord and are looking to new, emerging ways to receive content. That is how the free market is supposed to operate. When costs rise, competitors emerge, and as they do, consumers have greater choices.

Today's hearing will examine whether the proposed Comcast and Time Warner merger would impact competition in the cable and broadband markets and explore whether consumers would benefit from the combined scale of the joint venture. Proponents of the merger argue that it would spur innovation, increase choices, and improve service. Critics of the merger raise concerns regarding the influence of a post-merger Comcast might yield over key aspects of the cable and broadband markets.

We will hear the views of both sides of this debate today and allow the panelists to test each other's theories of the future of the industry. I look forward to hearing from today's witnesses on this important issue. Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. BACHUS. Thank you, Chairman Goodlatte. I would now like to recognize the full Committee Ranking Member, my friend, Mr. John Conyers of Michigan, for his opening statement.

Mr. CONYERS. Thank you, Chairman Bachus. And to eight witnesses, when was the last time we had—well, we ran out of tables. I am sorry, we have only eight here today.

We consider the proposed acquisition of these two corporations, and if consummated it would enable the combined entity to control approximately 30 percent of the national cable market and at least 40 percent of the high speed broadband Internet market. It would also dominate 19 of the 20 largest geographic markets in the Nation, including the New York and Los Angeles areas where Comcast currently is not present.

Currently, Comcast, in addition to its cable and Internet businesses, owns the NBC Television Network, 10 NBC-owned and operated local television stations, the Telemundo Spanish language broadcast network, nine cable networks, regional sports and news networks, and nine major metropolitan areas, and the motion picture studio, Universal. So not surprisingly, the sheer size and scope of the proposed merger, which would extend well beyond cable television, has raised concerns.

Several consumer groups, including Public Knowledge, Free Press, the American Antitrust Institute, and Consumers Union have raised concerns about the proposed merger. And I ask unanimous consent, Chairman Baucus, to offer a letter from Consumers Union dated May 7, 2014 for the record.

Mr. BACHUS. Without objection.

[The information referred to follows:]

ConsumersUnion
POLICY & ACTION FROM CONSUMER REPORTS

May 7, 2014

The Honorable Bob Goodlatte, Chairman
The Honorable John Conyers, Jr., Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Congressman Conyers:

Consumers Union, the public policy and advocacy division of Consumer Reports, appreciates your holding a hearing to examine the proposed merger between Comcast and Time Warner Cable ("TWC"). We believe this merger – which would give Comcast unprecedented power in the video and Internet marketplace – would be extremely harmful to consumers. Given the poor track record of these two cable and Internet giants, and the power they would wield as a combined company, this merger should be flatly rejected.

A combined Comcast/TWC would control nearly two-thirds of the nation's cable TV service, nearly forty percent of its Internet broadband service, and half of its video-voice-Internet "triple-play" service – far exceeding the next-closest competitor in any of those categories.

Comcast claims that the merger should not raise concerns with either the Federal Communications Commission or the Justice Department's Antitrust Division, because the two companies do not currently compete in each other's geographical territories. But this overlooks important ways in which the combined companies' market power would be further increased, to the detriment of competition, consumers, and programming diversity and innovation, now and for years to come.

This merger would solidify and increase the two companies' combined market power not only as sellers of TV and broadband to consumers, but also as buyers of programming and content that consumers want. The combined firm would be gatekeepers for an enormous portion of consumers – and monopoly gatekeepers in numerous major markets – which Comcast's proposed market swap deal with Charter Communications would only further solidify. Comcast also owns a valuable stream of content from its merger with NBCUniversal – including cable channels, news networks, locally owned broadcast stations, and production and content development operations. The merger thus would give the combined firm the ability and incentive to exact higher "admission tolls" from programming and content producers seeking to reach all those consumers, and to look for ways to make it more difficult and costly for rivals to enter the market. If that happened, those programming and content producers could be forced to raise prices, cut corners on quality, go out of business, or not enter in the first place. All of these results would be at the expense of consumers, and programming diversity and innovation.

Consumers are already dissatisfied with the service they receive from these two companies, and there is little reason to believe that combining them will improve the situation. According to the latest survey by Consumer Reports, Comcast and Time Warner Cable are among the worst-ranked companies in customer satisfaction for TV service. Both companies received particularly poor marks for value received for money, as well as for phone and online customer support. Combining these two companies would give the merged entity an even larger national presence, more market power, and less incentive to address consumers' concerns.

As a condition for allowing the Comcast-NBCUniversal merger, the FCC and DOJ required Comcast to adhere to a number of commitments designed to protect the public from the substantial marketplace harms that could result from combining the two companies. But concerns continue that Comcast is not always complying with these commitments – for example, there are complaints that it discriminatorily imposed data caps against rival content providers, and that it banished Bloomberg news to a remote place in its channel lineup.

And the FCC is now considering new Net Neutrality rules that would allow Internet service providers to sell preferential access to content providers who are willing to pay for it. This would give Comcast – especially after the Comcast-NBCUniversal commitments expire in 2018 – new power to play favorites among web sites and services, and to control the quality, speed, and availability of programming that reaches consumers. A combined Comcast/TWC would have even more power.

Attached are materials from recent Consumer Reports publications illustrating the importance of the concerns and issues at stake: a chart showing how cable rate increases have continuously surpassed inflation; a summary of and press release regarding our recent survey showing Comcast and Time Warner Cable near the bottom of customer satisfaction for pay-TV providers; and recent articles from *The Consumerist* addressing issues related to the merger.

We urge you to convey these concerns strongly and clearly to the FCC and the Justice Department. We want their investigations to be thorough. We believe that once their investigations are concluded, it will only be clearer that this proposed merger is not in the public interest. – that it will substantially harm competition, restrict consumer choice in programming, lead to price hikes, and hamper innovation. This merger should not be permitted to go forward.

Respectfully,

Delara Derakhshani
Telecommunications Policy Counsel

George P. Slover
Senior Policy Counsel

cc: Members of House Judiciary Committee

Attachments

Mr. CONYERS. Thank you. While neither we nor the competition enforcement agencies should pre-judge any deal, there are a number of issues concerning competition and consumer welfare that I would like as many on the panel to address as possible. To begin with, witnesses should address whether the combined Comcast/Time Warner Cable would have such market power that it could discriminate against rival content providers, because, according to critics, the merged company would have the ability and incentive to discriminate in favor of Comcast/Time Warner content, including NBC content.

And given that the merged entity would have almost 30 million subscribers, being unable to distribute on Comcast's video distribution network could potentially be fatal to non-Comcast affiliated programmers. Ultimately, this could give the merged entity enormous sway over the kind of content that is available to the public.

The witnesses should also address whether the combined Comcast/Time Warner Cable could emerge as a gatekeeper of the Internet, and thereby be able to stifle competitive innovation as some critics have already alleged. Recently, Netflix, an online video distributor, signed an agreement with Comcast that would allow Netflix to directly access Comcast customers rather than paying companies to carry traffic between its service and Comcast customers.

On the one hand, this could be seen as a simple, straightforward business transaction. After all, Netflix is responsible for a third of all United States web traffic. Paying Comcast to connect directly to its pipes instead of sending traffic through other companies, which are struggling to handle its traffic, may simply have been categorized as a smart business decision. But on the other hand, Netflix itself raises concerns about its agreement with Comcast, asserting that it was forced to pay Comcast for reliable delivery to Comcast customers.

In opposition to the Comcast/Time Warner merger, Netflix CEO Reed Hastings and CFO David Wells argued that the Internet faces a long-term threat from the largest ISPs driving up profits for themselves and costs for everyone else, and that is if the Comcast/Time Warner Cable merger is approved, the combined entity would possess even more anti-competitive leverage to charge arbitrary interconnection tolls for access to their customers.

The real question, however, is not what effect the merger may have on Netflix per se, but on the next Netflix that might emerge as an alternative to Comcast video distribution business. Would a combined entity be able to use its potential leverage over high speed Internet access to stifle potential competition in this way?

So finally I conclude on this point. To the extent that there may be competition concerns, I would like the witnesses that choose to discuss whether imposing behavioral remedies would be sufficient. As a condition for approval of the Comcast/NBCUniversal transaction, the FCC and the Justice Department required Comcast/NBCU to take affirmative steps to foster competition, including voluntary compliance with net neutrality protections as well as steps to benefit the public interests. Comcast has indicated that it will extend the same commitments to its proposed acquisition of Time Warner Cable.

Additionally, Comcast has entered into an agreement with Charter Communications to sell 1.4 million subscribers and divest another 2.9 million subscribers to form a new rival cable company.

Nevertheless, some observers are concerned that behavioral remedies imposed in the Comcast/NBCU transaction were ineffective and unenforceable to the extent Comcast did not abide by them. And accordingly, we should consider whether such commitments should be strengthened and made enforceable to better protect the public interest with respect to Comcast's proposed acquisition of Time Warner Cable. I look forward to your testimony, and I thank the Chairman, and yield back my time.

Mr. BACHUS. Thank you, Mr. Conyers. At this time I recognize the Vice-Chairman of the Subcommittee, Mr. Farenthold of Texas, for his opening statement.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman, and I will be brief. As a free market conservative, I am on the record as stating that I do not think government should interfere in business mergers to the extent they do not violate antitrust laws. And I generally support this merger and do not think it should be destroyed by excessive government intervention.

However, there are some concerns that I am hoping will get cleared up during this hearing, the primary one being the impact this merger will have on how programmers, particularly independent and small programmers, are able to compete in the marketplace and gain access. We have also got issues developing about new ways to distribute video content that may make this moot, but they are probably 10 years out. You have got video on demand delivery by companies like Google, Amazon, Verizon, Microsoft, Yahoo, and Apple. Obviously there is a potential concern that these compete with video on demand services actually native to the cable providers.

I am also concerned, again, as I said, about new companies and new programmers having access to getting on. I am concerned also about the percentage of the Hispanic and Spanish-language market that this merger would have in the overall national pricing. Even though Time Warner and Comcast do not compete in any markets to speak of, there is an overall national accepted pricing as there are more players in the Internet delivery game, in particular, what people expect to pay on a national basis is set by that. And with 30 percent of the market, there are also concerns over data caps that Time Warner does not have.

Now, that being said, I am blessed in Corpus Christie, Texas by living in a community that is served by two competing cable providers. The capital cost of that is high, but as we are seeing by investments in fiber by Verizon, Google, and other companies, multiple options are becoming available. It is the short-term that I am worried about. And I do hope that some of the witnesses will address short-term versus long-term competition and availability of programs.

And finally, I do think we ought to talk a little bit to distinguish about what is delivered in real time and what is important to be delivered in real time, for instance, news and sporting events as opposed to entertainment content, which is shifting more and more to an on-demand or a pay-per-view model for delivery, be that through DVRs or services like Netflix or iTunes Store and the like.

I have been looking forward to this hearing for a long time, and hope we can get it all cleared up. Thank you.

Mr. BACHUS. Thank you. We have a very distinguished panel today, and Mr. Conyers made a remark about the table being so long. And this was an attempt to balance the witnesses, and when we add a witness, you have to balance them on the other end. I hope that balance is fine.

Our first witness is Mr. David Cohen, executive vice president of Comcast Corporation, where he has responsibilities that include corporate communications, government and regulatory, public and legal affairs, and community investment. I guess, in other words, everything.

Prior to joining Comcast in 2002, Mr. Cohen served as a partner and a chairman of Ballard Spahr Andrews & Ingersoll, one of the 100 largest law firms in the country. Prior to his time at Ballard, Mr. Cohen served as the chief of staff to the Honorable Ed Rendell, mayor of Philadelphia. Mr. Cohen received his B.A. from Swarthmore College and his J.D. summa cum laude from the University of Pennsylvania Law School. Welcome, Mr. Cohen.

Mr. COHEN. Thank you very much, Mr. Chairman.

Mr. BACHUS. I am going to actually introduce all the witnesses, and I should have told the panel that.

Mr. COHEN. Okay.

Mr. BACHUS. And then we will go back.

Mr. COHEN. Sorry.

Mr. BACHUS. Our second witness is Mr. Robert Marcus, chairman and CEO of Time Warner Cable. Mr. Marcus is, as I said, chairman and CEO, and he has served in that capacity since January 1st of this year. Mr. Marcus first joined Time Warner in 2005, and since that time he has served the company in various capacities, including president, chief operating officer, chief financial officer, and senior executive vice president.

Prior to joining Time Warner Cable, he held various positions at Time Warner, Inc., including senior vice president of mergers and acquisitions. Before joining Time Warner, Mr. Marcus practiced law at Paul, Weiss.

Mr. Marcus received his B.A. magna cum laude from Brown University and his J.D. from Columbia Law School, where he was a Harlan Fiske Stone scholar and editor of the Columbia Law Review. We welcome you, Mr. Marcus.

Our next witness, Mr. Matthew Polka, is president and CEO of the American Cable Association, an 850-member non-profit association, whose members serve nearly 7 million cable television subscribers, primarily in small, rural markets. Prior to joining the association, Mr. Polka was the vice president and general counsel of Pittsburgh-based Star Cable Associates.

Mr. Polka graduated from West Virginia University magna cum laude, and received his J.D. from Pittsburgh University School of Law where he was editor of the law school news magazine and recipient of the law school's Most Distinguished Graduate Award. Welcome to you, Mr. Polka.

Our next witness, Professor Scott Hemphill of Columbia Law School, is a law professor at Columbia, as I said, where his research examines the balance between innovation and competition set by antitrust law, intellectual property, and other forms of regulation.

From 2011 to 2012, Professor Hemphill served as chief of the Antitrust Bureau in the Office of the New York State Attorney General. Before joining Columbia's faculty, he served as a law clerk for Judge Richard Posner on the U.S. Court of Appeals for the 7th Circuit, and to Justice Scalia on the United States Supreme Court.

Professor Hemphill is a graduate of Harvard College and the London School of Economics, where he studied as a Fulbright Scholar. He received his J.D. and Ph.D. from Stanford University. So we welcome you, Professor.

Our next witness is Mr. Allen Grunes, antitrust lawyer at the law firm of GeyerGorey. Mr. Grunes advised on mergers and acquisitions, provides counsel on non-merger matters, and represents clients before the courts, antitrust agencies, and Congress.

Prior to joining the law firm, Mr. Grunes spent more than a decade at the United States Department of Justice Antitrust Division where he led many merger and civil non-merger investigations in a number of industries, including radio, television, newspapers, and motion pictures.

Mr. Grunes received his B.A. from Dartmouth College and received his J.D. from Rutgers Camden School of Law, and holds an L.L.M. from New York University.

Our next witness is Mr. Patrick Gottsch. He is founder and chairman of Rural Media Group, Inc., the world's leading provider of multimedia content dedicated to a rural and western lifestyle. In fact, he does not wear a tie, and his representative asked me if he should wear a tie. And I told him that we wanted him in his natural state. [Laughter.]

And so, if you are saying he does not have a tie on, it is the prerogative of the Chairman and of Mr. Gottsch.

Mr. GOTTSCH. Thank you.

Mr. BACHUS. Rural Media Group is the parent company of a number of multimedia companies, including RFD-TV, the Nation's first 24-hour television network dedicated to serving the needs and interests of rural America.

Before launching Rural Media Group, Mr. Gottsch served as director of sales for Superior Livestock Auction, the largest livestock auction enterprise in the United States. Prior to joining Superior Livestock, Mr. Gottsch started ET Installations in Nebraska, which introduced over 2,000 satellites to the Midwest, and was recognized as the Nation's largest privately-owned home satellite retailer in 1987. Before ET Installations, Mr. Gottsch worked on the Chicago Mercantile Exchange as a commodities broker.

Mr. Gottsch graduated from Sam Houston State University in Huntsville, Texas. We welcome you, Mr. Gottsch.

Mr. GOTTSCH. Thank you.

Mr. BACHUS. Our next witness is Mr. David Schaeffer. Mr. Schaeffer is founder and CEO of Cogent Communications, one of the world's largest Internet providers. Prior to joining Cogent, Mr. Schaeffer successfully funded and operated six other businesses spanning a wide array of industries, from communications to commercial real estate. Mr. Schaeffer's diverse background and business successes have enabled him to build management teams that construct and operate the only facilities-based non-oversubscribed multi-national network of its kind.

Mr. Schaeffer received a B.S. in physics from the University of Maryland where he was also a Ph.D. candidate in economics. Mr. Schaeffer, we welcome you.

Our final witness is Dr. Craig Labovitz. Is that right?

Mr. LABOVITZ. It is.

Mr. BACHUS. All right. He is co-founder of DeepField Networks. He founded that in 2011 and serves as its CEO and president. Dr. Labovitz is a widely recognized expert on Internet infrastructure, security, and cyber threats.

Prior to founding DeepField, he served as chief scientist for Arbor Networks based in Ann Arbor, Michigan. His research and work is used by over 400 Internet service providers, and more than 70 percent of the Internet backbone transit traffic is protected by products stemming from his research.

Dr. Labovitz also served as one of the original engineers for the NSF Net Backbone, which is where the Internet as we know it today originated. And that was one of the six universities or what was that——

Mr. LABOVITZ. It was.

Mr. BACHUS. All right. Dr. Labovitz received his master's of science of engineering and Ph.D. from the University of Michigan and his bachelor of science in engineering from the University of Pennsylvania. So we welcome you as our final witness.

And at this time, Mr. Cohen, we welcome your testimony. And let me say this. Each of the witnesses' written testimony will be entered into the record in its entirety. And I ask that each of you try to summarize your testimony in 5 minutes. There will be some lights to guide you, but there is no electrical shock if you go past that time. [Laughter.]

So do not take that as a traffic light red. Mr. Cohen?

TESTIMONY OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION

Mr. COHEN. We will try this again, and thank you, Chairman Goodlatte, Chairman Baucus, Ranking Members Conyers and Johnson, and Subcommittee Members. We appreciate the opportunity to discuss the substantial consumer and public interest benefits that will arise from our merger with Time Warner Cable.

Over the last 50 years, Comcast has grown from a small cable operator with 1,200 customers in Tupelo, Mississippi into one of the most innovative media and technology companies in America. We are truly an American success story.

In a nutshell, this transaction will give us the scale to invest more in innovation and infrastructure so we can compete more effectively with our mostly larger national and global competitors, including the Bells, DirecTV, DISH, Apple, and Google to name a few as were referenced in some of your opening statements. And when we invest, so do our competitors. AT&T, for instance, has said that this transaction puts a heightened sense of urgency on competitors to invest more in their networks and improve service.

And the ultimate beneficiary of this enhanced competition and greater investment is the American consumer. Specifically, Comcast will bring Time Warner Cable residential customers faster Internet speeds, more programming choices, more robust Wi-Fi, and our best in class X1 operating system. And business customers will benefit as well.

We will also expand our acclaimed Internet essentials program, which has already connected over 1.2 million low income Americans to the Internet more than any program of its kind in the Nation. And we will extend many other public interest benefits from the NBCUniversal transaction to the Time Warner Cable footprint, including our commitments to diversity and to an open Internet. More investment, faster speeds, better technology, more Americans connected. Even with these compelling benefits, we recognize that questions arise whenever two big companies combine. Let me address some of them very briefly.

Americans are benefitting today from robust competition. 97 percent of the homes in America are in census tracts where at least three competitors offer fixed or mobile broadband Internet services. And almost 99 percent of American homes have access to at least three multi-channel video providers.

Objectively, this transaction is very straightforward from an antitrust perspective. As Ranking Member Johnson said, our two companies do not compete for customers anywhere. It is a fact that every customer will have the same choices among broadband and video providers after this transaction as before. Nor will Comcast gain undue power over programmers. Last week, we announced a transaction with Charter to divest almost 4 million customers, thereby reducing the number of our customers to approximately 29 million, below a 30 percent share of multi-channel video subscribers.

Some history here. The FCC has twice concluded that a 30 percent ownership cap was justified to prevent a single cable operator from wielding undue control over programmers. But the Federal courts twice rejected that cap saying that no cable operator could exercise market power at 30 percent. Nevertheless, we will remain below that level, which, by the way, is essentially the same share of the market we had after our AT&T Broadband and Adelphia transactions in the first decade of the 21st century.

Comcast is a company that keeps its promises and plays fair. Since our NBCUniversal transaction, we have successfully negotiated dozens of agreements with MVPDs for carriage of NBCUniversal content without any withholding of content from consumers, and no arbitrations have been needed under the MVPD provisions of the NBCUniversal order.

We also play fair in the exchange of Internet traffic, or what is sometimes called interconnection. This market is distinct from the ISP market, and the two markets should not be analytically conflated as some will try to do. For 20 years, we have successfully negotiated very common business arrangements with thousands of companies that connect to our network, including direct connection agreements with content providers, such as Netflix. Other ISPs do the exact same thing.

The interconnection market is fiercely competitive with dozens of substantial players, evidenced by the fact that prices have plummeted in that market by 99 percent over the last 15 years. Nothing in this transaction will affect the competitiveness of that market. Comcast wants to bring more investment and technology and new services to more American homes and businesses. In doing so, we will incentivize our competitors to invest more, which will benefit still more consumers. We have a track record as a fair competitor and as a company that over delivers on its promises.

Thank you very much for the opportunity to appear here today.

Mr. BACHUS. Thank you, Mr. Cohen.

And at this time, Mr. Marcus, you are recognized.

TESTIMONY OF ROBERT D. MARCUS, CHAIRMAN AND CEO, TIME WARNER CABLE INC.

Mr. MARCUS. Thank you. Chairman Goodlatte, Ranking Member Conyers, Chairman Bachus, Ranking Member Johnson, and Members of the Committee, I appreciate the opportunity to testify today about the proposed transaction between Comcast and Time Warner Cable.

I agree with David's assessment that the combination of our two companies will create a dynamic company poised for the 21st century, bringing new choices to consumers and spurring competition in the marketplace. This transaction will give the combined companies greater scale, which will drive investment in R&D, infrastructure, software, and talent, investment that will bring more consumers next generation technologies, more secure and reliable networks, faster broadband speeds, and enhanced video and voice services.

The combination of Comcast and Time Warner Cable also will bring new competition to business customers that neither company could effectively serve on its own. Not only will the merger drive investment and innovation at the new Comcast, but it will also drive investment and innovation from our competitors. Consumers clearly will be the beneficiaries.

And as David explained, this transaction will achieve these benefits without reducing competition in any way because Comcast and Time Warner Cable serve distinct geographic areas. To be clear, consumers will have the same choices of providers after the transaction as before.

The video broadband and voice businesses have never been more competitive. Today in nearly every market, consumers have at least three, and in many cases four or more, choices of facilities-based video providers. For years now, the satellite providers, DirecTV and DISH, have had video nationwide. Verizon and AT&T now offer video in a significant portion of our footprint. Google has launched video in several markets and has announced plans to expand that offering, and smaller over-builders also offer competing facilities-based video services.

At the same time, there are an increasing number of national over-the-top providers, including Netflix, which now has over 33 million customers in the U.S., and Google video websites, which attract over 157 million unique visitors each month.

Especially because of this increased competition among video distributors, programmers, including smaller, independent programmers, have more options for reaching consumers than ever before. Time Warner Cable and Comcast both carry scores of independent programming networks, and I am confident that the combined company will continue to be a leading platform for such content.

As for larger programmers, their ability to impose significant price increases every year demonstrates their extraordinary bargaining leverage. Programming costs at Time Warner Cable per subscriber will rise 10 percent this year, and I have no doubt that large programmers will continue to negotiate from a position of strength after our transaction.

Like video, the broadband marketplace is incredibly dynamic with cable facing competition from large broadband providers, such as AT&T and Verizon, rapidly expanding services from Google fiber, and increasingly robust mobile wireless broadband services. In fact, recent announcements by both AT&T and Google underscore how quickly this marketplace is evolving.

Just last month, AT&T named 100 candidate cities for broadband speeds of up to 1 gigabit per second. In February, Google stated that it has targeted an additional 34 cities for its 1 gig broadband service.

I would also note that mobile wireless is rapidly becoming a viable alternative to cable broadband given the ever-increasing capabilities of LTE, as well as continued advances in compression technology. The market for voice is also flush with competition with landline, mobile, and a growing number of over-the-top services, such as Skype. As relatively new entrants into the voice business, Comcast and Time Warner Cable have contributed meaningfully to the competitive of this market, and will continue to do so as a combined company.

This transaction will also create new and enhanced competition in the business market. Commercial services traditionally have been dominated by incumbents such as AT&T and Verizon, which leveraged their scale and scope to provide end-to-end services that businesses increasingly demand. Time Warner Cable has gained a foothold, especially with small- and medium-sized businesses. However, our ability to compete effectively in the telco-dominated business of serving larger multi-regional businesses has been constrained by our limited geographic footprint.

This transaction will significantly boost competition for commercial services by giving the combined company greater scale, a broader geographic footprint, and efficiencies necessary to meet the needs of business customers, especially the super-regional enterprises that demand a broad network footprint.

So in summary, today's dynamic and ever-evolving marketplace presents both new challenges and new opportunities. Enabling the new Comcast to compete with greater scale will yield more robust competition and significant benefits for consumers and businesses.

Thank you again for the opportunity to testify today, and I look forward to your questions.

[The joint prepared statement of Mr. Cohen and Mr. Marcus follows:]

JOINT WRITTEN STATEMENT BY

DAVID L. COHEN
EXECUTIVE VICE PRESIDENT
COMCAST CORPORATION

AND

ROBERT D. MARCUS
CHAIRMAN & CHIEF EXECUTIVE OFFICER
TIME WARNER CABLE INC.

TO THE
REGULATORY REFORM, COMMERCIAL AND
ANTITRUST LAW SUBCOMMITTEE
OF THE U.S. HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

OVERSIGHT HEARING ON
"COMPETITION IN THE VIDEO AND
BROADBAND MARKETS: THE PROPOSED
MERGER OF COMCAST AND TIME WARNER CABLE"

MAY 8, 2014

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Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for inviting us to testify today. We welcome this opportunity to discuss the proposed transaction between Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC"), and the numerous and substantial pro-consumer, pro-competitive, and public interest benefits that it will generate.

Summary of Joint Written Statement

The combination of Comcast and TWC will create a world-class communications, media, and technology company to help meet the insatiable consumer demand for advanced digital services on multiple devices in homes, workplaces, and on the go. Comcast has a proven record of investing in new technologies, facilities, and customer support to provide the best in broadband Internet access, video, and digital voice services. Similarly, TWC has made significant strides in offering a diverse array of video, broadband, and voice services to its customers.

Competing to provide these products and services and other highly desirable services in today's increasingly dynamic and national marketplace requires significant capital and R&D investments and technological expertise. The transaction will enable Comcast to build on each company's successes and strengths and extend Comcast's industry-leading communications and information services, as well as its substantial commitments to serve the public interest, to millions of additional consumers and businesses, with no risk of harm to competition or the public interest.

It is important to put this transaction in the proper competitive context. The decision of the companies to combine reflects the increasing rivalry and experimentation among national and global companies, including such powerful companies as AT&T, Verizon, DirecTV, Dish, Amazon, Apple, Samsung, Sony, Google, Netflix, and Facebook in competing for consumer attention and loyalty across the broadband ecosystem. The robust broadband connectivity that Comcast and TWC deliver to American consumers has enabled some of these and other companies to become global powerhouses, with many of them eclipsing both Comcast and TWC in annual revenues and market capitalization. Increasingly, these powerhouses are pursuing new businesses in which they compete with us – and we are doing the same thing. Google, for example, is leveraging its global role in content aggregation to compete with us in many areas, and is rapidly deploying fiber optic networks to serve dozens of major markets, including many that we serve; Netflix has built a larger U.S. base of video customers than our combined companies and is becoming a major originator of content; Apple has extended its platform into the full range of wired and wireless devices to compete in the delivery of content and services; and Samsung is developing its own operating system to implement a common platform among all Samsung consumer products, including its mobile and television appliances.

All of this competition is great for American consumers. We have seen the emergence of an unprecedented "broadband value circle" that provides consumers with abundant choices of content, platforms, devices, and providers. And the success of these companies has given them the massive scale and resources necessary to compete in this capital intensive, rapidly evolving industry, where continued innovation and research and development are essential.

By combining with TWC, Comcast can also achieve the increased coverage and economies of scale necessary to invest the billions of dollars required for next-generation technologies, greater service reliability, secure networks, and faster Internet speeds. This will let us drive more innovative products and services into the marketplace, allowing us to meet the needs of American consumers, businesses, and institutions in ways better than the two companies could do separately.

Combining the two companies' complementary strengths will accelerate the deployment of next-generation broadband Internet, video, and voice services across the new company's footprint. For example, TWC customers will benefit from Comcast's commitment to invest continuously in high-speed data services, as well as Comcast's next-generation products like the acclaimed X1 operating platform. And we can explore how TWC's next-generation products, like its "Start Over" and "Look Back" VOD technologies, may benefit Comcast customers.

With larger scale and network coverage, Comcast will also have the capability to deploy other new products and technologies more quickly and efficiently than either company could do on its own – including the best in-home Wi-Fi, expanded availability of Wi-Fi "hotspots" across the combined footprint (which will provide mobile access to Internet content), faster deployment of IP cable and related technologies, more accessible services and features for disabled Americans, and advanced network security.

Low-income households will benefit from the transaction through the extension of Comcast's industry-leading *Internet Essentials* program that supports broadband adoption by families with students eligible to participate in the National School Lunch Program. In just two and a half years, over 300,000 families, representing some 1.2 million low-income consumers, have been connected to the transformative power of the Internet thanks to this program. The transaction will extend this vital program to millions more Americans in the areas currently served by TWC.

Schools and libraries will benefit, too. Comcast and TWC already provide high-speed connectivity to thousands of schools and libraries. A larger footprint will enable the new Comcast to compete more effectively with ILECs and other legacy providers to provide better, lower-priced broadband and other services to more of these institutions – a national priority under President Obama's ConnectED initiative.

As part of the transaction, Comcast also proposes to extend many public interest commitments from the NBCUniversal Order to the acquired TWC systems, such as making available diverse and children's programming on various platforms, and guaranteeing carriage of non-commercial educational stations that have must-carry rights and have relinquished their broadcast spectrum. And Comcast will bring its best-in-class diversity programs to the combined company as well, covering diversity in governance, employment, suppliers, programming, and community investment, and extending the oversight of Comcast's unique external Joint Diversity Advisory Council to TWC systems.

Congress and the public can count on our commitment to deliver these competitive and public interest benefits. Comcast has a stellar record from past transactions. The company has previously shown how each of these past transactions would allow Comcast to invest and innovate in ways that benefit consumers and promote increased competition. Comcast promised it would, and it did. And Comcast will do it again here.

We also recognize that this transaction will be closely scrutinized by Congress, the DOJ, the FCC, and others for potential competitive issues. We welcome that review because there are several factors about the transaction that should allay any reasonable concerns.

First, Comcast and TWC *do not compete for customers in any market* – either for broadband, video, or voice services. The transaction will not reduce competition or consumer choice at all. Comcast and TWC serve separate and distinct geographic areas. This simple but critically important fact has been lost on many who would criticize our transaction, but it cannot be ignored – competition simply will not be reduced. Rather, the transaction will enhance competition in key market segments, including advanced business services[1] and advertising.[2]

Second, when this transaction was announced, Comcast said that it was prepared to reduce the combined company's subscriber counts by approximately three million, so that Comcast's managed residential subscribers would represent less than 30 percent of the total MVPD market. On April 28, 2014, Comcast announced an agreement with Charter, which includes divestiture transactions that more than meet this statement of intention. These transactions will reduce the combined company's managed residential subscribers by *nearly four million* – leaving Comcast with approximately 29 million managed residential subscribers. Comcast's share of MVPD subscribers will remain about what it was after both the AT&T Broadband and Adelphia transactions in 2002 and 2006, respectively. This subscriber share is also *below* the 30 percent "ownership cap" that the FCC had justified as necessary to prevent a cable operator from wielding bottleneck control or "monopsony" power over programming. Significantly, the D.C. Circuit twice overturned this cap after finding the dramatic growth of MVPD competition eliminated any risk that a cable operator could dominate with a 30 percent *or even higher share* of subscribers. And of course, MVPD competition has *increased significantly* since these court rulings.

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1 Medium-sized businesses and institutions, as well as regional, and super-regional businesses, will be among those who will benefit from more competition. The only options for many of these businesses and institutions have been slower, expensive data and voice services offered by incumbent local exchange carriers ("ILECs") and other legacy providers. Comcast and TWC have made modest – but important – strides, within their current footprints, in offering faster, lower-cost advanced digital services. Where each company has been able to enter these underserved market segments, the ILECs and other legacy providers have quickly responded with dramatic price reductions and service improvements. The transaction will give Comcast the additional coverage and scale necessary to compete with ILECs and others for these customers, as well as for backhaul services to wireless carriers.

2 Similarly, the advertising marketplace will benefit from enhanced competition. The combination of the two companies' complementary advertising platforms and channels will allow Comcast to provide seamless access to major designated market areas ("DMAs") like New York and Los Angeles, where we can provide broader and more innovative packages and options to advertisers, like dynamic ad insertion and "addressable advertising" for use in VOD and other cable and online advertising.

Third, the transaction will spur additional broadband competition from other well-funded providers, using fiber, copper, wireless, and satellite technologies. These companies will have every incentive to respond to consumer demands with their own investments and innovations. As AT&T's CEO Randall Stephenson stated, the Comcast-TWC transaction "puts a heightened sense of urgency" on broadband providers to "very, very aggressive[ly]" invest capital in their networks and improve the quality of their services. This is not just open-ended speculation – just last month, AT&T announced a major initiative to expand its ultra-fast fiber network to up to 100 cities and municipalities nationwide, including 21 major metropolitan areas. That type of positive competitive response will, in turn, trigger other broadband providers to respond and innovate, just as traditional cable providers responded to the entry of DBS providers in the MVPD marketplace. This is a highly desirable outcome for the American economy, and it will drive accelerated investment in both fixed and wireless broadband.

Fourth, Comcast and TWC have enabled the development of online video by providing ever-faster broadband speeds and higher bandwidth services. Our singular goal has been to enhance customers' online experiences. We have no interest in degrading our broadband services to disadvantage edge providers. That would harm the attractiveness of our high-speed data business, which is Comcast's fastest-growing business. Besides being illogical, there are safeguards already in place. As part of the NBCUniversal transaction, Comcast agreed to be bound by the FCC's Open Internet rules until 2018. These protections will now extend to the acquired TWC systems, giving the FCC ample time to adopt (and, if necessary, to defend) legally enforceable Open Internet rules applicable to the entire industry.

Fifth, as FCC Chairman Wheeler recently reaffirmed, the Open Internet rules do not apply to the interconnection arrangements that help make up the Internet "backbone," such as Comcast's recent interconnect agreement with Netflix, despite the efforts by some special interests to conflate these issues. The net neutrality rules address how an Internet service provider ("ISP") treats traffic over its last mile network, which delivers content to consumers' homes. Backbone interconnect agreements, including transit and peering agreements, address how traffic is transported across the backbone *to* an ISP's network; this involves a different set of business arrangements and a distinct marketplace for Internet content exchange – one that has functioned effectively and efficiently for over two decades without government intervention.[3]

Finally, access by competitors to the combined company's programming will remain unchanged. The limited number of TWC-owned programming networks that Comcast will acquire will be subject to well-established FCC rules and antitrust laws, along with the relevant terms of the NBCUniversal Order, to ensure that MVPDs and OVDs continue to have access to Comcast/NBCUniversal content after the transaction.

The TWC transaction is a unique and important opportunity for Comcast as it continues to compete in today's increasingly dynamic and global marketplace. We are confident that an objective review of the transaction will confirm the many benefits it will generate for consumers, businesses, and the public interest, as well as the lack of any competitive or other harms.

[3] As more fully discussed in Part IV.B.1 below, the Comcast-Netflix interconnect agreement is neither novel nor unusual. It was an entirely voluntary, commercially negotiated agreement that is one of the many, many options content providers have to send their content to Comcast's network.

I. Overview Of The Transaction

A. Comcast-TWC Combination

This is a friendly transaction in which Comcast will acquire 100 percent of TWC's equity and approximately 11 million TWC customers. It is a stock-for-stock transaction. TWC will become a direct, wholly owned subsidiary of Comcast.

Comcast and TWC operate in entirely separate and distinct geographic areas, as the map below illustrates.[4]

[4] The fact that Comcast and TWC do not compete reflects what one industry expert has described as "a kind of accident of history, namely that the rewarding of [cable] franchises is done by local communities (or states, in the few instances where that is applicable) and not by the federal government." Daniel Brenner *et al.*, *Cable Television and Other Nonbroadcast Video*, § 3.01 (1993). This led to a "frantic race for franchises" in the early stages of the industry. *Id.* In many local communities, franchise grants were exclusive (*de facto* if not *de jure*) to a single operator. *Id.* §§ 2.01; 3.02[6]. Although the 1992 Cable Act expressly prohibited exclusive franchises, *id.* at § 3.02[6], the two national direct broadcast satellite providers (i.e., DirecTV, Dish) began offering competing MVPD services to most areas, and then telephone companies (e.g., AT&T, Verizon) began using their networks and new technologies to deliver competing video services. As a consequence, competition among cable operators has been limited throughout the cable industry's history. And most cable companies today have determined that their investments are better spent on building out their existing areas with state-of-the-art networks, offering more innovative services, and working to improve existing services, rather than diverting their limited capital to the challenges of building new networks in communities that may already be served by two satellite providers, an established cable operator, a telephone company, and perhaps one of the few overbuilders, such as RCN or Google.

Consumers in Comcast's territories cannot subscribe to TWC for broadband, video, or phone services. And TWC customers cannot switch to Comcast.[5] *For that reason, this is not a horizontal transaction under merger review standards, and there will be no reduction in competition or consumer choice.*[6] Comcast's and TWC's many traditional competitors, including numerous broadband providers, MVPDs, and telcos will still be competing post-transaction, with no fewer firms in each relevant market than there are today.

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5 Among the two companies' more than 33 million customers, approximately 2,800 Comcast residential or small or medium-sized business customers are located in zip+4 areas where TWC services residential or small business customers (and the number of TWC customers is similar). These customers are sprinkled across various zip+4 areas, none of which has more than 500 Comcast customers, and it is quite possible that Comcast and TWC are not even providing overlapping services in some of these fringe areas but rather just have facilities that fall within the same zip+4 area. Comcast and TWC also analyzed all business services (Ethernet, backhaul, wholesale, voice, etc.), and found either no overlap or only a small number (approximately 215 Comcast and TWC customers in common zip codes).

6 The Department of Justice and Federal Trade Commission define "horizontal transactions" as those between "actual or potential competitors." *See* U.S. Dep't of Justice & FTC, *Horizontal Merger Guidelines*, at 1 (Aug. 19, 2010).

B. Charter-SpinCo Transaction

On April 28, 2014, Comcast announced that it has reached an agreement with Charter Communications ("Charter") to divest and exchange certain Comcast and TWC systems. The systems that will be sold to or exchanged with Charter are already fairly well integrated into geographic regions that fit well within the Charter footprint. As part of the transaction, certain pre-merger TWC systems will also be exchanged with Charter for certain of its systems. In addition, Comcast will transfer certain systems to a new, independent, publicly-traded MVPD ("SpinCo") in which Comcast shareholders, including the former Time Warner Cable shareholders, will hold two-thirds of the equity while Charter will hold a minority share of 33 percent and provide certain supportive operating services.[7]

The divestitures will be executed, subject to the completion of the Comcast-TWC transaction, in three buckets:

- First, Comcast will divest systems serving approximately 1.4 million existing TWC subscribers directly to Charter for cash.
- Second, Comcast and Charter will exchange systems serving approximately 1.6 million existing TWC and Charter subscribers each, rationalizing the geographic presence of both companies, which will lead to greater operational efficiencies and the rationalization of both companies' footprints, thereby enhancing the customer experience.
- Finally, Comcast will form and then spin off to its shareholders a new, independent, publicly traded company ("SpinCo") that will operate systems serving approximately 2.5 million existing Comcast subscribers, mostly in the Midwest. Comcast shareholders, including former TWC shareholders, will directly own approximately 67 percent of SpinCo, while a new holding company formed by Charter will directly own approximately 33 percent of SpinCo. The Charter holding company will acquire its interest in SpinCo by issuing stock to Comcast shareholders (including former Time Warner Cable shareholders). SpinCo will have a nine-member Board of Directors that will include six independent directors and three directors appointed by Charter (who are expected to be Charter executives or directors, including Charter CEO Tom Rutledge, who is expected to serve as chairman of SpinCo). Comcast will hold no ownership interest in SpinCo (or Charter) and will have no role in managing the SpinCo systems. Charter will provide substantial operational support for the SpinCo systems under a services agreement, although SpinCo will have its own expert, independent management team that is unaffiliated with Charter or Comcast.

As a result of these transactions, Comcast's total number of managed residential subscribers will be approximately 29 million – less than 30 percent of the total number of MVPD

7 *See* Exhibit 1 (showing designated market areas ("DMAs") involved in divestiture transactions).

subscribers in the United States, approximately the same as Comcast's subscriber share after its completion of both the 2002 AT&T broadband transaction and the 2006 Adelphia transaction, and below the FCC's 30 percent "ownership cap" that the agency had adopted based on a stated intention of preventing a cable operator from exercising bottleneck or monopsony control over programmers. That ownership limit was twice rejected by federal courts.

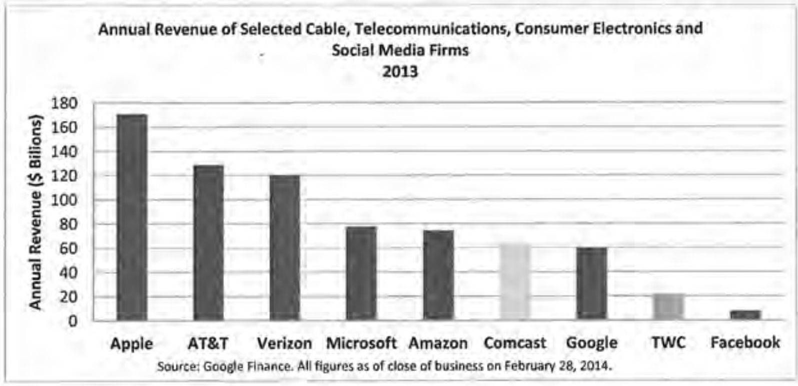
II. The Transaction Is Pro-Consumer, Pro-Competitive, And Will Generate Substantial Public Interest Benefits.

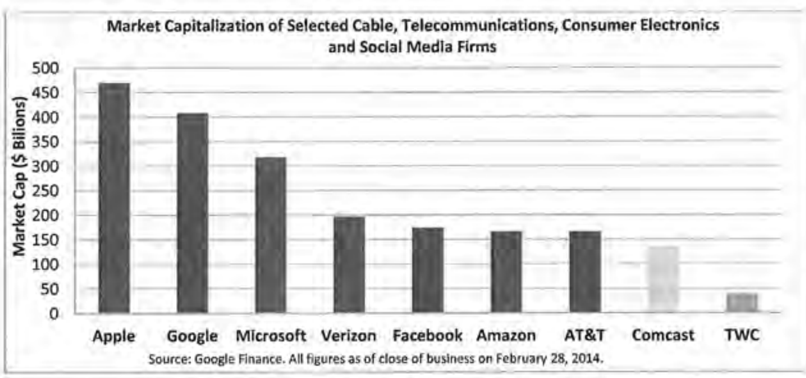
The combination of Comcast and TWC will create a world-class communications, media, and technology company that can provide consumers and businesses the advanced services they want now and will need in the future. The transaction will also spur other companies to innovate and invest in new technologies and services, helping to keep America at the forefront of technology and innovation. The mere announcement of this transaction had just such a positive effect, giving competitors like AT&T "a heightened sense of urgency" to invest in their networks and improve their services – including, for example, the company's recent announcement to expand its VIP, 1 Gig service to up to 100 new cities.[8] That is a highly desirable outcome for consumers and for our economy.

A. Greater Scale Is Essential To Compete In Today's Dynamic, Multi-Faceted Marketplace.

The media and communications industry has changed dramatically over the past two decades, and today has evolved into a vastly larger, more complex, and multi-faceted communications, media, and technology ecosystem, in which a host of sophisticated companies with national and even global footprints, like AT&T, Verizon, DirecTV, Dish, Amazon, Apple, Sony, Google, Netflix, and Facebook are increasingly competing against one another for customer attention and loyalty. Many of these powerhouses have eclipsed Comcast and TWC in annual revenues, market capitalization, and/or customers:

[8] *See* Randall Stephenson, Chairman & CEO, AT&T, Inc., Morgan Stanley Technology, Media & Telecom Conference, Tr. at 3 (Mar. 6, 2014).





The major telephone companies have the benefit not only of robust wireline footprints, but also national wireless broadband platforms, which they are increasingly leveraging as complementary offerings to residential and business customers.[9] Direct satellite providers are likewise evolving and aggressively expanding their national services and product offerings.[10]

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[9] *See, e.g.*, Joan Engebretson, *AT&T Leverages Landline, Wireless Assets for Free U-verse Promotion*, telecompetitor, Mar. 18, 2014, http://www.telecompetitor.com/att-leverages-landline-wireless-assets-for-free-u-verse-promotion/ ("Having wireless and landline network assets could be AT&T's and Verizon's secret weapon in both the wireless and landline broadband markets."). Verizon has also announced plans to acquire Intel Corporation's OnCue technology in order to "accelerate the availability of next-generation video services" on its networks. The technology would give Verizon's wireless customers the ability to stream live and on-demand television programming and to watch videos across multiple screens and comes after Verizon's purchases of EdgeCast, a content delivery network company and of video uploading and encoding technology from upLynk. Hayley Tsukayama, *Verizon Buys Intel's Cloud TV Service*, Wash. Post, Jan. 21, 2014, *available at*

And new digital platform providers, with their roots in software and hardware, are using the robust Internet connectivity provided by Comcast, TWC, and our competitors to grow into global powerhouses. These companies are increasingly pursuing new businesses that compete with ours. As one industry expert has observed, "broadband connectivity is the glue that permits multiple firms, once walled off from one another in distinct product-market categories, to compete, cooperate, buy, and supply products and services from one another in order to satisfy customers that are able to buy from any one of them."[11]

For example, Google increasingly competes as a network, video, and technology provider while providing core search and advertising functionalities for Comcast's and TWC's broadband businesses. Netflix has built a customer base larger than our combined companies and is the originator of original content and offering national subscription VOD ("SVOD"). Apple has extended its platform into the full range of wired and wireless devices, competing in the delivery of content and services to consumers. Microsoft just announced that it will feature ads on the Xbox One, creating a new video advertising platform. Amazon continues to leverage its unequaled sales platform and family of competitive tablets to promote its burgeoning Prime Instant Video business, and just last week announced the rollout of its own advanced video set-top box.[12] Samsung is developing its own operating system, Tizan, to implement a common platform throughout all of its consumer products, including mobile and television appliances, as well as releasing its own apps, such as a free music streaming service.[13] AT&T, Sony, and Dish are each planning to launch over-the-top video services in the near future.[14] Verizon is considering offering an over-the-top wireless video service. As Verizon's CFO recently observed, "[Verizon is] the fifth largest cable company now. I also have something that cable

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http://www.washingtonpost.com/business/technology/verizon-buys-intels-cloud-tv-service/2014/01/21/67e94336-82a5-11e3-9dd4-e7278db80d86_print.html.

10 *See, e.g.*, Press Release, Sprint Corp., Sprint and Dish to Trial Fixed Broadband Service (Dec. 17, 2013), http://newsroom.sprint.com/news-releases/sprint-and-dish-to-trial-fixed-wireless-broadband-service.htm.

11 *See* Jonathan Sallet, *The Creation of Value: The Broadband Value Circle and Evolving Market Structures*, at 3 (Apr. 4, 2011); *see also* Jonathan Sallet & Steven Weber, *Behold the Broadband Value Circle*, Bloomberg Businessweek, Jan. 11, 2008, *available at* http://www.businessweek.com/stories/2008-01-11/behold-the-broadband-value-circlebusinessweek-business-news-stock-market-and-financial-advice ("In the era of the Broadband Value Circle, everyone can compete in everyone else's market. Your supplier today may be your competitor tomorrow, and you may find that you are simultaneously that company's supplier.").

12 *See* Greg Bensinger, *Amazon Unveils Video Streaming Device Fire TV*, Wall St. J., Apr. 2, 2014, http://online.wsj.com/news/articles/SB10001424052702304441304579477283348851844?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304441304579477283348851844.html.

13 *See* Yun-Hee Kim & Jonathan Krim, *Samsung Is Developing Its Own Platform, Apps*, Wall St. J., Apr. 20, 2014.

14 *See* Todd Spangler, *AT&T, Chernin Group Invest $500 Million in Over-The-Top Video Venture*, Variety, Apr. 22, 2014, *available at* http://variety.com/2014/digital/news/att-chernin-group-invest-500-million-to-form-over-the-top-tv-venture-1201160876/#; Jeff Baumgartner, *Report: Dish Eyeing Summer Launch of OTT TV Service*, Multichannel News, Apr. 23, 2014, *available at* http://www.multichannel.com/news/technology/report-dish-eyeing-summer-launch-ott-tv-service/374044.

doesn't have, which is 100 million eyeballs on wireless devices."[15] And even Yahoo is "plunging" into "the increasingly competitive world of high-quality digital video" by developing two original TV-length comedy series and partnering with Live Nation to live-stream concerts over Yahoo's websites and apps.[16]

To meet these challenges, Comcast has fundamentally transformed itself from a regional cable company into a leading communications, media, and technology company. By investing heavily in talent, research and development, and the infrastructure needed to facilitate creativity and invention, Comcast has created a culture of innovation from top to bottom. Comcast now employs over 1,000 developers and engineers – a pool of technical talent unprecedented in the history of cable – and competes for new technology talent with Google, Apple, Netflix, and many others.[17]

This highly dynamic, rapidly evolving industry requires constant innovation and investment in R&D and in physical infrastructure, making increased scale not only desirable but *essential*. The greater scale, expanded network coverage, and operating efficiencies resulting from the transaction will enable Comcast to invest the billions of dollars necessary to bring next-generation technologies, more secure networks, faster Internet speeds, enhanced video and voice services, and greater service reliability to millions of residential and business consumers across the country.

B. Consumers Will Benefit From Accelerated Broadband Deployment And Expanded Broadband Adoption.

1. The Transaction Will Bring Faster Internet Speeds And Next-Generation Broadband Products And Services To TWC Customers.

Comcast is widely recognized for its technological expertise and willingness to invest in advanced broadband services.[18] Building on the investments TWC has made in its broadband network, Comcast will bring faster Internet services and next-generation products to millions of TWC's customers.

Broadband Speed Innovation: Comcast has increased its Internet speeds 13 times in the last 12 years. Comcast's fastest residential downstream broadband speeds have increased more than 30-fold in the last six years to 505 Mbps and are among the highest in the industry. Last

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[15] Fran Shammo, EVP & CFO, Verizon, Deutsche Bank Media, Internet and Telecom Conference, Tr. at 17 (Mar. 10, 2014).

[16] *See* Vindu Goel & Bill Carter, *Yahoo to Offer TV-Style Comedy Series on the Web*, N.Y. Times, Apr. 28, 2014, *available at* http://www.nytimes.com/2014/04/29/technology/yahoo-to-offer-two-tv-length-comedy-series-on-web.html?emc=edit_tnt_20140428&nlid=37308674&tntemail0=y&_r=1.

[17] Comcast's research and development efforts involve highly talented individuals at its technology centers around the country, including in Seattle, Silicon Valley, Denver, Washington, D.C., and Philadelphia.

[18] Comcast was recently rated number one by Frost & Sullivan in 2013 for "Technology Innovation" in the North American Broadband Market.

year, Comcast showed that its residential network is capable of delivering 3 Gigabits per second (or "Gigs").[19] And Comcast successfully trialed the first One Terabit[20] connection on a network segment from Ashburn, Va. to Charlotte, N.C.[21] To our knowledge, this was the first time live data traffic has ever been carried at Terabit speeds on an existing commercial network.[22]

Comcast is also doubling its broadband network capacity *every 18 months* to keep up with customers' increasing demands for Internet services on multiple devices. This was enabled by Comcast's decision, over five years ago, to convert its networks to "all-digital," which freed up the bandwidth required to increase broadband speeds, add channels, and provide more HD programming.

These investments are providing unparalleled value to Comcast customers. Comcast customers pay *92 percent less* per megabit of Internet speed on our network today than they paid in 2002.[23]

TWC took a different approach to free up bandwidth on its network by adopting switched digital video (SDV) technology. Now, TWC is transitioning to an all-digital platform to free up additional bandwidth needed to provision faster Internet speeds, but its transition is complete in only a small number of systems.[24]

Post-transaction, Comcast intends to make substantial incremental upgrades to TWC's systems to migrate them to all-digital, freeing up bandwidth to deliver greater speeds. For example, Comcast typically bonds 8 QAM channels together in its systems, and Comcast's most popular broadband service tier offers speeds of 25 Mbps downstream/5 Mbps upstream across its footprint. In comparison, TWC bonds 4 QAM channels in nearly half of its systems, and its most commonly purchased service tier offers speeds of 15 Mbps/1 Mbps. Comcast's fastest residential broadband tier offers speeds of 505 Mbps/100 Mbps; TWC's current top speeds are

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19 *See* Press Release, Comcast Corp., The Future of Broadband Speed and 4K Ultra HD Video (June 11, 2013), http://corporate.comcast.com/news-information/news-feed/comcast-demonstrates-the-future-of-broadband-speed-and-4k-ultra-hd-video.

20 That is, 10^{12} bits of data.

21 *See* Press Release, Ciena Corp., Comcast Conducts Industry's First Live 1 Terabit Network Trial with Ciena's 6500 Converged Packet Optical Solution (Oct. 22, 2013), http://www.ciena.com/about/newsroom/press-releases/Comcast-Conducts-Industrys-First-Live-1Terabit-Network-Trial-with-Cienas-6500-Converged-Packet-Optical-Solution.html.

22 *Id.*

23 *See* Exhibit 2 (chart showing increasing speeds/decreasing per megabit costs).

24 *See* Ian Olgeirson, *Charter, Time Warner Cable Lag in All-Digital Push to Convert CapEx into Capacity*, SNL Kagan (Jan. 17, 2014) ("Time Warner Cable is estimated to have made the [digital] transition in 17% of its homes passed, including markets in its New York cluster. The MSO has indicated plans to expand in 2014, but . . . is not expected to complete the effort this year."). TWC has migrated to all-digital only in New York City; Augusta, Maine; parts of Kentucky and Indiana; and portions of Los Angeles.

100 Mbps/5 Mbps. Comcast's investments in the TWC systems will also improve network reliability, network security, and convenience to TWC customers.

Comcast will soon be increasing Internet speeds further with the deployment of DOCSIS 3.1. DOCSIS 3.1 is the next generation cable broadband technology and is capable of delivering Internet speeds of several Gigs; it is the most advanced broadband architecture in the marketplace. Comcast is already preparing to deploy DOCSIS 3.1 in its existing footprint. The broader scale resulting from the transaction will now allow us to deploy DOCSIS 3.1 across the combined company's footprint, giving Comcast and TWC customers access to ultra-fast broadband capability more quickly and efficiently *than either company could do on its own*.

Better In-Home Wi-Fi: The transaction will similarly speed the availability of advanced Wi-Fi equipment in consumers' homes. The quality of broadband service depends not only on the "last-mile" infrastructure but also the delivery of the signal over the last few yards. Comcast has led the entire broadband industry in rolling out advanced gateway Wi-Fi routers to approximately 8 million households and small businesses, giving these customers faster speeds (up to 270 Mbps downstream as compared to 85 Mbps downstream from the prior generation devices) and better performance over their home and business wireless networks. In contrast, TWC only recently began deploying advanced in-home Wi-Fi routers. With the greater purchasing power and economies of scale resulting from the transaction, Comcast can not only offer TWC customers access to today's best routers, but also invest in and deploy next-generation router technologies for all of the combined company's customers.

Expanded Internet Access On The Go: Americans are increasingly using Wi-Fi as a primary way to connect to the Internet outside of the home. To serve this growing demand, Comcast is building one of the largest and most robust Wi-Fi networks in the country. These Wi-Fi "hotspots" currently come in three different categories: outdoor (*e.g.*, suspended from a cable wire); as part of the broadband service provided to small and medium-sized businesses; and "home as hotspot" (*i.e.*, a Comcast subscriber's home network is supplemented using a dual router that creates a new public Wi-Fi pathway).[25] In less than three years, Comcast has deployed over one million Xfinity WiFi access points in its footprint – and seen a significant spike in usage. And, on April 30, 2014, Comcast unveiled plans to reach *eight million* Xfinity WiFi hotspots in major cities coast to coast by the end of this year.[26] In comparison, TWC has deployed only 29,000 Wi-Fi access points in its footprint.

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[25] Through the neighborhood hotspots initiative Comcast announced last year, Comcast sends a separate Wi-Fi signal from Comcast-issued home equipment that enables anyone within range to get online. Entire residential blocks then show as hotspots on the Xfinity Wi-Fi mobile app. The initiative began in Philadelphia. With the significant expansion in Chicago in 2013, Comcast . . . [is] paving the way toward a national Wi-Fi network. *See* Robert Channick, *Comcast Turning Chicago Homes into Public Wi-Fi Hot Spots*, Chi. Trib., Mar. 5, 2014, *available at* http://articles.chicagotribune.com/2014-03-05/business/chi-chicago-public-wifi-comcast-20140304_1_xfinity-wi-fi-moffettnathanson-public-wi-fi-hot-spots.

[26] *See* Press Release, Comcast Corp., Comcast to Reach Eight Million Xfinity WiFi Hotspots in 2014 (Apr. 30, 2014), http://corporate.comcast.com/news-information/news-feed/comcast-to-reach-8-million-xfinity-wifi-hotspots-in-2014. This expanded deployment plan includes Atlanta, Baltimore, Boston, Chicago, Denver, Detroit, Hartford, Houston, Indianapolis, Miami, Minneapolis, Nashville, Philadelphia, Pittsburgh, Portland, Sacramento, Salt Lake City, San Francisco, Seattle, and Washington, D.C.

Comcast customers now transmit nearly 2 million gigabytes (or nearly 2 petabytes[27]) of data through Comcast's Wi-Fi hotspots each month. Approximately 13 percent of this traffic is transmitted through outdoor hotspots, 11 percent is transmitted through small and medium business (or "SMB") hotspots, 51 percent is transmitted through hotspots in customers' own homes, and 24 percent is transmitted through hotspots in other customers' homes. Public awareness of the benefits of this early-stage initiative is increasing, and usage is steadily growing. In fact, users connecting to residential neighborhood hotspots utilize them for longer periods of time, with their sessions lasting three times as long as sessions on outdoor hotspots and with users consuming almost three times as much data.

To complement these efforts, Comcast has partnered with TWC and other cable companies in a "CableWiFi" initiative that allows each company's customers to use the other companies' Wi-Fi hotspots. But this partnership has not created the incentives or structure necessary to significantly expand Wi-Fi availability in the ways that Comcast envisions for its customers.

The transaction will give Comcast the geographic reach, economies of scale, customer density, and return on investment needed to massively expand Wi-Fi hotspots across the combined company's footprint, including in the Midwest, South, and West, particularly in areas like Cleveland/Pittsburgh, the Carolinas, Texas, and California, where there will be greater density and clustering of systems. Our goal is to provide greater Wi-Fi availability that allows the combined company's customers to access the Internet in more places, more conveniently, and at no additional charge.

2. The Transaction Will Accelerate Other Broadband Network Investments And Improvements That Benefit Consumers.

The transaction will also enable Comcast to invest in network expansions and last-mile improvements that provide an even stronger foundation for innovative applications, including education, healthcare, the delivery of government services, and home security and energy management. And with greater coverage and density of systems, Comcast will also have the ability and incentive to build out and make available interconnection points in more geographic regions. This will be especially beneficial to companies like Google, Netflix, and Amazon, which aggregate massive data traffic when they deliver their own and others' services to consumers.

These network upgrades will promote other critical investments, at the edge of the network, in exciting new applications and services for consumers.[28] In its Open Internet Order, the FCC described this dynamic as:

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[27] This is equivalent to nearly half a million DVDs worth of data each month. *See Visual Networking Index IP Traffic Chart*, Cisco, http://www.cisco.com/cdc_content_elements/networking_solutions/service_provider/visual_networking_ip_traffic_chart.html.

[28] *See* Peter Grant & Bruce Orwall, *After Internet's Big Bust, Broadband Shift Went On*, Wall St. J., Jan. 8, 2003, *available at* http://online.wsj.com/news/articles/SB1041979000108173904 (John Doerr of Kleiner Perkins: "There's no question that broadband enables paid-for-content business models."); *id.* (Disney Internet Group President Steve Wadsworth on why ABC and ESPN websites were launching new video technology in 2003 as compared to the Dot Com bust: "We're getting to critical mass in broadband."); Josephine Moulds, *Boom, boom.*

> a virtuous circle of innovation in which new uses of the network – including new content, applications, services, and devices – lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses . . . . Streaming video and e-commerce applications, for instance, have led to major network improvements such as fiber to the premises, VDSL, and DOCSIS 3.0. These network improvements generate new opportunities for edge providers, spurring them to innovate further.[29]

This competitive dynamic has given consumers a more abundant and diverse choice of content, platforms, and providers than ever before. The transaction will enable the combined company to continue to contribute to this dynamic ecosystem more effectively than either company could do alone.

3. The Transaction Will Drive Greater Broadband Adoption Across The Combined Company's Footprint.

One of the most pressing challenges facing this country is the significant broadband adoption gap – known as the "digital divide." The combination of Comcast and TWC will substantially advance the goal of bringing all Americans into the digital communications age by extending Comcast's landmark *Internet Essentials* broadband adoption program to TWC's territories.

The primary barriers to broadband adoption have been identified as including a perceived lack of relevance of the Internet to the lives of individual consumers, a lack of "digital literacy" in consumers' understanding how to use the technology, and, for some, the price of getting online. Working with the FCC, community partners, and local elected officials, Comcast developed *Internet Essentials* to respond directly to all of these challenges. *Internet Essentials* provides low-income households with broadband service for $9.95 a month, along with the option to purchase an Internet-ready computer for under $150, and multiple options for accessing free digital literacy training in print, online, and in person.[30] Families with children eligible to

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Dotcoms Are Back in the Frame, Telegraph, Apr. 20, 2007, *available at* http://www.telegraph.co.uk/finance/markets/2807599/Boom-boom.-Dotcoms-are-back-in-the-frame.html (Judy Gibbons of Accel: "A whole industry infrastructure has been established, there are millions of users, people are consuming online versus offline. It's become very mainstream and therefore there are still lots of opportunities to both transform existing business and create new applications that are only possible with broadband internet, like social networking."); *see also Hearing on The American Clean Energy Security Act of 2009: Before the Subcomm. on Energy & Env't of the H. Comm. on Energy & Commerce*, 111th Cong. 1245 (Apr. 24, 2009) ("[I]n 1996, we went from a point where not one home in America had broadband in 1996, not one home, to a point where, 10 years later, there is a whole new vocabulary, YouTube, Google, eBay, Amazon, Hulu, thousands of companies, millions of new jobs. They didn't exist because the market wasn't there before 1996 for broadband. It was all narrowband.") (Rep. Edward Markey).

29 *See Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 ¶ 14 (2010).

30 *See Getting Started with the Internet*, Internet Essentials, http://learning.internetessentials.com/tour/getting-started-internet (last visited May 4, 2014).

receive free or reduced-price school lunches through the National School Lunch Program can qualify for this program.

Internet Essentials is achieving real results.[31] In the first 30 months of the program, Comcast connected more than 300,000 families, representing an estimated 1.2 million low-income Americans, to the power of the Internet at home. Over the past three years, Comcast also has provided in-person digital literacy training to more than 1.6 million individuals.[32]

Helping people successfully cross the digital divide requires ongoing outreach. To increase awareness of the *Internet Essentials* program, Comcast has made significant and sustained efforts within local communities. To date, those outreach efforts have included:

- Distributing over 33 million free brochures to school districts and community partners for (available in 14 different languages).
- Broadcasting more than 3.6 million public service announcements with a combined value of nearly $48 million.
- Forging more than 8,000 partnerships with community-based organizations, government agencies, and elected officials at all levels of government.

Other significant milestones for Comcast's *Internet Essentials* program include:

- Offering *Internet Essentials* in more than 30,000 schools and 4,000 school districts in 39 states and the District of Columbia to spread the word and help bring more families online.
- Investing more than $165 million in cash and in-kind support to help fund digital literacy initiatives nationally, reaching more than 1.6 million people through Comcast's non-profit partners.
- Fielding 1.9 million phone calls to the *Internet Essentials* call center.
- Welcoming 1.8 million visitors to the *Internet Essentials* websites, which supply information in both English and Spanish, and the Online Learning Center.

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31 *See* Charisse Lillie, *Comcast Ranks Among Top 50 Companies for Commitment to Community*, Comcast Voices (Dec. 5, 2013), http://corporate.comcast.com/comcast-voices/comcast-ranks-among-top-50-companies-for-commitment-to-community; *see also 2013 Results*, The Civic 50, http://www.civic50.org/2013_results.php (last visited May 4, 2014); *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4514-15 (2011) (Statement of Commissioner Clyburn) (explaining that "[t]he adoption initiative . . . is well-crafted, ambitious, and has enormous potential. By offering the possibility of affordable, high-speed broadband to families . . . not only will school-age children be able to explore the infinite worlds of the web, but the others in their homes will be able to join them.").

32 *See* Exhibit 3 (*Internet Essentials* graphic).

- Providing IE customers with more than 23,000 subsidized computers at less than $150 each.[33]

In addition, Comcast recently made grants totaling more than $1 million to 15 communities to create "*Internet Essentials* Learning Zones." The grants are part of Comcast's multi-faceted Gold Medal Recognition Program for communities that have done the most to help close the digital divide. Learning Zones will bring together the non-profit community, schools, and Comcast to create a continuum of connectivity during the day, after school, and at home. As part of these efforts, Comcast offered an opportunity for all eligible families in these communities to receive free *Internet Essentials* service for six months if they registered with the program during a three-week period in March.[34] More than 4,300 new low-income families have been connected to the Internet under this promotional offer.[35]

And the program has not remained static. As Comcast has gained insights from hands-on experience, it has consistently implemented significant enhancements to *Internet Essentials* along the way. As a result, the program has grown well beyond the company's original commitment in the NBCUniversal transaction. These enhancements include:

- Eligibility criteria expanded – Comcast has expanded eligibility criteria for *Internet Essentials* twice, first by extending it to families with children eligible to receive reduced price school lunches, and then by offering it to parochial, private, cyberschool, and homeschooled students. As a result, nearly 2.6 million families nationwide are now eligible for *Internet Essentials*, an increase of approximately 30 percent from the original eligible base.

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33 *See, e.g.*, Press Release, Comcast Corp., Comcast Extends National Broadband Adoption Program for Low-Income Families (Mar. 4, 2014), http://corporate.comcast.com/news-information/news-feed/internet-essentials-2014.

34 *Id.*

35 TWC also has undertaken broadband adoption efforts in recent years. TWC has offered an entry-level, "Everyday Low Price" broadband access service for $14.95 per month, as well as its Starter Internet program targeted to schools in several areas in its footprint, which provided eligible families a basic tier of broadband service for two years for $10 per month. *See* Mike Robuck, *Time Warner Boots Up Wi-Fi Hotspots, Starter Internet Tier in K.C.*, CED, Nov. 30, 2012, *available at* http://www.cedmagazine.com/news/2012/11/time-warner-boots-up-wi-fi-hotspots-starter-internet-tier-in-kc. Ultimately, 486 schools participated in the pilot program, which ended in January 2013. TWC also has been actively engaged in a variety of other broadband adoption and digital literacy efforts through partnerships with non-profit and community organizations. For example, in partnership with the nation's largest civil rights organizations, TWC carried $1 million worth of PSAs in key markets throughout 2012-2013 to promote the importance of broadband. The PSAs were carried in English, Spanish, and five other languages and were prepared by the Broadband Opportunity Coalition ("BBOC"). BBOC's members include: National Urban League, NAACP, National Council of La Raza, Asian American Justice Center, and LULAC. TWC has also partnered with the McCain Internet Empowerment Project, a non-profit initiative that brings broadband service and computer accessibility to senior citizens. TWC has provided computers and broadband connectivity at the Wilson Senior Center and eight other assisted-living facilities in the area to expand digital literacy among senior citizens.

- Broadband speeds increased – Comcast increased the program's broadband speeds twice in less than two years (from 1.5 to 3 to 5 Mbps upstream), and Internet Essential families now receive downstream speeds of 5 Mbps and upstream speeds of 1 Mbps.

- Instant approval process expanded – Comcast expanded its instant approval process for families whose students attend schools with 70 percent or more National School Lunch Program participation (previously, the threshold was 80 percent), which enhanced participation rates.

- Online support enhanced – Comcast created an online application tool on the program's English- and Spanish-language websites to make applications easier and faster.

- Partner support facilitated – Comcast's community partners now may help connect low-income families to the Internet by purchasing "Opportunity Cards" that help defray the cost of the service. And Comcast launched a program that gives third parties such as schools and community-based organizations the ability to purchase *Internet Essentials* service and equipment in bulk for families in their community.

- Registration process expanded – Comcast conducts on-site registration during *Internet Essentials* events all over the country.

- Residential moves supported – Comcast updated the "transfer of service" process for *Internet Essentials* customers, which now allows customers to move their accounts to a new home address in a Comcast service area without having to reapply for the program.

- Extended the program – Comcast has extended the program indefinitely beyond its initial three-year term, which was scheduled to expire in Summer 2014.

Thanks to all of these efforts, *Internet Essentials* is doing exactly what it was designed to do, as confirmed by two surveys compiled from families who participate in the program. Approximately 98 percent of program participants report that their children use the Internet access for homework (with 94 percent reporting their kids are doing better in school as a result); and 62 percent are using it for job searching, with 57 percent of those reporting that it helped with finding someone in their household a job.[36] These are the kind of important, real-world benefits that bridging the broadband adoption gap can provide to American families.

Comcast's voluntary broadband adoption commitment under the NBCUniversal Order expires this summer, when the program completes three full years. But Comcast's

[36] *See* David L. Cohen, *Year Three Internet Essentials Progress Report*, Comcast Voices (Mar. 4, 2014), http://corporate.comcast.com/comcast-voices/year-three-internet-essentials-progress-report?rid=776739735&mid=EMC_20140304_CAB_IE_Partner.

commitment to this cause is stronger than ever. That is why Comcast recently announced that it will *extend the Internet Essentials program indefinitely.*[37]

When this transaction is approved, *Internet Essentials* will become available in all the communities in the retained TWC markets – including major new metropolitan areas such as Los Angeles, New York, and Dallas/Fort Worth, which collectively have over 500,000 eligible students from 250,000 families – thereby significantly extending the program's reach.[38] Thus, another tangible and far-reaching benefit of this transaction will be to make the power of broadband and the Internet available to many more low-income families and to help reduce the country's unacceptable digital divide.

C. The Transaction Will Provide Innovative Video Products And Services To Millions Of Consumers.

Competition for traditional video services has never been fiercer or more challenging. Over the past five years, the two nationwide DBS providers have added another 1.7 million subscribers and the telco video providers have added another 6.2 million subscribers, while traditional cable operators have lost 7.3 million video subscribers. In the last year alone, telco providers gained over 1.4 million subscribers.[39] And if one goes back to 2005, as shown in the graph below, the increase in MVPD competition is even more pronounced.

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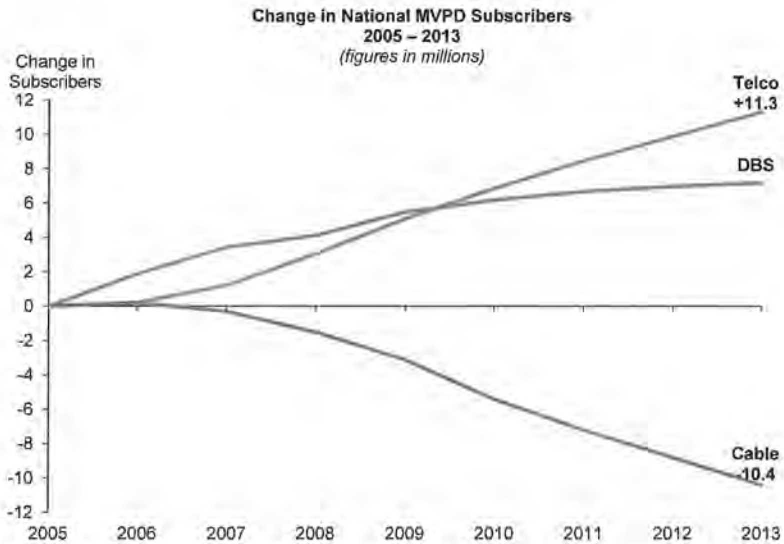
[37] *See* Press Release, Comcast Corp., Comcast Extends National Broadband Adoption Program for Low-Income Families (Mar. 4, 2014), http://corporate.comcast.com/news-information/news-feed/internet-essentials-2014.

[38] Because Comcast will no longer control the cable systems in the markets being divested, it will no longer be able to support *Internet Essentials* in those communities, although SpinCo could choose to continue the program.

[39] Recent data shows that this trend is continuing. The top nine cable companies lost about 1,735,000 video subscribers in 2013, while the top telephone providers added 1,460,000 subscribers and satellite TV providers added 170,000 subscribers in the same year. *See* Press Release, Leichtman Research Group, Major Multi-Channel Video Providers Lost About 105,000 Subscribers in 2013 (Mar. 14, 2014), http://www.leichtmanresearch.com/press/031414release.html.



Source: SNL Kagan; SEC filings; FCC Video Competition Reports

Moreover, in 2011, 98.6 percent of homes had access to at least three multichannel video providers, and 35.3 percent had access to at least four.[40]

Most of the systems that Comcast is acquiring from TWC, including the largest ones in New York City, Los Angeles, and Dallas/Fort Worth, are in local MVPD markets that the FCC already has found to be effectively competitive. Online businesses like Netflix, Apple, Google, Amazon, Hulu have also entered the online video space, which – along with potential entrants like Dish, Verizon, and AT&T – are putting additional competitive pressures on cable and other MVPDs.[41]

All of this competition has compelled Comcast to continuously improve its content, user interfaces, and customer support. Comcast is now the industry leader in offering premium video services for great value. As one industry analyst recently observed:

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40 *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496 ¶ 36 (2013).

41 Several online companies are producing original and exclusive programming, such as Netflix's *House of Cards* series, or purchasing exclusive windows of content from other third-party programming suppliers, such as Amazon Prime's exclusive SVOD rights to FX's *Justified*. These growing content options make it more critical than ever for Comcast to offer its customers the best programming available.

> *Today, Comcast's [operating] platform is the video industry's best product.* Their VOD service is the video industry's best library. Their network, their customer service, and even their marketing have improved by lightyears. Their positive video subscriber result, coming as it does when their video penetration of homes passed has fallen to just 40.3 percent, is testament not to a "good quarter" but instead to a good half-decade of hard work and heavy lifting.[42]

As a result of these efforts, "the reality is that when you really look at Comcast's network and services, and even its pricing, compared to Time Warner Cable's services, an argument can be made that Time Warner Cable customers may have a lot to gain from being converted to Comcast customers."[43]

Another analyst similarly commented, "Comcast has really focused on investing in its network. Time Warner Cable has been reacting to changes in the market too, but not with the same speed" as Comcast.[44] For video services, "there's no question that Comcast has a better offering compared with what Time Warner Cable offers today. From its video-on-demand catalog to its TV Everywhere service to a cloud-based user interface it's been developing the past couple of years, Comcast has invested heavily in revamping its TV service, and it shows."[45]

Post-transaction, Comcast is committed to providing TWC customers the best value in video services – not just to keep current TWC customers, but also to attract new ones by outdoing the competition and offering better, more innovative video experiences. And Comcast can also add TWC innovations to current Comcast customers, creating an increased value proposition footprint-wide.[46]

Best Entertainment Operating Systems: The transaction will give millions of TWC customers access to Comcast's cutting-edge and nationally acclaimed X1 entertainment operating system (including system upgrades), as well as access to more content on a variety of devices inside and outside the home.

The X1 platform provides an unmatched interactive TV experience featuring a state-of-the-art user interface and other product features that transform our customers' viewing

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[42] *See* MoffettNathanson Research, Comcast Q4 2013: Boardwalk Empire, at 2 (Jan. 28, 2014) (emphasis added).

[43] *See* Marguerite Reardon, *Why a Comcast Merger Could Be Good for TWC Customers*, CNET, Mar. 15, 2014, http://news.cnet.com/8301-1023_3-57620361-93/why-a-comcast-merger-could-be-good-for-twc-customers/ (quoting Craig Moffett).

[44] *Id.* (quoting IHS analyst Erik Brannon).

[45] *Id.*

[46] In *Fortune*'s recent World's Most Admired Companies List 2014, Comcast was named the number one Cable and Satellite Provider by industry executives, directors, and analysts. In this industry category, Comcast also ranked number one in innovation, people management, use of corporate assets, social responsibility, quality of management, financial soundness, and long-term investment. *The World's Most Admired Companies*, Fortune, Mar. 17, 2014.

experiences. These new features can only be fully appreciated by trying out the system,[47] and include: (1) integrated search (across TV, Xfinity On Demand, and DVR) with instant play; (2) enhanced personalization and recommendations; (3) access to the Internet and TV-enabled apps like Facebook, Pandora, and others; (4) the X1 remote app, which offers a new remote control experience by letting customers use their smartphones and tablets to control their TVs with a simple tap, swipe, and shake, or use voice commands to easily navigate the programming guide; and (5) in certain markets, the ability to instantly send any website from a smartphone, tablet, or PC to the TV.[48]

Comcast has also just launched its new X1 DVR with cloud technology, which enables customers to watch their DVR recordings on PCs, Macs, and mobile devices in the home, and to download recorded content to take on-the-go. In addition, Comcast has offered a live in-home streaming feature that allows customers on the X1 platform to stream practically their entire TV channel lineup to computers and mobile devices in the home at no extra cost.

TWC has likewise offered innovative DVR functionalities to its customers, including its "Start Over" and "Look Back" technologies. The transaction will allow Comcast to explore how best to combine these features for all of the combined company's customers.

More Cable Channels and VOD: Comcast has also led the cable industry in going all-digital, dramatically improving the video experience while simultaneously freeing up valuable bandwidth for enhanced data, video, and voice services. Comcast customers now have more cable channel viewing and Xfinity On Demand choices, offering over 55,000 programming choices, including the most current TV shows and movies (80 percent of this content is free of charge).[49] Xfinity On Demand also has the best new release movies from all the major studios, and one of the broadest selections of independent films.

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47 *See Entertainment Operating System X1*, Comcast Corp., http://www.comcast.com/x1 (including video demonstration of the X1 platform). Comcast is now beginning a phased rollout of an enhanced version of the X1 platform, which is sometimes referred to as "X2." In addition, on April 29, 2014, Comcast announced that X1 triple-play customers will soon be able to live stream personal video from their mobile devices, over the Internet, directly to the television. For example, a mom could live stream a daughter's soccer game in Philadelphia to her grandparents' television in San Francisco. Press Release, Comcast Corp., Comcast Brings Advanced Communications, More Personal Media to the TV (Apr. 29, 2014), http://corporate.comcast.com/news-information/news-feed/ncta-2014-x1.

48 Praise for the value and innovation of the X1 platform has been widespread. *See, e.g.*, Todd Bishop, *Xfinity X1: How Comcast Roped Me Back in to Cable*, GeekWire, Aug. 22, 2013, http://www.geekwire.com/2013/xfinity-x1/ ("I have been testing this sleek black cable box for the past three weeks, but to call it a cable box really doesn't do it justice. It is a nice blend of Internet content, live television, apps, a multi-tuner DVR and on-demand programming, in one of the cleanest user interfaces that you'll find from a cable company."); Tim Carmody, *Comcast's New X1 UI Integrates Real-time and Streaming TV with News and Social Apps*, The Verge, May 21, 2012, http://www.theverge.com/2012/5/21/3033972/comcast-ui-platforms-video-news-social-apps ("[X1] feels like a genuinely 21st-century way to use a widescreen television set – like a smart TV inside your cable box."); John McDuling, *The American Cable Industry's Cunning Plan to Save Itself: Make TV Work Like It Should*, Quartz, Feb. 4, 2014, http://qz.com/172533/the-american-cable-industrys-cunning-plan-to-save-itself-make-tv-work-like-it-should/ (quoting Netflix CEO Reed Hastings describing the X1 as a "great product.").

49 Xfinity On Demand averages 400 million views each month. Since the service launched in 2003, there have been 32 billion views. Comcast has also launched a competitive SVOD service, Streampix, that provides customers additional choices of library TV and movie content.

Although TWC originally used SDV technology to free up bandwidth on its network and provide increased high-quality content, it has likewise begun migrating its systems to all-digital. Post-transaction, Comcast will use its expertise and experience to accelerate digital migration of TWC's systems, enabling Comcast to re-purpose bandwidth where needed to support more channels and VOD choices, bringing TWC customers the enhanced video experience that Comcast customers already enjoy, and winning back customers in the face of increasingly widespread and rigorous competition for customers' time and attention.

Superior TV Everywhere Services: Comcast has also focused on adding value to its video service for customers by securing comprehensive digital rights from programmers like Disney, Fox, AMC, and Viacom, enabling Comcast to offer TV Everywhere and other streaming services to its customers. Through XfinityTV.com and Xfinity TV mobile apps, for example, Comcast cable customers can access over 50 live TV channels, and over 25,000 movies and TV shows,[50] that can be watched anytime, anywhere,[51] including by downloading programming to watch offline later. With this transaction, TWC customers will now enjoy the expanded content offerings that Comcast already makes available to its customers.

Even more, Xfinity content can be accessed in a variety of ways both at home and on the go. The Xfinity TV Go app allows users to access live and on-demand content across a range of devices, including iPhones, iPads, Android smartphones and tablets, and Amazon Kindle Fire tablets. Customers can also view this content directly from laptops and desktops by visiting XfinityTV.com. And customers can access their Xfinity on-demand content at home through an Xbox 360 rather than through a set-top box.

Faster Deployment Of IP Cable And Other Pro-Consumer Technologies: The combined company will also be strongly positioned to help advance the IP cable transition. As the FCC has observed, "[m]odernizing communications networks can dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices."[52]

Accelerating the IP cable transition will yield a number of consumer and public interest benefits. IP cable:

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50 In comparison, TWC customers can view up to 29 live channels and 6,500 hours of video content.

51 *See* Press Release, Comcast Corp., Xfinity TV Go Network Roster Tops 50 with Latest Update (Mar. 19, 2014), http://corporate.comcast.com/news-information/news-feed/comcast-customers-can-now-stream-more-than-50-live-channels-anytime-anywhere.

52 *See Technology Transitions*, Order, Report and Order, and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, GN Docket No. 13-5, FCC No. 14-5 ¶ 2 (rel. Jan. 31, 2014).

- Enables consumers to access their cable and advanced video services in their homes on a wide variety of IP-enabled retail devices – video game consoles, tablets and other connected devices;[53]

- Shifts more of the network intelligence to the cloud, thereby allowing the combined company to rapidly roll out new functionalities to consumers;

- Reduces costs by allowing the combined company to simplify its existing distribution networks by relying on IP technology to transport all of its services and relying on innovative off-the-shelf IP-based retail devices and reducing its home equipment and inventory costs; and

- Dramatically reduces energy consumption for consumer set-top boxes.

Comcast and TWC have each made significant investments in IP infrastructure, devices, and applications. Post-transaction, Comcast is committed to speeding the IP cable transition throughout the combined company's expanded footprint, creating even greater value for customers.

Extension of NBCUniversal Commitments: As part of the transaction, Comcast will also extend several video service commitments from the NBCUniversal Order to all of the acquired TWC systems. These include Comcast's commitments to diverse programming; children's programming; broadcast station protections for local market integrity and retransmission consent negotiations; guaranteed carriage of non-commercial educational stations (that have must-carry rights and have relinquished their broadcast spectrum); and news neighborhood requirements.[54]

D. The Transaction Will Enhance Competition For Voice Services.

The availability of voice services from cable companies has had significant pro-competitive and pro-consumer benefits, including lower prices and better service.[55] Our voice

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[53] *See, e.g.*, Yaron Raz, *Migrating to IP in the Cable TV Environment: Benefits, Challenges, and Resolutions*, CED, Oct. 16, 2013, *available at* http://www.cedmagazine.com/articles/2013/10/migrating-to-ip-in-the-cable-tv-environment-benefits-challenges-and-resolutions; *Cable Edges to an IP Future*, Digital TV Europe (July 3, 2013), http://www.digitaltveurope.net/74622/cable-edges-to-an-ip-future/ ("IP is seen as a desirable platform for video services as it will enable them to deliver multiroom and multiscreen services much more economically.").

[54] *See* Exhibit 4 (Day One Undertakings Memorandum, dated Feb. 13, 2014).

[55] *See, e.g.*, Press Release, FCC, FCC Approves Merger of AT&T Inc. and BellSouth Corporation, at 2 (Dec. 29, 2006) (noting that "the rapid growth of intermodal competitors – particularly cable telephony providers . . . is an increasingly significant competitive force in this market"); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, App. I ¶ 5 n.11 (2011); Michael D. Pelcovits & Daniel E. Haar, Microeconomic Consulting & Research Associates, Inc., *Consumer Benefits from Cable-Telco Competition*, at ii, iii (Nov. 2007) (Cable-telco competition brought "direct consumer benefits of $4.0 billion to the cable companies' customers and $19.5 billion in indirect consumer benefits due to the competitive response of the ILECs, for a total of $23.5 billion of consumer benefits." It also projected that the total consumer benefits of such competition would be "more than $111 billion" between 2008 and 2012).

services have increasingly given residential and small business customers competitive alternatives for basic telephone service in the areas served by Comcast and TWC.

Comcast offers "Xfinity Voice" service to residential customers throughout the vast majority of its service territory, and as of December 2013, 10.7 million Comcast customers subscribed. Xfinity Voice offers users a long list of enhanced features made possible by Comcast's industry-leading IP network, such as caller ID provided over a television, laptop, or mobile device, and Readable Voicemail. Similarly, Comcast's Business VoiceEdge offers an even more robust voice platform for business users, and offers an important competitive choice for small, medium-sized, and larger enterprise businesses.

TWC has also made substantial strides in creating a robust voice service to compete with other voice providers. TWC was the first multiple system operator to introduce a mass-market, facilities-based digital voice service, and has now deployed digital voice throughout its geographic footprint. TWC serves approximately 5.3 million residential and business voice customers.

The transaction will bring together the best aspects of both companies' digital voice services, creating best-in-class voice services for residential and business customers alike, and making Comcast a more effective competitor for voice services with ILECs and other providers.

E. The Transaction Will Enhance Competition In The Markets For Business Communications And Wireless Backhaul Services.

Comcast and TWC are both upstart competitors in the market for business services in their respective service areas. Comcast has been actively signing up small and medium-sized businesses and institutions in its footprint for the past several years.[56] TWC has also entered the small business marketplace, and has more experience providing advanced services to medium-sized businesses and some national accounts in its footprint.[57] Comcast and TWC estimate that they have reached about 10 to 15 percent penetration of the local small and medium-sized business market, and a *de minimis* share of national business, in their respective geographic areas. The transaction will give the combined company the greater scale, coverage, and operating efficiencies necessary to compete more aggressively in these segments of the economy, especially for medium-sized, regional, and "super-regional" businesses.

Important Inroads Serving Small and Medium-Sized Businesses and Institutions: There are approximately 23 million small businesses in the United States. Together, they are the largest source of employment in the country.[58] But for many small businesses and institutions, their existing choices for broadband are limited to expensive T1 services with download speeds

[56] *See* Doug Mitchelson & Brian Russo, Deutsche Bank, *Pay TV Guide / 4Q13 Wrap* 35 (Mar. 6, 2014).

[57] We generally view these market segments as follows: small business – fewer than 20 employees; medium-sized business – 20-500 employees often across multiple sites in different geographic locations, includes regional and super-regional; and national (enterprise) accounts – over 500 employees across many sites.

[58] *See Small Business Trends*, U.S. Small Business Administration, http://www.sba.gov/content/small-business-trends (last visited May 4, 2014).

of only 1.54 Mbps, or even slower services.[59] Where our companies have been able to compete for these important but underserved customers, legacy providers, including AT&T, Verizon, and CenturyLink, have quickly responded by upgrading their services, aggressively investing, and adding value for customers.[60] And a 2013 research report indicates that new entry into these market segments has been decreased Ethernet pricing for business *by 10 percent or more a year*.[61]

Comcast's business services division, known as "Comcast Business," has helped provide a competitive alternative for small businesses, as well as institutions, by offering fiber-based ("on-net") high-speed Internet (up to 150 Mbps), high-performance point-to-point and multi-point Ethernet services with the capacity to provide speeds of 1 Gig (and even as high as 10 Gigs), cloud computing, TV/programming, and voice services.[62] This includes offering better, lower-cost broadband services to schools and school districts, which will advance the goals of the ConnectED initiative.[63] And Comcast has also brought to thousands of pharmacies, barber

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[59] *See* Charlie Reed, *Comcast-Time Warner Cable Merger to Create Fourth Largest Business Services Player*, Telecom Reseller, Feb. 13, 2014, *available at* http://www.telecomreseller.com/2014/02/13/comcast-time-warner-cable-merger-to-create-fourth-largest-business-services-player/.

[60] For example, AT&T and CenturyLink have intensified efforts to expand fiber to businesses and reduce cable's speed advantage, with AT&T pledging to extend fiber to 1 million businesses in its footprint and CenturyLink increasing the number of fiber-fed buildings by 17 percent between the third and fourth quarter of 2013. *See* Sean Buckley, *AT&T's $14B Project VIP: Breaking Out the Business Service, U-verse Numbers*, FierceTelecom, Sept. 24, 2013, http://www.fiercetelecom.com/special-reports/atts-14b-project-vip-breaking-out-business-service-u-verse-numbers; Glen Post, CEO, CenturyLink, Inc., Q4 2013 Earnings Call, Tr. at 5 (Feb. 12, 2014). And Verizon has added Google Apps for Business for its business customers. *See* Monte Beck, Vice President of Small Business Market, Verizon, *Google Apps for Business Now Available for Verizon Customers*, Google Official Enterprise Blog (Jan. 24. 2011), http://googleenterprise.blogspot.com/2011/01/google-apps-for-business-now-available.html. Similarly, CenturyLink has enhanced its Core Connect product for business by adding website design and hosting, domain name registration, fax over email, and data backup services. *See* Core Connect, Century Link Business, http://www.centurylink.com/smallbusiness/products/bundles/core-connect/ (last visited May 4, 2014).

[61] *See* Insight Research Corp., *US Carriers and Ethernet Services: 2013-2018*, at 5 (Aug. 2013); *see also* TeleGeography, *Global Enterprise Networks: Enterprise Service Pricing*, at 16 (Jan. 2013) ("Median Ethernet market prices remain volatile, fluctuating considerably year to year. . . . With this said however, the long-term price trend is clearly down."); *id.* at 20 ("As a growing number of carriers offer the service, [Virtual Private LAN Service] prices continue to decline."); Craig Galbraith, *CableCos Gain Ground in Ethernet, But AT&T, Verizon Still Lead*, Channel Partners (Feb. 12, 2014), http://www.channelpartnersonline.com/news/2014/02/cablecos-gain-ground-in-ethernet-but-at-t-verizon.aspx ("Cable companies have developed a winning formula for the U.S. business Ethernet market. They are successfully leveraging their on-net fiber footprints to offer aggressive pricing and rapid service provisioning.").

[62] TWC has served the small business segment market as well. The combined company has the opportunity to provide new services to a host of small businesses in the TWC markets, and to provide those businesses with options, pricing, and attention that the incumbent providers have not offered.

[63] For example, by using Comcast for broadband services, a Chicago school district is saving "about 42 percent over what we were spending with AT&T." Denys Bucksten, *District 112 Will Have A Tenfold Increase In Bandwidth This Year To Improve Internet Access*, Chi. Trib., Aug. 12, 2013, *available at* http://articles.chicagotribune.com/2013-08-12/news/ct-tl-lk-0815-highland-park-school-technology-20130812_1_north-shore-district-district-112-bandwidth. And in Pennsylvania, Comcast was able to provide a number of school districts with connectivity to the PA IUnet, an online, statewide, private network that allows

shops, dry cleaners, and restaurants a value proposition that was far better than had previously been available – lower price, more attractive product offerings, and better customer service.[64]

TWC has made significant progress breaking into both the small and medium-sized business segment in its footprint, including an investment in NaviSite, a company that allows TWC to offer cloud-based services to medium-sized business customers.[65]

Nevertheless, Comcast and TWC have faced constraints in attempting to replicate their market success on a larger scale. The added scale and geographic reach, as well as complementary strengths afforded by the transaction, will enhance the combined company's ability to be a more significant player in the medium-sized business segment and beyond. In addition, the geographic rationalization of systems resulting from the Charter-related transactions will further advance these efforts.

Medium-Sized, Regional, and "Super-Regional" Businesses Will Especially Benefit from the Transaction: The transaction, along with the geographic rationalization of systems realized from the Charter-related transactions, will create a substantial opportunity for the

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teachers and students to communicate, collaborate, and share resources. According to Jared Mader, director of education technology for the Lincoln Intermediate Unit, which helped facilitate the agreement, "Comcast has allowed many of our districts to increase their bandwidth exponentially – and in some cases for half the price – which has given them access to cloud computing, video conferencing, and other online educational tools that had previously been cost-prohibitive for them." *Pennsylvania Districts Get Low-Cost Ethernet Services*, School CIO (Jan. 31, 2014), http://www.schoolcio.com/cio-feature-articles/0109/back-office-business/54654.

[64] *See* J.T. Ramsey, *Q&A with Bill Stemper, President of Comcast Business Services*, Comcast Voices (Feb. 12, 2013), http://corporate.comcast.com/comcast-voices/qa-with-bill-stemper-president-of-comcast-business-services (describing evolution of Comcast's Business Services). For example, Utz Quality Foods is using Comcast Business Ethernet and Business Trunks to connect multiple office locations and distribution centers throughout the Eastern United States, reporting that it realized a significant cost savings while enjoying more bandwidth than what its T1 lines had provided. *Utz Upgrades Connectivity for Offices, Distribution Centers*, Evening Sun (Apr. 24, 2013), http://www.eveningsun.com/news/ci_23096622/utz-upgrades-connectivity-offices-distribution-centers-including-hanover.

[65] Although Comcast only launched its efforts in the medium-sized business segment in 2010, it has already been recognized for its innovations, winning a variety of Carrier Ethernet awards, including 2013 Metro Ethernet Forum awards for Regional Service Provider of the Year, Best Marketing, and Best Carrier Ethernet Business Application, as well as a 2012 Best Practices Award from Frost & Sullivan for North American MSO Ethernet Services Competitive Strategy Leadership. *See* Press Release, Comcast Corp., Comcast Introduces New Metro Ethernet Services for Mid-Sized Businesses (May 16, 2011), http://corporate.comcast.com/news-information/news-feed/comcast-introduces-metro-ethernet-services-to-address-bandwidth-application-and-reliability-requirements-of-mid-sized-businesses; Bill Stemper, *Comcast Wins Metro Ethernet Forum Service Provider of the Year Award*, Comcast Voices (Nov. 22, 2013), http://corporate.comcast.com/comcast-voices/comcast-wins-metro-ethernet-forum-service-provider-of-the-year-award. Similarly, Union Bank in Ohio switched from T-1 broadband lines provided by telecommunications carriers to Time Warner Cable. The bank's data transmission speed doubled from 1.5 Mbps on the old T-1 lines to 3 Mbps bandwidth on Time Warner Cable's fiber-optic network, "the bank's data congestion problems are a thing of the past," its "most stringent network security needs" are being managed, and it experienced "a tremendous reduction" in broadband service costs. *See* Time Warner Cable, Case Study, *The Union Bank Company Cashes in on Blazing Fast Ethernet and Managed Security Services from Time Warner Business Class*, http://www.timewarnercable.com/en/business-home/resource-center/case-studies/union-bank-company.html (last visited May 4, 2014).

combined company to reach and serve more medium-sized businesses, as well as regional and "super-regional" businesses, bringing added competition to these important market segments. For example, many small businesses are franchises that have a number of locations across a region. Given the limits of their current footprints, it is difficult for Comcast and TWC to offer seamless advanced services to these businesses. The transaction will change that.

Because the two companies' offerings are limited to locations within their respective footprints, businesses with locations in other parts of the country have either relied on providers with larger footprints of on-net building connections, like AT&T, Verizon, CenturyLink, tw telecom, and Level 3; negotiated multiple different accounts with different providers; or used an "aggregator" that cobbles together – for a "middleman" fee and other additional costs – a multi-provider solution for the business.

Understandably, business customers often prefer the higher level of reliability that results when a network is built to a common set of technical standards and managed by a single network operations center, and for which a single point of contact offers support for technical or other customer-service issues. As a result, cable companies too often are seen as not being able to make a competitive offering in this market segment.[66] This has impeded Comcast's and TWC's ability to compete for some business customers in their current footprints.

After the transaction, and the planned Charter-SpinCo divestitures, the combined company will have operations in 16 of the 20 largest DMAs, including New York and Los Angeles. This greater coverage, along with the geographic rationalization of systems resulting from the Charter-related transactions, will encompass significantly more multiple-regional business locations, allowing Comcast to compete more aggressively for these customers. As our experiences in the small and medium-sized business and institutional segments show, greater competition should spur price reductions and service innovations by other providers that will ultimately redound to the benefit of consumers.

Large Businesses: Similarly, AT&T, Verizon, and CenturyLink have generally dominated the market for national business accounts. TWC has made some minor inroads into this market segment, and the combined company will benefit from that experience. By providing greater scale and coverage, and accelerating the build-out of the combined company's fiber network to additional business locations, the transaction will help position Comcast as a more viable competitor for wholesale Ethernet and fiber services, as an alternative to the ILECs' high-priced special access services for some larger businesses. More competition and choices for these accounts should again lead to lower prices and better service.

Wireless Backhaul: Wholesale wireless backhaul is another significant opportunity created by the transaction. Wireless backhaul facilities carry voice and data communications from cell sites, businesses, wireless Internet access points, and other facilities to the public telephone network and the Internet. TWC currently provides wireless backhaul to approximately

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[66] As tw telecom has observed, "with the exception of maybe some regional types of deals that some of the cable companies might be putting over their networks in some of the tighter regions, we really don't see them as a competitor for these larger multi-city complex deals that we're doing." Larissa Herda, Chairman & CEO, tw telecom inc., Q4 2013 Earnings Call, Tr. at 11 (Feb. 12, 2014).

14,000 cell sites. With the recent acquisition of DukeNet, TWC also obtained an 8,700-mile regional fiber-based network that provides wholesale wireless backhaul and other business services to customers in North Carolina, South Carolina, and five other states in the Southeast. But in 2013, even when added together, Comcast and TWC had only an estimated 2.8 percent market share in these services.[67] By combining the companies' resources and business expertise, Comcast can compete more effectively, post-transaction, to provide backhaul services to wireless cell sites. This, in turn, should help lower wireless prices and speed the transition of wireless infrastructure to fiber.

F. The Transaction Will Accelerate The Deployment And Adoption Of Next-Generation Cable Advertising Technologies That Will Benefit Advertisers And Consumers.

The transaction also will accelerate the expanded deployment and adoption of next-generation cable advertising technologies, such as inserting targeted ads in VOD and other content, called "dynamic ad insertion" and "addressable advertising." These innovations will create new benefits for advertisers, content providers, and consumers alike.

Traditionally, VOD advertising was static: the ads were inserted in advance and could not be later modified.[68] Dynamic ad insertion transforms this platform by separating the ads from the programming stream and dynamically inserting them into VOD – and also other platforms like TV Everywhere and even cloud DVR. This service gives advertisers the flexibility to adapt and tailor their messages in a more timely manner, providing them with new and flexible access to the increasingly large segment of consumers who engage in time-shifted viewing or view content using devices other than a traditional television (*e.g.*, a laptop or desktop computer, tablet, or phone).[69]

Although Comcast and TWC have both been experimenting with dynamic ad insertion in VOD and TV Everywhere programming, the required technology is expensive and neither company has deployed the service across its current footprint. With the ability to offer one standard VOD and TV Everywhere platform across the combined company's larger footprint, Comcast will be able to unlock the real potential for next-generation VOD and online

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67 *See* Charlie Reed, *Comcast-Time Warner Cable Merger to Create Fourth Largest Business Services Player*, Telecom Reseller, Feb. 13, 2014, *available at* http://www.telecomreseller.com/2014/02/13/comcast-time-warner-cable-merger-to-create-fourth-largest-business-services-player/.

68 *See* Amol Sharma & Suzanne Vranica, *On Demand: Quick Ad Switch*, Wall St. J., May 27, 2013, *available at* http://online.wsj.com/news/articles/SB10001424127887323336104578503572001847946.

69 *See, e.g.*, Comcast Spotlight, *Dynamic Ad Insertion: Unlocking the Value of Video on Demand*, at 6, 9, *available at* http://www.comcastspotlight.com/takefive/assets/Take_Five_10_DAI_Webcast_FINAL.pdf. Nielsen estimates that between 2011 and 2013 the average time spent per adult per day watching time-shifted television has increased from 25 minutes to 32 minutes. Additionally, the time using the Internet, a smartphone, or a multimedia device has increased from 112 minutes to 130. *See* Nielsen Co., *An Era of Growth: The Cross-Platform Report*, at 9 (Mar. 5, 2014), *available at* http://www.nielsen.com/us/en/reports/2014/an-era-of-growth-the-cross-platform-report.html.

advertising.[70] Being able to spread the costs for the service over an expanded customer base will allow for greater investment in developing and enhancing this technology. It will also make the service itself more attractive to advertisers by enabling them to target a larger audience that can be reached using these innovative platforms. Advertisers and ratings agencies, moreover, will more likely unite around common audience measurement and effectiveness tools for these new platforms and ad technologies, which in turn will create greater momentum for their adoption. And, by extending Comcast's industry-leading VOD and TV Everywhere content, platforms, and digital rights to TWC's systems, the transaction will create additional advertising options in these areas, particularly in the key markets of New York and Los Angeles.

Similar benefits may result for addressable advertising technology.[71] Addressable advertising allows marketers to replace geographic zone targeting (*i.e.*, advertising targeted at specific zip codes or neighborhoods) with advertising targeted to individual households based on demographics and other household-specific characteristics.[72] The advertiser identifies the preferred demographics of its target audience, and then the cable operator targets ads to matching neighborhoods or households using various data as permitted under the Cable Act's stringent privacy protections. Addressable advertising offers important benefits to existing advertisers who can improve the efficiency and cost-effectiveness of their marketing efforts, and it may provide a new option to advertisers that might not previously have considered the cable television medium because their products appeal to narrow niche markets rather than a mass market.

In addition to providing the greater scale and investment potential for this new technology, the transaction will allow Comcast to extend its addressable ad technology to the retained TWC systems, including key advertising markets like New York, Los Angeles, and Dallas, creating attractive new options for advertisers to reach video audiences efficiently.[73]

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70 Forty percent of Comcast's VOD viewing is in the C3 window. *See* Jeff Baumgartner, *Advanced Ads: 40% of Comcast* VOD *Viewing Is in C3 Window*, Multichannel News, Feb. 28, 2014, *available at* http://www.multichannel.com/distribution/advanced-ads-40-comcast-vod-viewing-c3-window/148580. Comcast had about one billion dynamic ad insertion impressions last year and expects to double this in 2014. *Id.*

71 *See* Ryan Joe, *CES 2014: Advances in Addressable TV*, Ad Exchanger, Jan. 14, 2014, http://www.adexchanger.com/digital-tv/ces-2014-advancements-in-addressable-tv/.

72 *See* Jeanine Poggi, *The CMO's Guide to Addressable TV Advertising*, Advertising Age, Feb. 19, 2014, *available at* http://adage.com/article/cmo-strategy/cmo-s-guide-addressable-tv-advertising/291728/.

73 The advertising success of other technology-focused companies – with an even more expansive reach (and earlier start) than the combined company would have – underscores the benefits of scale for developing next-generation advertising technologies that enable more precise audience targeting. For example, Google's advantage in targeted advertising technology is well documented; it is recognized as "far and away the biggest player in the ad-tech industry," serving over 300 billion ad impressions per month. *See* Alex Kantrowitz, *Just Look At How Google Dominates Ad Tech: Rate New Data Shows Just How Big Google's Ad-Tech Advantage Is*, Advertising Age, Oct. 18, 2013, *available at* http://adage.com/article/digital/google-dominates-ad-tech/244824/. And the once nascent mobile advertising space has now seen huge growth thanks to efforts by Facebook and Google. *See* Victor Luckerson, *The Mobile Ad Market is Exploding Because of These Two Companies*, Time, Mar. 19, 2014, *available at* http://time.com/#30517/the-mobile-ad-market-is-exploding-because-of-these-two-companies/. Google netted 49 percent of all mobile ad revenue in 2013, and is projected to earn $14.7 billion in mobile ad revenue this year. *Id.*

The enhanced value and benefits of addressable advertising will be particularly significant when combined with dynamic ad insertion capabilities.[74] For the first time, advertisers of all types and sizes, including national advertisers, seeking to target customers with spot cable advertising in certain key markets across the country will be able to look to the combined company to insert their timely, dynamic, addressable ads in a VOD asset or other platform.[75]

These next-generation advertising technologies are not just a good opportunity for advertisers – they also will help programmers by allowing them to better monetize VOD, providing a new source of revenue to support high-quality programming and reducing pressure on affiliate fees. This should encourage programmers to make more of their content available for free on VOD, including "banking" entire past seasons on VOD to allow consumers to catch-up, as USA Networks recently did with "Suits."

Ultimately, consumers will benefit by receiving more highly popular content at little or no extra cost, while receiving advertisements, promotions, and discounts that are more relevant to them and their families.

G. The Transaction Will Generate Other Significant Public Interest Benefits.

Although the transaction stands on its own merits, there are other significant public interest benefits that will result from additional voluntary commitments that Comcast is prepared to make as part of the transaction.

Continued Focus On Improving Customer Service: Improving the customer experience is a top priority at Comcast. We are investing billions of dollars in our network infrastructure and are developing innovative products and features to make it easier and more convenient for our customers to interact with us. While our satisfaction results are beginning to rise, we know we still have work to do and are laser-focused on continuing to improve our customers' experiences in a number of ways.[76]

Facebook, with 172 million users in the U.S. and Canada alone, earned 53 percent of its ad revenue, or $1.37 billion, from next-generation mobile ads.

[74] *See* Jeanine Poggi, *NBC Universal to Start Selling Addressable Ads in Video on Demand: 'NBCU+ Powered By Comcast' Will Expand VOD Addressability*," Advertising Age, Jan. 30, 2014, *available at* http://adage.com/article/media/nbcu-comcast-partner-advanced-advertising-product/291401/.

[75] *See* Jon Lafayette, *What a Comcast-TWC Merger Would Mean for the Rest of the TV Business*, Broadcasting & Cable, Feb. 17, 2014, http://broadcastingcable.com/sites/default/files/public/CommFeb17.pdf ("[T]he merger hastens tech innovation on the advertising front, as it 'eventually harmonizes 30 million households on a common ad tech platform.' That could enable addressable advertising and dynamic ad insertion in VOD, something that industry consortium Canoe Venture could never do . . . .") (quoting Tim Hanlon, CEO, Vertere Group).

[76] *See* Exhibit 5 ("Investing in the Customer Experience – Innovating to Drive Change – Generating Measurably Improved Results").

Comcast has improved its customer satisfaction ratings significantly. Since 2010, Comcast has increased its J.D. Power's Overall Satisfaction score by nearly 100 points as a video provider, and close to 80 points in High Speed Data – more than any other provider in our industry during the same period.

In a recent report on Comcast's 2013 fourth quarter performance, well-regarded industry analyst Craig Moffett likewise said that Comcast's customer service has "*improved by light-years.*"[77]

Among other things:

- 97 percent of Comcast service calls now take place within scheduled appointment windows.
- Comcast's repeat visits for installations and service appointments are down approximately 20 percent since 2010.
- Comcast now offers more self-installation options that enable customers to install and activate services without a service call. In 2013, 42 percent of customers self-installed services compared to 30 percent in 2012.
- Comcast has enabled more self-service options, including access to the same diagnostic tools used by agents.
- More than one-third of customers manage accounts online, a 42 percent increase over the prior year.

Comcast knows that it needs to maintain its focus on improving customer service, and will bring this same commitment to TWC customers. In addition, the substantial investments Comcast will make in upgrading TWC's systems should improve network reliability and significantly reduce the trouble call rate that TWC has previously experienced.

Extending Internet Essentials: As Comcast announced just a few weeks ago, it is committed not only to extend *Internet Essentials* indefinitely, but also to continue to enhance the program.[78] By extending and expanding the Comcast program to reach new geographic areas – including the large metropolitan areas of New York, Los Angeles, and Dallas/Ft. Worth – the transaction will help to connect many thousands of additional low-income households to today's high-speed Internet.

Diversity Commitments: Comcast is recognized nationally for its commitment to promoting diversity. Comcast's diversity program is founded on a variety of commitments

[77] *See* MoffettNathanson Research, Comcast Q4 2013: Boardwalk Empire, at 2 (Jan. 28, 2014) (emphasis added).

[78] *See* Press Release, Comcast Corp., Comcast Extends National Broadband Adoption Program for Low-Income Families (Mar. 4, 2014), http://corporate.comcast.com/news-information/news-feed/internet-essentials-2014.

memorialized in three Memoranda of Understanding with diverse leadership organizations in 2010 in connection with the NBCUniversal transaction. Those voluntary undertakings span five key focus areas across all aspects of our business: (1) governance, (2) workforce recruitment and retention, (3) procurement, (4) programming, and (5) philanthropy and community investment.[79]

Since approval of the NBCUniversal transaction, Comcast has made demonstrable progress toward these goals, in many cases exceeding its commitments and expanding upon them with new or modified initiatives. Since the closing of the NBCUniversal transaction, the numbers of people of color and women have increased among Comcast's executive leadership, vice president and above ("VP+"), and director levels, and in the full-time U.S. workforce overall. At the most senior levels, as of year-end 2013, people of color comprised 18 percent of Comcast employees holding VP+ positions, as a result of a 32 percent increase in the number of people of color in these positions since year-end 2010. Women comprise 36 percent of the VP+ positions, as a result of a 21 percent increase in the number of women in these positions since year-end 2010. Publications across the country, including news outlets that focus exclusively on diversity, have recognized Comcast as an employer of distinction.[80]

Comcast has similarly demonstrated the seriousness of its resolve to create more opportunities for diverse suppliers, increasing its total Tier I spending with diverse suppliers to over $1.3 billion in 2013 alone – a 44 percent increase since the year before the NBCUniversal transaction.[81] And Comcast also committed to further the interests of minority entrepreneurship through the creation of a $20 million Catalyst Fund, focused on providing training and seed funding to minority start ups. These examples are only a sampling of Comcast's efforts to promote diversity.[82]

In addition, for the past three years, Comcast has received advice and guidance from its Joint Diversity Advisory Council ("Joint Council"), a unique external advisory group consisting of more than 40 nationally recognized advisors on diversity from business, community-based organizations, and the media/entertainment industry, representing a broad spectrum of diverse constituents and perspectives. The company ensures transparency and measurement of progress

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79 *See* Third Annual Report of Compliance with Transaction Conditions, MB Docket No. 10-56 (filed Feb. 28, 2014), http://corporate.comcast.com/images/MB-10-56-C-NBCU-Annual-Compliance-Report-2013-2014-02-28.pdf ("Third Annual Compliance Report") (chronicling Comcast's comprehensive diversity efforts on each of these fronts).

80 Similarly, Women in Cable Telecommunications ("WICT") recently released its 2013 PAR Survey results. Comcast tied for first among operators as "Best in Women" and NBCUniversal is first among programmers.

81 Comcast's supplier diversity program has been recognized by Black EOE Journal; Hispanic Network Magazine; Professional Women's Magazine; and U.S. Veterans Magazine.

82 Comcast is also a leader in supporting and honoring the serving military and in hiring the nation's veterans. Comcast has been recognized as a 2012 G.I. Jobs Top 100 Military Friendly Employer and a 2013 U.S. Veterans Magazine Top 100 Best of the Best Veteran Friendly Company, and is a recipient of the 2012 U.S. Chamber of Commerce Foundation's Lee Anderson Award for its commitment to veteran employment and support as a key partner in their national "Hiring our Heroes" initiative.

through rigorous benchmarking and reporting processes, including regular reports to the Board, Internal Diversity Councils, and external Joint Council.

Post-transaction, Comcast will bring its best-in-class diversity programs to the combined company as well. In addition, Comcast will incorporate some of TWC's diversity programs and practices that enhance its own. Like Comcast, TWC also has internal councils for oversight of its diversity programs. The transaction will afford Comcast the opportunity to ensure that the best and most effective approaches to governance are deployed throughout the combined company. Promptly following the close of the transaction (within 120 days or so), Comcast will develop a new master strategic plan that will set forth the vision and goals for the combined company's diversity programs, similar to the plan adopted shortly after the NBCUniversal transaction closed. The new plan, like the existing plan, will be formulated with the advice of the Joint Council. This transaction will afford Comcast the opportunity to ensure that the best and most effective approaches to governance for diversity and inclusion are deployed throughout the combined company by extending Board, executive Internal Diversity Council, and Joint Council review to TWC systems.

Expanding Accessible Solutions To Disabled Consumers: Both Comcast and TWC have been deeply committed to providing accessible solutions to consumers with disabilities. TWC currently supports many accessibility services, including closed captioning on its TWC TV apps on a wide range of device platforms,[83] voice-to-text features for its phone services,[84] and large-button remote controls.[85]

Comcast's goal is a "Smart Home for Everyone," where accessibility is enabled across products and services, regardless of platform. Comcast has a dedicated full-time office to coordinate accessibility efforts throughout the company and with the disability community,[86] as

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83 *See, e.g., Is Closed Captioning Supported on the TWC TV for iPad App?*, Time Warner Cable, http://www.timewarnercable.com/en/residential-home/support/faqs/faqs-tv/twctvapp/twctvforip/is-closed-captioning-supported.html (last visited May 4, 2014). The TWC TV apps on the following devices support closed captioning: iPhone, iPad, iPod Touch; Android Smartphones & Tablets; Kindle Fire HD/HDX; Roku Streaming Players (generations 2 & 3); Xbox 360; and Samsung Smart TV (2012 – 2014 models). Captioning also is supported on PCs via TWCTV.com.

84 *See VoiceZone from Time Warner Cable*, Time Warner Cable, http://www.timewarnercable.com/content/twc/en/residential-home/phone/features/voicezone.html (last visited May 4, 2014).

85 *See Solutions for Everyone*, Time Warner Cable, http://www.timewarnercable.com/en/residential-home/support/accessibility.html (last visited May 4, 2014) (detailing accessibility solutions on TWC systems). TWC also has been a strong advocate for expanding broadband access for persons with disabilities. *See, e.g.*, Krishna Jayakar, *Between Markets and Mandates: Approaches to Promoting Broadband Access for Persons with Disabilities*, Time Warner Cable Research Program on Digital Communications (Fall 2012), *available at* www.twcresearchprogram.com/publications.php.

86 A key facilitator of innovation at the company is the Comcast Accessibility Lab. This is a working lab at the Comcast Center in Philadelphia specifically designed for the development and testing of accessible solutions. The Lab is used by Comcast's product development teams to incorporate assistive technologies into new products and services. It also is utilized for focus groups and usability testing with consumers and to help educate Comcast's employees about accessibility.

well as a dedicated customer support team of 22 agents in the new Comcast Accessibility Center of Excellence.[87]

Like TWC, Comcast has invested heavily in new technologies and initiatives for accessibility. For example, Comcast is leveraging the X1 cloud-based platform to deliver the first "talking guide" in the MVPD industry. The remote control for the X1 platform – known as the XR2 – also includes "soft keys" that a customer with a disability will be able to configure to enable quick access to the talking guide and other accessibility features, such as closed captioning and video description.[88] Comcast has also deployed a Readable Voicemail service, which converts voicemail audio into text and aids deaf and hard-of-hearing customers in accessing their voicemail. And our Xfinity Connect Mobile App, which enables access to email, text, and other online services on tablets and smartphones, is screen reader-enabled for blind and low-vision users.[89]

Post-transaction, Comcast is committed to extending the very best accessibility features, including those developed by TWC, across the combined company's new footprint. TWC customers with disabilities will also have access to our specially trained customer support agents and back-office support functions.

A More Secure Network: As leading providers of broadband network services, Comcast and TWC work diligently to assess, deter, and neutralize cybersecurity vulnerabilities and threats. Because cybersecurity threats implicate all elements of the broadband ecosystem – the physical network layer, operating systems, applications, data in storage and transiting the network, and end-user access points – broadband providers must employ network-level measures and technologies in concert with consumer-based security tools.

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87 *See* Press Release, Comcast Corp., Comcast Debuts Accessibility Support Team and Product Lab (Oct. 28, 2013), http://corporate.comcast.com/news-information/news-feed/comcast-debuts-new-accessibility-offerings-during-national-disability-awareness-month; *Accessibility Services for Customers with Disabilities*, Comcast Corp., http://customer.comcast.com/help-and-support/account/accessibility-services#Help (last updated Jan. 10, 2014).

88 NBCUniversal is likewise an industry leader in providing closed captioning for online content. NBCUniversal captioned online video well before the Commission required such captioning, and also voluntarily captions an unprecedented amount of online content not subject to the Commission's rules, such as news clips on the NBC News and Today Show websites and Internet-only video feeds for the 2014 Sochi Olympics. *See* Tom Wlodkowski, *Bringing the Olympic Experience to More People in More Ways Than Ever Before*, Comcast Voices (Feb. 10, 2014), http://corporate.comcast.com/comcast-voices/bringing-the-olympic-experience-to-more-people-in-more-ways-than-ever-before (also noting that NBCUniversal will broadcast over 50 hours of the Sochi Paralympics and that the full NBC Sports Network Paralympics primetime show will be available on Xfinity On Demand, Xfinity.com/TV, and the Xfinity TV Go app the next day).

89 In addition, Comcast is deploying a number of innovative solutions aimed at ensuring that the accessibility features of its equipment work properly. For example, Comcast has adopted a caption compliance testing program for set-top boxes that has shortened quality control testing cycles for new box models from several weeks to a matter of days. It has also started deploying a first-of-its-kind network monitoring tool that detects remotely when cable program streams are non-compliant with industry standards for closed captioning and video description, giving Comcast the ability to proactively troubleshoot these issues and quickly mitigate closed captioning and video description impairments and service interruptions. These equipment testing and monitoring activities will be expanded to TWC systems as those systems are integrated into Comcast's network.

Comcast has increased its investment in security assets and resources by over 300 percent in the last four years. Comcast is the first large ISP in North America to fully implement Domain Name System Security Extensions ("DNSSEC"), an enhanced level of Internet security that ensures the authenticity of websites and prevents consumers from being unwittingly directed to fraudulent replicas of those sites.[90] And Comcast is the largest ISP to deploy native IPv6 support, the next generation of IP addressing, to 100 percent of its network.[91] IPv6 provides several features that improve overall network speed and functionality. The transaction will extend DNSSEC and IPv6 to all the TWC systems, enhancing cybersecurity protections for millions of consumers and businesses.

Comcast also operates a centralized security organization that oversees the full array of the company's cybersecurity resources and policies. An internal 24/7 security response and operations center enforces these policies. In addition, Comcast has made significant investments in network sensors, threat intelligence-gathering capabilities, and internal cybersecurity forensics, enabling the company to engage in pattern-based detection and other threat-monitoring measures that strengthen its defenses in the constantly changing cyber threat landscape. These capabilities help repel sophisticated cyber incursions. Post-transaction, Comcast will expand and extend this proven security organization across the combined company's footprint.

The transaction will further benefit TWC broadband customers by providing them with new tools and capabilities to protect against cyber threats. Comcast's Constant Guard security suite is the nation's most advanced and comprehensive consumer-facing cybersecurity product, designed to protect end-users' privacy, identity, and digital assets. Constant Guard is offered free to all Comcast customers, and will be made available to current TWC customers. Comcast also provides separate "botnet" notification to potentially infected customers, whether or not they use Constant Guard.[92] And Comcast has made additional investments in technologies that detect and contain malicious network traffic before it traverses network components or reaches end-user devices.

The transaction will allow Comcast to integrate and scale these many cybersecurity features and resources, along with some of the cutting-edge cybersecurity features and advances developed by TWC. As a result, the combined company's cybersecurity capabilities will be improved in ways that could not be as effectively accomplished by either Comcast or TWC alone.

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90 *See* Jason Livingood, *Comcast Completes DNSSEC Deployment*, Comcast Voices (Jan. 10, 2012), http://corporate.comcast.com/comcast-voices/comcast-completes-dnssec-deployment.

91 *See* John Brzozowski, *Comcast Launches IPv6 for Business Customers*, Comcast Voices (Apr. 29, 2013), http://corporate.comcast.com/comcast-voices/comcast-launches-ipv6-for-business-customers.

92 *See Constant Guard - Our Safe Network*, Comcast Corp., http://constantguard.comcast.net/our-safe-network (last visited May 4, 2014).

III. Promises Made And Promises Kept – Our Record.

Congress and the public can count on Comcast to deliver these pro-consumer, pro-competitive, and public interest benefits in this transaction, just as Comcast has done in each of our prior transactions. When Comcast makes promises, it keeps them.[93]

For example, Comcast has already *surpassed* most of the broadband requirements in the NBCUniversal Order by:

- Expanding the original eligibility criteria for our *Internet Essentials* broadband adoption program multiple times and connecting 1.2 million low-income Americans, or more than 300,000 families, to the Internet at home;

- Expanding our broadband network by approximately 6,300 miles, or 41 percent more than the total 4,500 miles required to satisfy the year-three commitment in the Order. In addition, Comcast extended its broadband plant to over 715,000 additional homes, or approximately 80 percent more than the year-three milestone of 400,000 homes-passed;

- Adding over 650 courtesy video and broadband Internet access accounts to schools, libraries, and other community institutions in underserved areas in which broadband penetration is low and where there is a high concentration of low income residents (the conditions required 600); and

- Far exceeding the requirement to have a broadband service tier of at least 12 Mbps down in our DOCSIS 3.0 markets. In fact, in the top 30 Comcast markets, our Performance tier is at least 20 Mbps downstream, and our Extreme 105 Mbps down tier is also available.[94]

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93 *See* Exhibit 6 (comprehensive review of Promises Made/Promises Kept from NBCUniversal transaction). The conditions in the NBCUniversal Order cover 15 separate substantive and multi-faceted areas, amounting to a total of more than 150 separate specific requirements. Out of these, the FCC has only found it necessary to investigate one issue. In 2012, the FCC investigated Comcast's compliance with the standalone broadband condition, including issues concerning rate cards reflecting the new tier and the clarity of language used on Comcast's website for the first few weeks after the new tier was implemented. Comcast promptly resolved the FCC's concern, and there was no finding of a violation. Comcast had made a good faith effort to comply with the condition as it understood the requirement, but the FCC questioned whether the service should have been rolled out in a different way. In resolving the issue, Comcast agreed to extend the commitment to offer this standalone service at a specific price point for one extra year to make sure its customers received the full benefit of it. Currently, a substantial number of Comcast customers subscribe to standalone broadband.

Separately, a dispute arose between Comcast and Bloomberg TV over interpreting what the language of the "neighborhooding" condition in the NBCUniversal Order meant. Both parties asked the FCC to clarify the requirement. Once the FCC did so, Comcast complied with it. Comcast remains Bloomberg TV's largest distributor, and the parties have a strong business relationship. The FCC's Media Bureau also reviewed relevant contract provisions in certain NBCUniversal license agreements, as part of a benchmark arbitration under the NBCUniversal Order, and agreed with NBCUniversal that each of these agreements precluded the licensing of content to an OVD for ad-supported exhibition.

94 *See* Third Annual Compliance Report, at 2, 7, 19-20; Exhibit 3 (*Internet Essentials* graphic).

Similarly, Comcast has met or exceeded each of its video service obligations and commitments in the NBCUniversal Order:

- Preserving and enhancing local news programming, and exceeding the required amount of 1,000 hours of regularly scheduled local news programming by providing approximately 1,500 hours for NBC Owned Television Stations and approximately 1,300 hours for the Telemundo Station Group;

- Nearly doubling the three-year milestone of 20,000 VOD choices at no additional charge, by offering an average of nearly 40,000 free VOD choices to Comcast customers in 2013;

- Going above and beyond its commitment to provide "more" children's and family-friendly VOD content within three years by adding over 1,000 VOD choices appealing to these audiences;

- Similarly adding 355 Telemundo and mun2 VOD programming choices;

- Already launching five of the ten new independent networks Comcast committed to launch within eight years, four of which are minority owned or managed;

- Launching new local and public interest content on its VOD and Online platforms, including as part of 2013's Black History Month, Asian Pacific American Heritage Month, LGBT Pride Month, Native American Heritage Month, and Hispanic Heritage Month; and

- Exceeding by four times its public service announcement (PSA) spending commitment of $15 million, by airing PSAs worth over $61 million covering key categories, such as digital literacy, parental controls, nutritional guidelines, and childhood obesity.[95]

Comcast is also dedicated to continuing its longstanding support of PEG access programming. Not only is Comcast the largest distributor of PEG access programming in the country, but it also is innovating PEG channel access by providing X1 platform customers the ability to stream PEG channels to computers and mobile devices. In addition, as a part of the NBCUniversal commitments, Comcast has promoted the discovery of local content by hosting PEG and hyper-local content on VOD and Online On Demand in six pilot communities through "Project Open Voice."[96] Post-transaction, Comcast will continue to develop PEG offerings

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[95] *See* David L. Cohen, *Comcast and NBCUniversal File Third Annual Compliance Report on NBCUniversal Deal*, Comcast Voices (Mar. 3, 2014), http://corporate.comcast.com/comcast-voices/comcast-and-nbcuniversal-file-third-annual-compliance-report-on-nbcuniversal-deal.

[96] Project Open Voice, launched in 2011, is a Comcast initiative that "broaden[s] the discovery of local content, including public, educational and government (PEG) programming." *About Project Open Voice*, http://projectopenvoice.com/about/ (last visited May 4, 2014). It currently operates in the trial markets of

based on community needs and to work to provide robust and meaningful PEG programming to local communities.

And beyond these services-specific commitments, Comcast has also delivered on its corporate-wide promises by launching numerous new diversity initiatives, including the creation of internal and external diversity councils that direct the company's efforts respecting diversity in governance, employment, procurement, programming, and community investment. NBCUniversal has long been a leader in offering diversity development programs to improve the interest and presence of diverse writers, directors, journalists, and on-screen personalities. Under Comcast's leadership, NBCUniversal has added even more signature programs.[97]

Comcast has similarly met or exceeded each of its investment and upgrade commitments in the AT&T Broadband (2002) and Adelphia (2006) transactions.[98] And, both in connection with its part of the Adelphia transaction, and in its most recent acquisition of Insight Communications (2012), TWC has done the same – successfully integrating and upgrading systems and delivering on the FCC's expectations in approving those transactions.

Comcast and TWC will work together to meet, if not exceed, their commitments in this transaction, as well.

IV. The Transaction Will Not Harm Competition.

Both companies welcome review of the transaction by Congress, the DOJ, the FCC, and others. We are confident that multiple objective factors will allay any reasonable concerns about the transaction.

A. This Is Not A Horizontal Transaction, And There Will Be No Reduction In Consumer Choice In Any Market.

As we noted earlier, Comcast and TWC serve geographically separate and distinct markets and do not compete for broadband, video, voice, or other services. The transaction will not reduce consumer choice for any of these services *in any market*. This transaction is very different from a horizontal merger, like the recent proposed AT&T/T-Mobile combination.

Peterborough, NH, Medford, MA, Philadelphia, PA, Hialeah, FL, Houston, TX, and Fresno, CA, creating portals for local media online and On Demand content. *See id.*

97 These include fellowships and initiatives to identify and cultivate new and diverse writers, directors, journalists, and casting directors.

98 As promised in the AT&T Broadband transaction, Comcast invested over $8 billion in capital improvements to upgrade its cable systems and build out a record 53,000 miles of fiber during 2004, meeting and exceeding every upgrade target that it had established and ensuring that 99 percent of its customers had access to a two-way broadband network. And after its acquisition of customers from Adelphia, Comcast invested billions to bring the systems it acquired up to Comcast's standards, and did so in record time. Since then, Comcast has transformed the network again and again.

B. There Will Be No Vertical Harms From The Transaction.

The transaction will not result in any competitive harms in other markets where the combined company is involved. Rather, the transaction will spur greater competition.[99]

1. The Internet Ecosystem

a. Comcast Has A Long Record Of Working Cooperatively With Other Companies On Interconnection, Peering, And Transit.

The Internet is a collection of mostly private networks that connect to each other.[100] The modern Internet is open, decentralized, and interdependent. It offers thousands of different paths (the Internet "backbone") that content (or "edge") providers use to connect with the networks operated by ISPs, such as Comcast, Charter, AT&T, Verizon, CenturyLink, Sprint, and others, that serve end-users.[101]

Content providers typically contract with their own "first mile" ISPs to connect them to Internet backbone providers – specialized firms including "content delivery networks" ("CDNs") and "transit" providers (such as Akamai, Limelight, Level 3, Tata). Content providers send their content over the Internet using CDNs or transit providers who then carry the content to ISPs that serve end-users, delivering the content over "last mile" connections between the ISP and an end-user's home or device.

Traffic Over The Internet "Backbone"

Whether it is a small website or a large online video distributor ("OVD"), content providers have always paid Internet backbone providers (such as Cogent, a transit provider, or Akamai, a CDN -- or both) to pick up content at their doorstep and deliver it to ISPs over interconnected networks. Where it has made economic sense for content providers, they also have the option of making business arrangements to connect their servers directly to ISPs, removing the Internet backbone provider as a middleman.

Major companies that move massive amounts of content, like Netflix (which itself accounts for an estimated *one-third* or more of all U.S. Internet content traffic during peak times), often follow an "all of the above" strategy, choosing to pay different middlemen at different times, but also choosing to connect directly with ISPs when they believe it will save

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99 Since this transaction was announced, numerous companies have reported plans for major investments in infrastructure, as well as the deployment of new technologies and services for video content and delivery. *See* Exhibit 7 (Timeline of Technology and Communications Investment and Innovation Since Comcast-TWC Merger Announcement).

100 Since 1996, more than $1.2 trillion has been invested in broadband networks to carry the massive amount of data carried over the Internet. This data flow is increasing at an astonishing compound annual growth rate (CAGR) of about 40 to 50 percent.

101 *See* Exhibit 8 (graphic representation of the Internet).

them money. Some large-volume content companies, such as Google and Facebook, have built their own extensive network infrastructure to connect to last mile providers.

Content providers can control the path their content takes from the point of origination to the end-user. Content providers often route their content over whatever path lowers their total economic costs, even if that does not always ensure the optimal end-user experience – but it is the content provider's decision to make, and the content provider's responsibility to deliver its content traffic through pathways with adequate capacity to ensure an efficient hand-off to the ISP.

Importantly, no content provider is ever *compelled* to interconnect directly with Comcast's or TWC's ISP networks. Comcast, in particular, has over 40 settlement-free routes and 8,000 commercial arrangements, which include dozens of substantial paid peering and transit arrangements with CDNs, ISPs, and major content providers which bring content to Comcast's ISP network for delivery to Comcast's customers.[102] The overwhelming majority of content from across the globe comes into Comcast's ISP network over its settlement-free connections with its peers, without the content provider having *any* direct relationship with Comcast. Those connections are always an option for every content provider, and they are always open – in fact, they are the lifeblood of Comcast's Internet business because they are also how Comcast gets *its customers'* content to and from the rest of the world.

The market for interconnection is separate from the ISP market. The combination of Comcast's and TWC's ISP networks, which will account for less than 40 percent of the "fixed" ISP market, will not come close to enabling the combined company to adversely affect competition in the interconnection market.

And the economics of Internet traffic delivery in the interconnection market are fiercely competitive. Internet transit prices have plummeted *by 99 percent in the last 15 years* amidst a competitive boom that saw new providers, including Comcast, enter the interconnection market.

If a content provider wants to interconnect directly with Comcast's ISP network, when the content provider believes that would be beneficial for its business, it can do so. Netflix recently chose to use that option.[103] Its direct interconnect agreement with Comcast is neither

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102 Peering services may be "settlement-free," meaning that content is exchanged without actual payment (other than "in-kind" trade), or they may be paid. Settlement-free peering is more common when the content traffic in each direction is roughly commensurate, or the exchange of network facilities and services each network performs for the other is roughly equal, and paid peering is more common when there is a significant content traffic or network imbalance. Comcast's settlement-free peering policy, which is consistent with industry standards used by all ISPs, including AT&T, Verizon, Cogent, and Level 3, is available at www.comcast.com/peering. The relevant factors describe what is considered fair trade of infrastructure and include criteria around content volumes, geographically diverse interconnection points, backbone size, and relative balance.

103 Netflix decided to cut out the middleman and interconnect directly with Comcast's ISP network, as other very large content providers have done, through an entirely voluntary, commercially negotiated agreement *that Netflix sought*. And Netflix has made clear that this ordinary interconnect agreement with Comcast will not "meaningfully change the economics for [Netflix]." Todd Spangler, *Netflix CFO: Comcast Bandwidth Deal Doesn't Change Our Economics*, Variety, Mar. 3, 2014 (quoting Netflix CFO, David Wells), *available at* http://variety.com/2014/digital/news/netflix-cfo-comcast-bandwidth-deal-doesnt-change-our-economics-1201124817/#. According to the same report, "Netflix is likely paying Comcast about $12 million per year under

novel nor unusual. And, in fact, Netflix has recently followed up this direct interconnect agreement with a similar agreement with Verizon.[104]

In short, the marketplace for the exchange of Internet content has worked extremely well for over two decades. This transaction will not affect the interconnection market or change how the Internet backbone works.

Traffic Over The "Last Mile"

As noted above, the "last mile" of the Internet refers to the connections running from an ISP's network to an end-user's home or device. By design, the FCC's Open Internet rules only apply to these "last mile" connections; the rules reflect a concern about how an ISP's actions may affect the end-user's ability to access content, the quality of the broadband Internet access service offered to the end-user, and the priority with which content is delivered over that final connection.

This transaction will not affect Comcast's established practice of delivering content to its customers over the "last mile" of the Internet *without blocking or discriminating against any content provider*. It bears repeating that Comcast and TWC have enabled the development of online video and many other innovative Internet-based services by providing ever-faster broadband speeds and higher bandwidth services to our broadband customers over these "last mile" connections. We have no interest in degrading our broadband services to disadvantage OVDs or providers of other content and services. That would only harm the attractiveness of our fastest-growing business – high-speed data – and simply makes no business sense.[105] Furthermore, Comcast's commitment (in the NBCUniversal Order) to be legally bound by the FCC's original no blocking and non-discrimination protections governing the delivery of content over these "last mile" connections will apply to the acquired TWC systems post-transaction.

Comcast shares policymakers' objective of preserving an open Internet. On April 24, 2014, FCC Chairman Wheeler announced his plan to circulate proposed new rules with the goal of adopting them by the end of this year.[106] Comcast is confident that the FCC will have adopted (and, if necessary, defended) a new, industry-wide approach to net neutrality well before Comcast's Open Internet commitment sunsets in 2018.

Any concerns that, as a result of this transaction, Comcast will have an incentive to block or degrade online video or any other content that is delivered over the Internet to Comcast's

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the interconnection deal . . . *which is among the lowest transit pricing in the industry*." *Id.* (emphasis added). Recently, it has been reported that Netflix reached a similar interconnect agreement with Verizon.

[104] *See* Janko Roettgers, *Verizon Inks Paid Peering Deal with Netflix*, Gigaom, Apr. 28, 2014, https://gigaom.com/2014/04/28/verizon-inks-paid-peering-deal-with-netflix/.

[105] *See* Declaration of Mark A. Israel ¶ 37, Exhibit 6 to the Applications and Public Interest Statement filed by Comcast and TWC on April 8, 2014, *available at* http://apps.fcc.gov/ecfs/document/view?id=7521097357.

[106] *See* http://www.fcc.gov/blog/setting-record-straight-fcc-s-open-internet-rules.

customers are completely unfounded. Comcast does not have that incentive or ability today and will not have that incentive or ability if this transaction is approved.

b. The Transaction Will Spur Competition For Broadband Services.

The market for broadband service, like video service, is local – the relevant factor is whether a consumer has a choice of broadband providers where he or she lives. Because Comcast and TWC serve distinct geographic areas, this transaction will not reduce broadband competition in any local market. Consumers will have the same choices post-transaction as they have today. According to the FCC, approximately 97 percent of households are located in census tracts where three or more fixed or mobile broadband providers reported offering at least 3 Mbps downstream and 768 kbps upstream, and over 80 percent are located in census tracts where two or more providers reported offering at least 10 Mbps downstream and at least 1.5 Mbps upstream.[107]

Nonetheless, while "national market share" data (or even market share data in the companies' combined footprint) are not that meaningful, if one looks only at what the FCC calls "fixed" broadband connections, and using the most recent FCC data available (from December 2012), the combined company's share would be below 40 percent of the "fixed broadband" market, after the divestitures Comcast plans to make. If one were to include wireless broadband in the calculation – which are about half of all broadband connections and should be part of any "national market share" analyses – the combined share drops below 20 percent, after the planned divestitures. These numbers are not static, and by making Comcast a more effective competitor against traditional and emerging broadband providers, the transaction will spur these other providers to act on powerful incentives to meet competition and win consumers. These desired market dynamics are *already* happening.

Comcast and TWC compete intensely in their separate markets with DSL, fiber, and advanced VDSL services like AT&T's U-verse, as well as with satellite and wireless 4G providers.

DSL: The wireline telco providers are formidable broadband competitors with the incentive and resources to continue to expand their reach and services. Comcast and TWC face nearly ubiquitous broadband competition from AT&T, Verizon, CenturyLink, Frontier, and others that offer DSL service that provides broadband Internet service to tens of millions of consumers.

While some may scoff at the competitive viability of DSL service, market realities and investments by telcos in DSL technology that have led to increased DSL speeds rebut those concerns. Verizon offers DSL service at speeds up to 15 Mbps, Frontier offers speeds up to 25

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107 *See Internet Access Services: Status as of December 31, 2012*, at fig. 5(a) (WCB Dec. 2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1224/DOC-324884A1.pdf (reporting on availability of broadband services).

Mbps, and CenturyLink offers speeds up to 40 Mbps.[108] These speeds are more than sufficient to support the Internet-based services that the vast majority of customers use. For example, according to Netflix, users can stream its videos over connection speeds as low as 0.5 Mbps, and can stream them in full-DVD quality over a connection speed of 3 Mbps.[109]

Critically, between December 2008 and December 2012, DSL-based broadband connections grew at an average annual rate of 26 percent, while cable broadband connections grew at an average annual rate of 18 percent.[110] And even as this growth is occurring, the next waves of DSL upgrades are already being tested. For instance, in July 2013, Alcatel-Lucent completed first field trials of G.fast, which takes DSL to speeds beyond 1 Gbps.[111]

Fiber Presence/Buildouts: In addition to the nearly-ubiquitous DSL offerings telco providers provide, telco providers are building out even faster broadband offerings using a variety of technologies. AT&T, for its part, is expanding the deployment of U-verse, a service based primarily on fiber-to-the-node ("FTTN") technology, as part of its "Project VIP" investment plan.[112] These investments will enable AT&T to offer FTTN-based U-verse services to 33 million customer locations, and "U-verse IPDSLAM" services to an additional 23 million customer locations, by the end of 2015. U-verse currently delivers speeds up to 45 Mbps and will deliver speeds up to 100 Mbps to the FTTN-based locations in the future.[113] U-verse is AT&T's fastest-growing business – in the fourth quarter of 2013, AT&T announced that U-verse revenues grew 27.9 percent year-over-year.[114]

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108 *See* Letter from Lynn R. Charytan, Senior Vice President, Legal Regulatory Affairs and Senior Deputy General Counsel, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, Ex. A, Pt. 3 (filed Feb. 21, 2014) (detailing competitive standalone HSD options in Comcast's top 30 markets).

109 *See How Fast Should My Internet Connection Be to Watch Netflix?*, Netflix, https://help.netflix.com/en/node/306 (last visited May 4, 2014).

110 *See* FCC, *Internet Access Services: Status as of December 31, 2012*, at 26 (WCB Dec. 2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1224/DOC-324884A1.pdf (Comcast calculations using FCC data).

111 *See* Mikael Ricknas, *Alcatel-Lucent Gives DSL Networks a Gigabit Boost*, PC World, July 2, 2013, *available at* http://www.pcworld.com/article/2043483/alcatellucent-gives-dsl-networks-a-gigabit-boost.html.

112 *See* Press Release, AT&T, AT&T to Invest $14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services (Nov. 7, 2012), http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode.

113 *See* Press Release, AT&T, AT&T U-verse High Speed Internet Subscribers: 10 Million and Counting (Nov. 15, 2013), http://www.att.com/gen/press-room?pid=25107&cdvn=news&newsarticleid=37296.

114 *See* Press Release, AT&T, AT&T Reports 20 Percent Adjusted EPS Growth, Record-Low Fourth-Quarter Postpaid Churn, Solid Smartphone Gains and Continued Strong U-verse Momentum in Fourth-Quarter Results (Jan. 28, 2014), http://www.att.com/gen/press-room?pid=25228&cdvn=news&newsarticleid=37405&mapcode=corporate|financial.

CenturyLink is also on the same path with network investments that include "gigabit fiber, VDSL2, and pair bonding deployments to efficiently enable higher speeds."[115]

Verizon has taken a different approach and has deployed an entirely fiber-based service, FiOS, that it now offers to tens of millions of homes. AT&T's U-verse and Verizon's FiOS are available to about 43 percent of the homes in Comcast's footprint, and that is true of about 40 percent of the homes in TWC's footprint. Based on today's numbers, the combined company would be overlapped by these competitive fiber services in approximately 42 percent of its footprint.

Notably, the mere announcement of our transaction has created a "heightened sense of urgency" at AT&T to accelerate investments in its broadband networks.[116] AT&T recently announced that it will be "redirecting" a portion of its Project VIP capital investment to the deployment of fiber-to-the-home facilities. And in response to the Senate Finance Committee's April 3, 2014 approval of a tax extenders bill that includes provisions to encourage fiber deployment, AT&T's CEO Randall Stephenson said that AT&T will begin moving forward with the deployment of fiber to additional U.S. cities, and that he expects other U.S. companies to make similar investment decisions based on the bill.[117] Then, on April 21, 2014, AT&T announced plans for potential expansion of its 1 Gbps fiber-optic service to up to 21 new metropolitan areas, including Atlanta, Chicago, Los Angeles, San Francisco, and San Jose.[118] Verizon's CFO expressed the same eagerness to compete, stating: "I compete against Time Warner Cable today. I compete against Comcast today. I'll just compete against Comcast tomorrow and the way I view it is FiOS is a superior product to any of them because it is the only one that is fiber to the prem[ises] . . . ."[119]

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115 *See* Glen Post, CEO, CenturyLink, Inc., Q4 2013 Earnings Call, Tr. at 5 (Feb. 12, 2014).

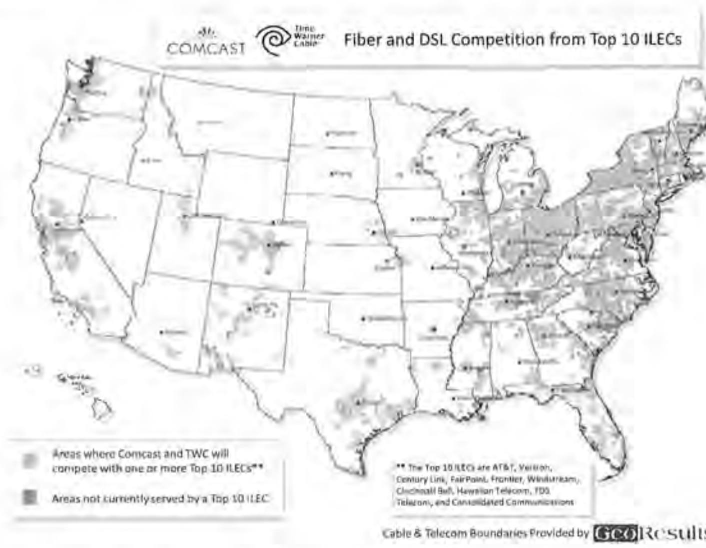
116 *See* Randall Stephenson, Chairman & CEO, AT&T, Inc., Morgan Stanley Technology, Media & Telecom Conference, Tr. at 3 (Mar. 6, 2014).

117 *See AT&T Statement on Markup of Senate Tax Extenders Package*, Business Wire, Apr. 3, 2014, http://www.businesswire.com/news/home/20140403006252/en/ATT-Statement-Markup-Senate-Tax-Extenders-Package (statement of Randall Stephenson).

118 *See* Grant Gross, *AT&T's Expanded 1 Gbps Rollout Could Go Head to Head with Google*, Network World, Apr. 21, 2014, http://www.networkworld.com/news/2014/042114-atampt39s-expanded-1-gbps-fiber-280882.html.

119 *See* Fran Shammo, EVP & CFO, Verizon, Deutsche Bank Media, Internet and Telecom Conference, Tr. at 13 (Mar. 10, 2014); *see also* Gautham Nagesh, *Comcast Sees Time Warner Cable Deal Boosting Broadband Competition*, Wall St. J., Feb. 21, 2014, http://online.wsj.com/news/articles/SB10001424052702304275304579397541413329198 ("Verizon has a history of introducing the next big thing for our video and Internet customers. This [transaction] just changes the name of the competitor in some of our markets.") (quoting Verizon spokesman Ed McFadden).

The map below illustrates the ubiquitous fiber and DSL competition that Comcast and TWC face from the top 10 ILECs. In the vast majority of areas, we compete with at least one top 10 ILEC.



Service areas shown represent areas in which the top-10 ILEC providers offer fiber and/or DSL-based Internet access service of any speed. Service area boundaries have been estimated using census block data, wire center locations, and other publicly available information.

In addition to the telco providers, we face intense competition from fiber-to-the-premises services like Google Fiber, municipal providers, and others. Google Fiber has plans to *quadruple* the number of cities in which it provides service, potentially launching in nine new metro areas.[120] Google also reportedly plans to offer expansive Wi-Fi networks in each of the candidate expansion metro areas.[121] Comcast or TWC has a significant presence in eight of those nine areas (which are already served by multiple other MVPDs and broadband providers).

[120] These include San Jose, California; Salt Lake City; Phoenix; San Antonio; Nashville; Atlanta; Charlotte, North Carolina; Raleigh-Durham, North Carolina; and Portland, Oregon. Claire Cain Miller, *Google Moves to Expand Fiber, Its Fast Internet*, N.Y. Times, Feb. 20, 2014, at B6.

[121] Hayley Tsukayama, *The Switchboard: Google May Be Giving Free WiFi to Fiber Cities*, Wash. Post, Apr. 25, 2014, http://www.washingtonpost.com/blogs/the-switch/wp/2014/04/25/the-switchboard-google-may-be-giving-free-wifi-to-fiber-cities/?tid=hpModule_1728cf4a-8a79-11e2-98d9-3012c1cd8d1e.

And Google unquestionably has the financial and technical wherewithal to expand Google Fiber to additional markets.[122]

Other Fixed Broadband Competitors: We also face broadband service competition from cable overbuilders like WOW! and RCN, fixed wireless broadband services like Verizon's HomeFusion and Windstream, and satellite broadband providers like Hughes and WildBlue – with Dish aggressively developing plans for spectrum-based broadband offerings.[123] Dish is even reported to be partnering with Artemis, a startup, to develop pCell, a service that will use radio technology to offer fiber-like speeds wirelessly.[124]

Mobile Wireless: Mobile wireless also provides a meaningful broadband alternative for many Americans. Wireless broadband speeds are increasingly able to support the Internet-based services that the vast majority of customers use.

Mobile wireless data speeds and capacity continue to increase rapidly with the deployment of advanced services such as LTE and LTE-Advanced. Recently, Masayoshi Son of SoftBank (which owns Sprint) noted that he intends to outstrip typical cable broadband speeds by building a wireless broadband network of up to 200 Mbps.[125] Even edge providers that require substantial bandwidth now expect wireless to be an increasingly effective broadband competitor.[126]

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122 *See* Jon Brodkin, *Google Fiber Chooses Nine Metro Areas for Possible Expansion*, Ars Technica, Feb. 19, 2014, http://arstechnica.com/business/2014/02/google-fiber-chooses-nine-metro-areas-for-possible-expansion/.

123 *See, e.g.*, Press Release, Sprint Corp., Sprint and Dish to Trial Fixed Broadband Service (Dec. 17, 2013), http://newsroom.sprint.com/news-releases/sprint-and-dish-to-trial-fixed-wireless-broadband-service.htm.

124 *See* Kyle Russell, *Dish Network Is Partnering With This Startup To Make Cellphone Internet 1,000 Times Faster Than 4G*, Business Insider, Apr. 23, 2014, http://www.businessinsider.com/dish-network-and-artemis-partnering-to-make-cell-phone-internet-1000-times-faster-than-4g-2014-4.

125 *See* Presentation by Masayoshi Son, The Promise of Mobile Internet in Driving American Innovation, the Economy and Education, Tr. at 12 (Mar. 11, 2014), *available at* http://cdn.softbank.jp/en/corp/set/data/irinfo/presentations/vod/2013/pdf/press_20140311_02.pdf.

126 As the head of MLB Advanced Media recently stated, in response to the claim that "[t]he cable guys pretty much control broadband":

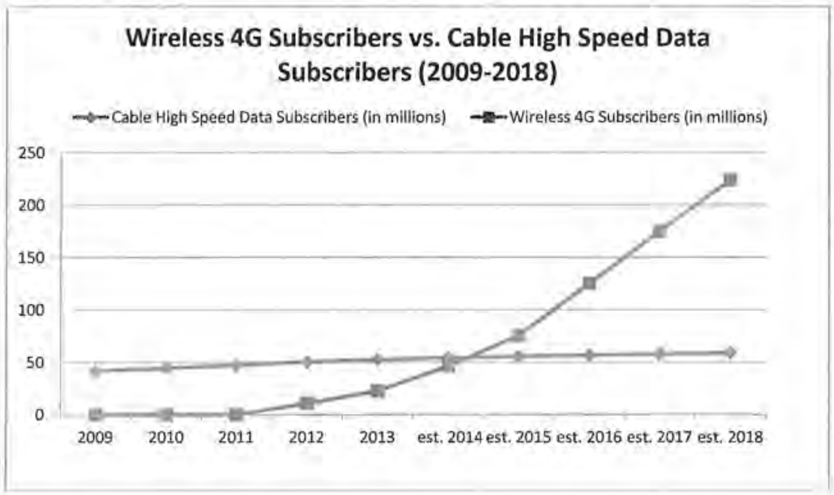
> How? We have telcos now. You've got wireless. The only pay TV business that's growing now is U-[v]erse and FiOS. They're owned by AT&T and Verizon. I don't think you should discount what AT&T and Verizon can do without a landline – what they can do through the air. Who knows what this is going to look like? * * * A lot of our people watch our live games in 4G. . . . If you watch [a] live baseball game in 4G it looks pretty good and 5G is just round the corner.

David Lieberman, *Q&A: MLB Advanced Media CEO Bob Bowman on WWE Network, Sony's Virtual Pay TV Plans, and What's Next for Streaming Video*, Deadline (Jan. 21, 2014), http://www.deadline.com/2014/01/qa-mlb-advanced-media-ceo-bob-bowman-on-wwe-network-sonys-virtual-pay-tv-plans-and-whats-next-for-streaming-video/ (quoting Bob Bowman). *See also How Fast Should my Internet Connection Be to Watch Netflix?*, Netflix, https://help.netflix.com/en/node/306 (last visited May 4, 2014) (stating that users can stream Netflix videos at speeds as low as 0.5 Mbps, and can stream them in full-DVD quality with speeds of 3 Mbps).

While today's pricing for wireless broadband plans with substantial bandwidth are higher than other broadband services, these prices have and will continue to come down over time as wireless providers achieve more bandwidth. And, for many lighter broadband users, this is not an issue even today.

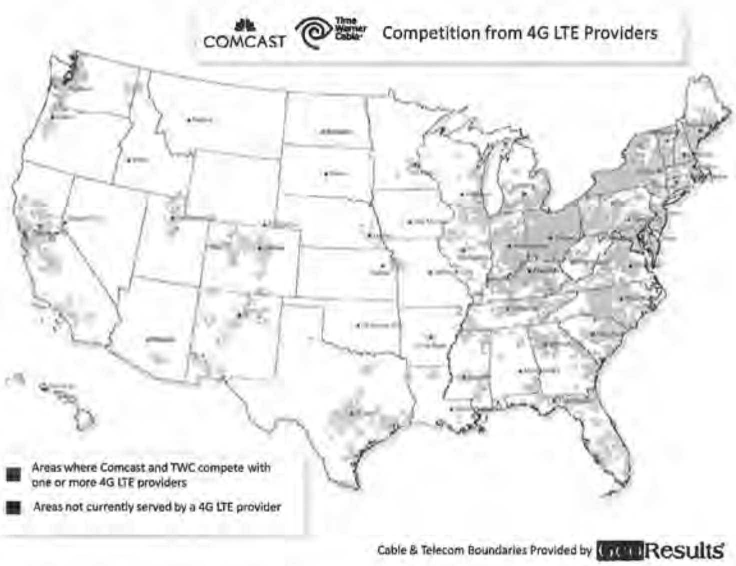
Looking ahead to 2018, SNL Kagan predicts that there will be 224 million 4G subscriptions active in the United States, up from 22.6 million at year-end 2013.[127] This alone will easily surpass the rate of growth of cable broadband service during the past five years and over the next five. The FCC will contribute significantly to that growth story in its upcoming spectrum auctions.

The chart below shows the significant increase in wireless 4G subscribers since 2009 and the projected increases through 2018, as forecasted by SNL Kagan:



[127] *See* SNL Kagan, *Covered Pops & Subscribers by Technology in U.S. Wireless* (July 2013). Similarly, Cisco predicts the number of 4G connections in North America in 2018 to be 372 million. *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2013–2018*, at 36 (Feb. 5, 2014), http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html.

And the map below shows the areas where Comcast and TWC face increasing competition from one or more 4G LTE providers. In most service areas, we face competition from at least one 4G LTE provider.



Resulting Competitive "Dogfight": AT&T's Stephenson aptly captured these marketplace dynamics, observing that, "[i]t is going to be a *dogfight* between us and cable for the next 20 years. They will invest, and they will step up. We will invest. It will go back and forth."[128]

The 20-year history of broadband confirms that Congress and the public can reasonably expect other broadband providers to respond even more aggressively to this competitive "dogfight," resulting in greater broadband service choices and value for consumers and businesses. Far from posing any harm to the broadband service market, this transaction has *already* spurred – and will continue to spur – even greater competition and investment that benefits consumers and businesses.

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[128] *See* Shalini Ramachandran & Thomas Gryta, *Cutting the Cable and Getting "Phone TV"*, Wall St. J., Nov 1, 2013, http://online.wsj.com/news/articles/SB10001424052702303843104579169971029572160.

2. Video Services

a. Comcast Will Have About The Same National Market Share Of MVPD Subscribers As In Prior Cable Transactions.

We emphasize again that the combination of the two companies will leave Comcast, after the planned divestures, with about 29 million subscribers in systems it manages. Comcast's share of the MVPD market will be below 30 percent – around the same share that Comcast had after the AT&T Broadband (2002) and Adelphia (2006) transactions. This will also be below the 30 percent "ownership cap" that the FCC had adopted based on a stated intention to prevent a cable operator from exercising bottleneck or monopsony control over programmers. The D.C. Circuit twice rejected the ownership cap, finding, among other things, that "[t]he record is *replete* with evidence of ever increasing competition among video providers . . . . *Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.*"[129] Of course, the MVPD marketplace is even more competitive now than it was five or more years ago, with cable providers' share of U.S. MVPD subscribers having declined significantly in recent years due to robust competition from DBS and telco providers. Any lingering concerns over Comcast's achieving a 30 percent share of national MVPD subscribers, post-transaction, are simply antiquated in light of today's marketplace realities.[130]

Nor should there be any concern that the combined company will create a bottleneck for programmers given its *presence* in major DMAs. In fact, if the transaction is approved, the system divestitures that Comcast has planned, as part of the Charter/SpinCo transactions, will leave Comcast with a presence in 16 of the top 20 DMAs, *as is the case today.*

In any event, DMAs are simply Nielsen constructs for rating measurement purposes and do not constitute relevant antitrust markets, and presence alone does not create any undue competitive risk. Programmers have access in all DMAs to two nationwide DBS distributors and, increasingly, to online video distributors. Comcast will face significant competition in *all* these DMAs. As the chart below demonstrates, there will be *11 or more* MVPDs in 13 of the 16 top DMAs where the combined company will have a presence, and *at least seven* MVPDs in the three other DMAs.[131]

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[129] *See Comcast Corp. v. FCC,* 579 F.3d 1, 8 (D.C. Cir. 2009) (emphasis added).

[130] As 21st Century Fox, Inc.'s President and COO, Chase Carey, recently observed: "We honestly don't see any material consequences to our business [from cable consolidation], in fact, there may be some positive ones. First, unique content and scale in an expanding digital world has never held a stronger hand. Second, new digital platforms in over-the-top players may grow even more quickly with the consolidated distribution industry. Furthermore, the real issue is how many choices an individual home has, not how big is the distributor. We already deal successfully with large distributors. Cable consolidation will not change the number of choices. Consumer choice is actually likely to increase, not decrease, as over-the-top digital platforms emerge. Finally, consolidation may spur innovation and improve customer experience and new technologies like targeted ads as well as other enhancements that enlarge the pie for everyone." 21st Century Fox, Inc., Q2 2014 Earnings Call, Tr. at 6 (Feb. 6, 2014).

[131] In a handful of markets, these numbers may change by one upon completion of the divestiture transactions with Charter.

Video Providers in the Top 20 Designated Market Areas (DMAs)

Rank	DMA	Providers (excluding Comcast and TWC)	Total	Post-Transaction
1	New York, NY	Dish, DirecTV, Verizon, RCN, Cablevision, and 6 others	11	No Change
2	Los Angeles, CA	Dish, DirecTV, Verizon, AT&T, Charter, and 16 others	21	No Change
3	Chicago, IL	Dish, DirecTV, AT&T, RCN, WOW!, and 7 others	12	No Change
4	Philadelphia, PA	Dish, DirecTV, Verizon, RCN, Atlantic Broadband, and 4 others	9	No Change
5	San Francisco-Oakland-San Jose, CA	Dish, DirecTV, AT&T, Charter, WARPSPEED, and 4 others	9	No Change
6	Dallas-Ft. Worth, TX	Dish, DirecTV, Verizon, AT&T, Cable One, and 28 others	33	No Change
7	Washington, DC (Hagerstown, MD)	Dish, DirecTV, Verizon, RCN, Atlantic Broadband, and 8 others	13	No Change
8	Atlanta, GA	Dish, DirecTV, AT&T, Windstream, WOW!, and 9 others	14	No Change
9	Boston, MA (Manchester, NH)	Dish, DirecTV, Verizon, RCN, MetroCast, and 7 others	12	No Change
10	Houston, TX	Dish, DirecTV, AT&T, CenturyLink, Consolidated Communications, and 24 others	29	No Change
11	Phoenix, AZ *(Comcast and TWC have no presence)*	--	--	No Change
12	Detroit, MI *(Comcast and TWC will have no presence post-transaction)*	--	--	No Change
13	Seattle-Tacoma, WA	Dish, DirecTV, Frontier, Coast Communications, Wave, and 11 others	16	No Change
14	Minneapolis-St. Paul, MN *(Comcast and TWC will have no presence post-transaction)*	--	--	No Change
15	Tampa-St. Petersburg, FL	Dish, DirecTV, Verizon, WOW!, CenturyLink, and 6 others	11	No Change
16	Miami-Ft. Lauderdale, FL	Dish, DirecTV, AT&T, Advanced Cable Communications, Atlantic Broadband, and 2 others	7	No Change
17	Sacramento-Stockton-Modesto, CA	Dish, DirecTV, Sierra Nevada Communications, WARPSPEED, Wave, and 9 others	14	No Change
18	Denver, CO	Dish, DirecTV, Consolidated Communications, Suddenlink, Midcontinent, and 16 others	21	No Change
19	Cleveland, OH *(Comcast and TWC will have no presence post-transaction)*	--	--	No Change
20	Orlando-Daytona Beach-Melbourne, FL	Dish, DirecTV, AT&T, Grande Communications, CenturyLink, and 7 others	12	No Change

Source: GeoResults

For similar reasons, even if the transaction enables the combined company to moderate some of its future programming costs, there is simply no evidence for the speculation that this will create any greater ability for a programmer to extract more aggressive prices and terms from other distributors. Programmers have negotiating leverage over distributors like Comcast and TWC, as evidenced by programming costs significantly outpacing the rate of cable retail prices.[132] The facts show that broadcasters and programmers have been able to raise their prices consistently across the industry, putting greater pressures on all MVPDs (and ultimately their customers). One recent study comparing the compound annual growth rate of average non-programming network costs ("network costs") and programming costs ("program content costs")

[132] Based on the cumulative changes in programming costs reported in Comcast's and TWC's annual public filings and the average expanded basic cable price in the FCC's *Report on Cable Industry Prices* from 2004 to 2012. *See Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices, 28 FCC Rcd 9857 (2013).

indicates that, since 1979, the cost of the network has increased by an average of 3.34 percent per year, while the cost for program content has increased by an average of 17.62 percent per year.[133]

Programmers negotiate for the highest rates the market will bear from every single MVPD. And, as the D.C. Circuit has twice found, Comcast will not have "buyer power" with a 30 percent or even higher share of MVPD subscribers over cable programming. Given these dynamics, there is no basis to assume that the programming costs for smaller MVPDs will go up as a result of the transaction, rather than other market forces.

b. The Combined Company's Programming Will Be Available To MVPDs And OVDs Alike.

The programming that Comcast will acquire from TWC includes one professional-sport, English-speaking regional sports network; several local news channels (including Time Warner Cable News NY1);[134] and two national cable programming services (MLB Network and iN Demand), in which Comcast also has part ownership. Post-transaction, these relatively modest holdings will also be subject to safeguards such as the FCC's program access rules.

Notably, since the Comcast-NBCUniversal transaction, there have been no major disputes with any MVPDs over access to NBCUniversal programming on fair and reasonable terms.[135] Over this same period, NBCUniversal's share of total network revenues (including broadcast, cable, and RSN) has been around 11.5 percent and will increase only 0.25 percent by this transaction, still less than 12 percent by revenue.[136] And, because TWC has no ownership interest in any local broadcast stations, NBCUniversal's share of that programming segment will be unchanged.

As we described earlier, today's programming market is more dynamic and competitive than ever. Given these facts, it is simply unrealistic to assume that the combined company would

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133 *See* Robert Gessner, *Programming Costs Drive Cable Bills Higher*, TV NewsCheck, Mar. 14, 2014, http://www.tvnewscheck.com/article/74809/programming-costs-drive-cable-bills-higher.

134 As part of the NBCUniversal Order, Comcast and NBCUniversal committed themselves to "continue [NBCUniversal's] policy of journalistic independence with respect to the news programming organizations of all [NBCUniversal's] networks and stations, and [to] extend these policies to the potential influence of each of [the joint venture's] owners." NBCUniversal Order, App. A, § XII. Further, "to ensure such independence," Comcast and NBCUniversal have continued in effect the position and authority of the NBC News ombudsman. *Id.* Among other duties, the ombudsman is responsible for final approval of all investigative reports on any NBC News program and all reports in prime-time news programs, including Dateline NBC. In addition, the ombudsman conducts seminars on ethics in journalism for all NBC News and MSNBC employees, and serves as the Ombudsman for NBC News.

135 Since 2011, NBCUniversal has successfully reached affiliation agreements covering the full suite of NBCUniversal programming with, among others, Verizon, Cablevision, Charter, Dish Network, Suddenlink, Mediacom, and NCTC without resort to the arbitration remedies in the NBCUniversal Order.

136 After the merger, Comcast/NBCUniversal will rank as the fourth-largest owner of national programming networks (by revenue), after Disney/ABC, Time Warner, and Viacom – which is the same rank that Comcast/NBCUniversal has today.

have the power or incentive to withhold NBCUniversal programming from MVPDs in any markets, even apart from the protections of the program access rules and NBCUniversal Order.

Nor will the transaction affect the combined company's willingness to license programming to OVDs. Since the Comcast/NBCUniversal transaction was approved, NBCUniversal has successfully licensed or renewed programming content to numerous OVDs, including Amazon, Netflix, and YouTube. The NBCUniversal Order also contains substantial licensing and arbitration rights for OVDs, as well as other protections, that will continue to apply after the TWC transaction.[137]

c. Comcast Carries Huge Amounts Of Unaffiliated Programming And Will Continue To Do So Post-Transaction.

Comcast has an unsurpassed record of commitment to providing carriage of independent programmers. The company carries over 160 independent networks, including many small, diverse, and international ones. *Six of every seven networks* carried by Comcast are unaffiliated with the company. And, since the Comcast-NBCUniversal transaction, Comcast has launched several new independent networks, including BBC World News, ASPiRE, BabyFirst Americas, El Rey, and REVOLT, and supported the development of several other independent networks with expanded carriage.[138] During the same period, Comcast has not dropped any major cable programming network over an inability to reach a carriage agreement, or lost the signal of any major broadcaster in a retransmission consent dispute.

A refusal by Comcast to carry unaffiliated programming content that customers demand would only drive customers to competing MVPDs, harming one of our core businesses.[139] And, of course, the FCC's program carriage rules provide a backstop against any wrongful denials of carriage.[140]

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137 Only one OVD has elected to proceed to arbitration under the NBCUniversal Order, and that arbitration involved parsing through NBCUniversal's obligations to other licensees to make sure its provision of requested content to the OVD would not breach any third party rights – issues on which the Media Bureau fully agreed with NBCUniversal's position (Commission review is still pending).

138 *See* Third Annual Compliance Report, at 3.

139 This includes serving the needs and interests of customers with differing political viewpoints and perspectives. For example, Comcast is the largest distributor of The Fox News Channel ("Fox News") in the United States. Fox News is part of Comcast's budget-friendly "Digital Economy" package of 40-plus programming channels. Comcast's own CNBC and MSNBC channels are also available, but on higher tiers of service.

140 Recent program carriage rulings make clear that Comcast does not discriminate against independent programmers on the basis of affiliation. *See Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982 (D.C. Cir. 2013), *cert. denied sub nom.*, 134 S. Ct. 1287 (2014); *Herring Broad., Inc. v. FCC*, 515 F. App'x 655 (9th Cir. 2013). By the same token, the FCC and the courts have rejected as unfounded the few program carriage complaints brought against TWC. *See TCR Sports Broad. Holding, LLP v. FCC*, 679 F.3d 269 (4th Cir. 2012) (rejecting program carriage claim against TWC); *Herring Broad., Inc. d/b/a WealthTV v. Time Warner Cable, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd. 8971 (2011) (same).

3. Advertising Markets

The advertising market is intensely competitive, with an increasing number of online and other new platforms challenging traditional local spot television advertising. Based on SNL Kagan data, only 7 percent of local advertising revenues are spent on cable. As Professor Christopher Yoo testified during the Senate Judiciary Committee hearing on the transaction on April 9, 2014, "If you're a local advertiser, 93% of your money is going elsewhere . . . . And a 7% concentration level under any antitrust standard is irrelevant." Even combined, moreover, Comcast and TWC will only have approximately 8-11 percent of television viewing saleable impressions. Although the combined company's geographic footprint may be larger, its share of the local TV advertising market will still be very small and well below any level that raises antitrust concerns.

Advertisers who seek to reach a national television audience today generally purchase advertising time on cable and broadcast networks directly from the networks themselves. In addition, many of those advertisers choose to supplement their cable and broadcast network schedules by purchasing advertising in one or more of the 210 DMAs. These purchases can be made directly on local broadcast stations or through about a dozen national representative firms that provide these services for local broadcast stations. MVPDs, in turn, may sell their available local spot advertising time directly to buyers of advertising or indirectly through NCC Media, which places spot advertising time across multiple pay-TV providers. MVPDs also accept advertising buys from many other firms (e.g., TelAmerica, CTV, Cable Scoop, Cable Time, Zip Tech Media, WorldLink, ITN, Delivery Agent (The Band), and AudienceXpress) that, like NCC Media, place spot ads across multiple pay-TV providers.

New York is the only DMA where Comcast and TWC both sell local spot cable television advertising. But advertising on a Comcast system is not a substitute for advertising on a TWC system, since the systems serve different customers. Similarly, there are few DMAs – New York, Los Angeles, and Dallas/Fort Worth – where Comcast currently owns an NBC broadcast station and TWC owns a cable system. However, the FCC and DOJ have both found that local spot advertising on a cable system is not a close substitute for advertising on a local broadcast station. In addition, an advertiser is able to target portions of a DMA through cable spot advertising, but must purchase local broadcast advertising on a DMA-wide basis.[141]

Comcast and TWC compete against all forms of local advertising, with local broadcast TV being the most direct competitor, but the list also includes radio, newspaper, outdoor display advertising, direct mail, and Internet advertising. Internet advertising, including search, display and, especially, video advertising, is also growing very rapidly.[142] Advertisers, therefore, will

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[141] The Department of Justice, for example, has taken the position that cable television advertising is not a meaningful substitute for broadcast television advertising for many advertisers. *See* Compl. ¶ 10, *United States v. Raycom Media, Inc.*, No. 1:08-cv-01510 (D.D.C. Aug. 28, 2008) ("[C]able television advertising is not a meaningful substitute for broadcast television spot advertising . . . .").

[142] *See, e.g.*, Will Richmond, *IAB: Advertisers' Interest In TV and Video Is Now At Parity*, VideoNuze, Apr. 28, 2014, http://iq.videonuze.com/article/iab-advertisers-interest-in-tv-and-video-is-now-at-parity (reporting recent survey of agency and brand buyers indicating that *interest in TV and online video advertising is now at parity* and that nearly two-thirds of the respondents expect to increase their online video spending in the next twelve months).

continue to enjoy a great many alternative outlets in the 16 DMAs where the combined company will operate.

As we previously described, by providing greater coverage and scale in major markets such as New York and Los Angeles, the transaction will enable Comcast to offer more attractive alternatives for advertisers, including innovative services like dynamic ad insertion, addressable ads, and more seamless access to the nation's top media markets. Far from harming competition in advertising markets, the transaction will enhance it.

V. Conclusion

The Comcast-TWC transaction is a unique and critical opportunity for both companies and their customers. It will result in better broadband, video, and voice services for millions of additional consumers, while enabling the combined company to upgrade its broadband network, expand last-mile services, and increase Wi-Fi availability. It will make Comcast a more viable competitor for advanced business services, especially for the underserved small and medium-sized business segments, but also for regional, super-regional, and national enterprise customers. And it will better position Comcast as a world-class technology and media company to help meet growing consumer and business demand for advanced digital services anywhere and everywhere, on all kinds of new and yet to be created platforms.

The transaction will also serve several other clear public interests, allowing millions of additional consumers to benefit from focused improvements to customer service, expanded broadband deployment to households and schools in lower-income areas, improved cybersecurity, more accessible services for disabled persons, and Comcast's strong diversity initiatives.

In addition to these immediate consumer and business benefits, the transaction will spur even greater competition in the ongoing "dogfight" for broadband, video and voice services. This will lead to new technologies, better services, and more choices for consumers and businesses – keeping America at the forefront of the digital revolution.

We have begun a thorough review process with the DOJ and FCC. We are confident that this process will confirm the many benefits that the transaction will generate for consumers, businesses, and the public interest. Comcast has promised, on behalf of the combined company, that these benefits will be delivered. And, as we have shown in past transactions, Comcast delivers on its promises.

Thank you again for the opportunity to testify today.

Mr. BACHUS. Thank you, Mr. Marcus. And, Mr. Polka, before you testify, let me say this. The heat was on in here when I arrived, and I have asked them to turn on the air conditioner, which I understand has now kicked on. But if any of the witnesses or audience, particularly if you have completed your testimony and you want to slip off your coat, or prior to giving your testimony you want to take off your coat, you may save yourself a lot of shine when you give your testimony. [Laughter.]

So I would invite and encourage anyone who wants to do that to do that.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. BACHUS. You all look great, but as this wears on——

Mr. COHEN. Thank you, Mr. Chairman. We certainly appreciate you bringing to life the analogy of being on the hot seat.

Mr. BACHUS. That is right. And this is a hotter hot seat than normal, and was not intended that way. I think Mr. Issa sometimes does turn up the heat, but we do not do that on this Committee. [Laughter.]

Mr. Polka, you are recognized at this time.

Mr. POLKA. Thank you, sir. Thank you very much.

Mr. BACHUS. But it is not stress. It is not stress.

TESTIMONY OF MATTHEW M. POLKA, PRESIDENT AND CEO, AMERICAN CABLE ASSOCIATION

Mr. POLKA. Thank you, sir. The proposed combination of Comcast and Time Warner Cable with later divestitures and swaps with Charter is a big deal that threatens consumers and competition. The singular point that I want you to know is that this is a complicated deal that will negatively impact your constituents. Unless the FCC and Department of Justice adopt robust relief, it should not be approved.

To begin with, it is important to realize that Comcast is more than just the largest pay TV provider. It is also a very large programmer through its ownership of the NBC Television Network, 10 NBC-owned and operated stations, 13 regional sports networks, and many popular national cable networks. Like Comcast, Time Warner Cable is also a very large cable operator, and also a large programmer through its ownership and/or control of 16 regional sports networks, including those in New York and Los Angeles.

I wish I could simplify this deal into a single component, but the fact is that there are three separate elements to consider that each causes harm. First, the combination of the two companies' programming; second, the combination of Comcast programming with the new cable systems Comcast acquires; third, the combination of the companies' cable systems. The first two are similar to ACA's concerns about the Comcast/NBCUniversal transaction that DoJ and FCC addressed through conditions. The third raises new and significant concerns not present in Comcast's previous deal.

Regarding the first component, by merging its programming with Time Warner Cable's regional sports networks and selling them in a bundle, Comcast will gain greater bargaining power against all pay TV providers in all regions where Time Warner Cable's regional sports networks are carried. It will be severe in New York and Los Angeles where there is both an owned NBC television station and a must-have Time Warner Cable regional sports network. All pay TV providers and their consumers in these markets will be affected by this harm, including many ACA members.

With respect to the second component, Comcast will have an incentive to disadvantage pay TV providers that compete directly with the cable systems it acquires. It will do this by either withholding Comcast programming during negotiation impasses or by demanding higher prices for this programming. However, the competitive harm will not be limited to Comcast's pay TV rivals. Because many of these pay TV providers obtain their programming through the National Cable Television Cooperative, NCTC, Comcast/Time Warner Cable will have an incentive to charge the NCTC higher prices for its programming, and this will harm the 900 pay TV providers that obtain Comcast/Time Warner Cable through the buying group.

Regarding the third component, Comcast denies harm arising from combining its distribution assets with the Time Warner Cable and Charter cable systems it is acquiring because it does not compete locally against them. However, this ignores that this massive combination will dramatically increase the merged entity's bargaining power over video programmers.

The merged entity will have about 30 percent of all pay TV subscribers nationally. This level of market share has traditionally raised concerns with Federal antitrust authorities. It will also have greater regional market share because of the Comcast-Charter deal. As a result, it will become a must-have distribution outlet for national and many regional programmers. In the short run, it will demand even larger volume discounts than its rival, thereby weakening these rivals' competitive position or worse. And in the long run, Comcast/Time Warner Cable may leverage its pay TV industry dominance to increase its market share in the video programming industry, ultimately reducing this industry's competitiveness, too. The final result: higher prices and fewer choices for consumers.

The FCC adopted arbitration conditions designed to ameliorate the first two harms described above in the Comcast/NBCUniversal order. However, requiring Comcast/Time Warner Cable to abide by these same conditions is insufficient because they are flawed. In particular, arbitration remains too expensive for smaller pay TV providers. Moreover, the conditions incompletely described how bargaining agents for smaller pay TV providers could avail themselves of the arbitration conditions.

Lastly, the Department of Justice and FCC will need to fashion new remedies for the harm arising from combining Comcast distribution assets with distribution assets of Time Warner Cable and Charter which did not arise in the Comcast/NBCU transaction.

In conclusion, the DoJ and FCC have some big decisions ahead. ACA looks forward to working closely with Congress and the agencies as the review proceeds and conditions are fashioned to address the transactions anti-competitive harms. Thank you very much.

[The prepared statement of Mr. Polka follows:]

STATEMENT OF MATTHEW M. POLKA
PRESIDENT AND CHIEF EXECUTIVE OFFICER
AMERICAN CABLE ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON
"COMPETITION IN THE VIDEO AND BROADBAND MARKETS:
THE PROPOSED MERGER OF COMCAST AND TIME WARNER CABLE"

MAY 8, 2014

Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee, my name is Matthew M. Polka, President and Chief Executive Office of the American Cable Association (ACA). Thank you for inviting me to speak about the ramifications for competition and consumers of the proposed combination of the nation's two largest cable multiple system operators, Comcast Corporation ("Comcast") and Time Warner Cable ("TWC"), both of which also have significant interests in video programming and other businesses related to the video and broadband sectors. In my testimony, I'll also reflect on the associated transaction in which Comcast, subject to the completion of the proposed Comcast-TWC merger, will divest systems to and swap systems with Charter Communications ("Charter"), and spin off systems to a new independent company that will be operated by Charter.[1] To put it mildly, the Comcast-TWC transaction is a "big deal" that threatens consumers and competition, likely resulting in higher prices for consumers. As I will discuss, there is more than sufficient evidence already to demonstrate that the proposed transaction will result in significant anticompetitive harms in many ways. Unless the Federal Communications Commission (FCC) and the Department of Justice (DOJ) adopt robust relief to remedy these harms, they cannot, consistent with the law, approve this deal.

I. Introduction to the American Cable Association

In the US, nearly 100 million households are customers of subscription TV. More than 80 million households subscribe to broadband. While big companies like Comcast, TWC, AT&T, Verizon, and Charter serve most of the market, there are nearly 850 small and medium-sized multichannel video programming distributors ("MVPDs") that provide video, broadband Internet access, and voice services in local markets in all 50 states to nearly 7 million video subscribers. These are ACA's members. In some instances, these operators provide these same services in markets the big companies have ignored. In other instances, they provide

[1] On April 28, 2014, Comcast and Charter Communications announced that the companies have reached an agreement, subject to the completion of the proposed Comcast-Time Warner Cable merger, whereby (1) Comcast will divest TWC systems serving approximately 1.4 million existing TWC customers directly to Charter; (2) Comcast and Charter will transfer assets serving approximately 1.6 million existing TWC customers and 1.6 million Charter customers, enhancing the geographic clustering of both companies; and (3) Comcast will form and spin off to its shareholders a new, independent, publicly-traded company ("SpinCo") that will operate systems serving approximately 2.5 million existing Comcast customers. Comcast will have no ownership interest in SpinCo, and company will be managed by Charter. The parties to the transaction have yet to submit their applications to the FCC or the DOJ, which hinders ACA providing a complete assessment of the harm of the Comcast-TWC deal at this hearing.

competition to the big operators. ACA members are rarely household names on the national scene. But they are highly valued in the communities they serve.

The small and medium-sized operators of ACA, which include cable operators, rural telephone companies, and municipally owned service providers, serve a number of important functions in the U.S. communications market and in society at large. ACA members:

Provide broadband in rural areas. As the National Broadband Plan noted in 2010, providing rural broadband is one of the great infrastructure challenges of the 21st century. Despite the high costs of building networks in more sparsely populated areas, ACA members have been building out broadband in rural areas for years. Most of them do so without any government funding, saving taxpayers billions in support for government-funded broadband networks.

Provide competition and choice in urban areas. Several of ACA's biggest members, like WOW!, RCN, Wave Broadband, and Grande Communications, are competitive providers of cable, broadband, and voice services in urban areas. These companies entered markets that are dominated by large cable companies and incumbent telephone companies, bringing choice and price competition in the process. Today, ACA members provide choice to more than five million homes in the U.S.

Provide services to community institutions and business in underserved areas. ACA members make available high-speed Internet access, private data networks and multiline voice products to tens of thousands of community institutions in small cities and rural areas. Nearly one million small businesses in rural areas have access to these advanced communications products from ACA members.

II. Overview of the Harms from the Proposed Combination

ACA is most concerned about the competitive effects of the proposed Comcast-TWC transaction in two intertwined industries - the (downstream) MVPD industry, which distributes video programming to consumers, and the (upstream) video programming industry, which provides this programming to these distributors. Comcast is a behemoth in both industries. In the downstream MVPD industry, it is the largest MVPD with 21.7 million cable subscribers. In the upstream video programming industry it owns the NBC television network,10 NBC owned-and-operated stations (O&Os), 13 regional sports networks (RSNs), and a large number of the most popular national cable networks including USA Network, CNBC, Golf Channel, Syfy, Bravo, E!, and MSNBC. TWC, too, is a giant in the downstream video distribution industry. It is the second largest cable operator in the nation with 11.4 million cable subscribers. TWC also has a significant presence in the video programming industry through its ownership or control of 16 RSNs, including RSNs in the New York and Los Angeles television markets.

From an economic perspective, this means that the transaction has both horizontal and vertical components and that a complete analysis of the potential competitive harms must consider all of these aspects. More specifically, ACA is most concerned with the harm that arises from the following three components of the proposed transaction.

Component #1: The upstream horizontal component, which is the horizontal combination of Comcast's programming assets with TWC's programming assets.

Component #2: The vertical component, which is the vertical combination of Comcast's programming assets with the distribution assets Comcast acquires from TWC and Charter.

Component #3: The downstream horizontal component, which is the combination of Comcast's distribution assets with the distribution assets Comcast acquires from TWC and Charter.

ACA was an active participant in this Committee's and the DOJ's review of the competitive effects of Comcast's acquisition of NBC Universal's ("NBCU") programming assets as well as the Comcast-NBCU license transfer proceeding before the FCC. That deal brought together Comcast's substantial cable distribution assets with the assets of one of the nation's largest programmers, NBCU. The deal also involved Comcast's major presence in the programming industry primarily through its ownership of 13 RSNs in major metropolitan areas. Thus, this previous deal also had vertical and horizontal aspects. In particular, it exhibited the first two of the three components identified above, an upstream horizontal component (the horizontal combination of Comcast's programming assets with NBCU's programming assets) and a vertical component (the vertical combination of NBCU's programming assets with Comcast's distribution assets). After a thorough review of the proposed combination, the DOJ alleged in a complaint filed with the U.S. District Court that the "transaction as originally proposed would have allowed Comcast...to limit competition from traditional competitors." DOJ then asked the court to enter a Final Judgment, to which Comcast agreed, imposing conditions on Comcast's post-transaction behavior. The FCC similarly concluded that significant competitive harms would result from both aspects of the transaction and imposed additional conditions that were intended to ameliorate these harms.

ACA's concerns with the first two components of the current transaction before the Committee are substantially similar to the concerns we expressed regarding the competitive effects – and the ultimate effects on consumers – of these components in the review of the Comcast-NBCU transaction. The third component was not a factor in the combination of Comcast and NBCU, but raises new and potentially significant concerns in the current transaction.

Component #1- Upstream Horizontal Harm

With respect to the upstream horizontal component, ACA members are concerned that the combination of Comcast's programming assets with TWC's RSNs will allow the merged entity to exercise greater bargaining power against all MVPDs that carry this programming, by bundling more "must have" programming. This effect will occur in the areas where TWC owns or controls RSNs, and will be most severe in the designated market areas ("DMAs") where there is both an NBCU O&O and a popular TWC RSN, such as New York and Los Angeles. All MVPDs, and therefore consumers, in these regions and markets will be affected by this harm regardless of whether they compete against Comcast or TWC. In the New York DMA, these MVPDs include Cablevision, Verizon, DIRECTV, DISH Network, AT&T, and four ACA members. In the Los Angeles DMA, these MVPDs include DIRECTV, DISH Network, Verizon, AT&T, Cox, Bright House, Suddenlink, and nine ACA members.[2]

[2] According to Schedule 2 of the Comcast Form 8-K filed on April 28, 2014, Comcast will acquire Charter's existing systems in the New York and Los Angeles DMAs.

Component #2- Vertical Harm

With respect to the vertical component, our concern is that the merged entity will have an incentive to disadvantage MVPDs that compete with the cable systems Comcast acquires from TWC and Charter by either withholding Comcast programming from them permanently or temporarily during negotiation impasses, or simply by forcing them to pay higher prices for this programming,[3] likely outcomes the FCC has consistently found in other reviews of transactions with a vertical component. However the vertical competitive harm will not necessarily be limited to only the MVPDs that will have a competitive overlap with TWC and Charter systems acquired by Comcast. Due to the fact that many of these MVPDs obtain their programming through the National Cable Television Cooperative (NCTC), which serves as the buying group for more than 900 small and medium sized MVPDs, Comcast-TWC will have an incentive to raise the prices that it charges to the NCTC, and these price increase will harm all MVPDs that obtain their programming through the buying group.

Component #3 - *Downstream Horizontal Harm*

The third component of the current transaction – the horizontal combination of Comcast's distribution assets with the distribution assets of TWC and Charter – did not arise in the Comcast-NBCU transaction and raises significant and troubling new issues. Comcast denies that there is any horizontal problem at the MVPD level by noting that Comcast's cable systems do not compete at the local level against the TWC and Charter systems it's acquiring. However, this response ignores the fact that this massive horizontal combination will result in a dramatic increase in the merged entity's bargaining power with respect to and control over the video programming industry.

With approximately 30% of all MVPD subscribers, the merged entity will become a "must have" distribution outlet for programmers. In the short run, the merged entity will gain additional competitive advantages over its MVPD competitors, through demanding larger volume discounts than its rivals are able to obtain, thereby weakening the competitive position of these rivals or perhaps driving them out of business entirely. In the long run, Comcast-TWC may be able to leverage its increased dominance in the MVPD industry to increase its market share in the video programming industry, ultimately reducing the competitiveness of this industry as well. The final result will likely be higher prices and fewer choices for all MVPDs, even those that do not compete head-to-head against Comcast-TWC.

Factoring in Comcast's deal with Charter, the downstream horizontal harm is also likely to also arise in regional markets and individual DMAs as a result of Comcast and Charter swapping systems to achieve greater geographic clustering. In approving the Adelphia/Time Warner/Comcast transaction in 2006, the FCC found such clustering has the potential to increase the price consumers will have to pay for local and regional programming, particularly RSNs. This likely harm affects all MVPDs in the local or regional market where the MSO increases its geographic dominance.

* * *

[3] ACA has at least 38 members serving more than 1.6 million subscribers that have at least a 10% competitive overlap with TWC or Charter. With Comcast and Charter announcing their proposed transaction only a few weeks ago, ACA has been unable to confirm which of its members will ultimately compete against Comcast and which against Charter and SpinCo.

The video programming market is not the only market likely impacted by this transaction. ACA is currently conducting additional fact-finding and related economic analysis on other markets, such as the cable advertising and cable hardware and software markets, and will report our findings and conclusions to the Committee, the DOJ, and the FCC as our analysis progresses.

III. Remedies

In the Comcast-NBCU transaction, the FCC adopted arbitration conditions that were intended to ameliorate the first two harms described above, and our understanding is that Comcast and TWC have indicated that they would be willing to abide by these same conditions as a condition for approving the current transaction. However, such conditions will definitely not be enough to address the harms that will be created by this transaction, because these conditions, although well-intended, have a number of defects and problems limiting their effectiveness, particularly for small and medium sized MVPDs. In particular, arbitration remains too expensive for small and medium-sized MVPDs to utilize on their own, and the manner in which bargaining agents appointed by individual MVPDs could potentially avail themselves of the arbitration conditions was poorly articulated and incompletely described. ACA hopes to work closely with both the Committee and the FCC throughout the year to explain the problems with the Comcast-NBCU conditions and explore ways to fix them. Moreover, since downstream horizontal harms did not arise in the Comcast-NBCU transaction, the FCC will need to fashion new remedies for these harms, and ACA looks forward to sharing its thoughts on this subject as well.

IV. Conclusion

The proposed transaction places federal decision-makers at a crossroads: Will the agencies have sufficient foresight to adopt the necessary robust relief that will enable them to get ahead of anticompetitive problems caused by the proposed combination? If the FCC and DOJ ignore or treat lightly the potential harms or provide inadequate relief, the likelihood of more big content and distribution mergers will surely increase, all riding on the precedent of this deal. As a result, consumer hopes for lower prices, greater choice, and more competition will be dashed. On the other hand, if the federal agencies address the likely harms with robust relief, existing providers will reinvest in their businesses and new entrepreneurs will rush into the market – all to the benefit of American consumers. The consequences of these choices make this proposed combination a "big deal." ACA looks forward to working closely with both Congress and the agencies as the review proceeds, and as relief is fashioned by the agencies to address the transaction's anticompetitive harms.

Mr. BACHUS. Thank you, Mr. Polka.

And at this time, Mr. Hemphill, you are recognized—or Professor Hemphill—for your opening statement.

TESTIMONY OF C. SCOTT HEMPHILL, PROFESSOR OF LAW, COLUMBIA LAW SCHOOL

Mr. HEMPHILL. Thank you. Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to testify today about the antitrust implications of this proposed merger. As several Members have already noted, antitrust protects dynamic and competitive markets, and a number of antitrust concerns have been raised out this merger. These concerns, however, are generally based on mistaken analogies that do not really apply.

For example, critics have charged that this merger is just like AT&T-Mobile, and, therefore, it can be expected to raise prices to consumers, but, in fact, this merger is nothing like that. You have heard this already, but I think it bears emphasis. To see why, suppose I want to buy a wireless service where I live in New York City. I can choose from AT&T, T-Mobile, and other providers. Take one of these away, though, and the remaining firms may be able to raise prices, which has the bad effect of squeezing some consumers out of the market.

Now, compare that to the video service. Where I live in West Village, I can choose among Time Warner and other options, but Comcast is not a choice unless I am willing to move to Philadelphia, which I currently am not. In fact, Time Warner and Comcast do not really compete anywhere for cable customers, so nothing is lost by their combination.

Now, critics offer a second analogy that Comcast is sort of like a powerful grain buyer acting in a predatory way against farmers. Now, in an agricultural market, farmers might well find themselves at the whim of, let us say, the only two grain buyers in town. And if the two buyers merge, they have an opportunity to reduce purchases in order to depress the price. But again, this merger is nothing like that.

In fact, programmers, companies like ESPN, are nothing like farmers. When ESPN sells programming to Comcast, nothing is used up. ESPN is free to sell the same programming to other video providers, too, and, of course, it does so to DirecTV, FiOS, and on and on. Put differently, when there is no rivalry in the use of the product, this whole buyer strategy, the strategy of cutting back on purchases in order to force a price drop, just collapses.

Now, there is another argument here, which is that Comcast might be able to strike a better bargain thanks to its increased size. Now, that is far from clear. To be sure, the stakes are higher for ESPN compared to today because ESPN loses more revenue if its contract negotiations within Comcast break down, but that is true for Comcast, too. The stakes are higher for Comcast as well as more customers complain or cancel their service. Nor is Comcast such a must-have with programmers that it gains special power that way.

The third analogy is that Comcast is just like Microsoft. Now, the idea here is that Netflix and other online video providers will be undermined, foreclosing their ability to compete with traditional video. Now, this deserves careful attention because I think we can all agree that preserving innovation and competition from online video is very important.

But this third analogy seems wrong to me as well. For one thing, the cost of foreclosure strategies is quite high, and there are existing protections under the earlier NBCU merger conditions for online video that would actually be extended to Time Warner which could be thought of as a benefit of the deal.

What I do think we see here is not so much foreclosure, but an ongoing fight among powerful firms, an ongoing fight to figure out who should pay for the infrastructure that makes possible the dramatic growth in online video and how those payments should be achieved.

Thank you again for the opportunity to address these issues, and I look forward to your questions.

[The prepared statement of Mr. Hemphill follows:]

Testimony of C. Scott Hemphill
Professor of Law
Columbia Law School

House Judiciary Committee
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Oversight Hearing on Competition in the Video and Broadband Markets:
The Proposed Merger of Comcast and Time Warner Cable

May 8, 2014

Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee, I am Scott Hemphill, a Professor of Law at Columbia Law School. I write and teach about antitrust law, innovation, and competition. My research has considered the application of antitrust law to Internet service providers (ISPs) and video distributors.[1] I recently served the New York Attorney General as Chief of the Antitrust Bureau, which strives to protect competitive markets on behalf of New York consumers and businesses.[2]

I welcome the opportunity to testify today about the antitrust implications of the proposed merger of Comcast and Time Warner Cable (TWC). Antitrust law has a critical role to play in preserving competition. Competition benefits the economy through low prices, efficient production, and innovative new products and services. Antitrust law accomplishes this, in relevant part, by prohibiting mergers that may "substantially . . . lessen competition" or "tend to create monopoly."[3]

Some of the concerns raised about this merger are best framed as antitrust objections. Critics have charged that the deal will have anticompetitive effects by raising cable or broadband prices to consumers; by harming video programmers; or by foreclosing competition

[1] See, e.g., C. Scott Hemphill & Tim Wu, Parallel Exclusion, 122 Yale Law Journal 1182 (2013); C. Scott Hemphill, Network Neutrality and the False Promise of Zero-Price Regulation, 25 Yale Journal on Regulation 135 (2008).

[2] See, e.g., Proposed Final Judgment, United States and New York v. Verizon Communications Inc., No. 12-cv-1354 (D.D.C. Aug. 16, 2012).

[3] Section 7 of the Clayton Act, 15 U.S.C. § 18, provides: "[N]o person . . . shall acquire . . . the whole or any part of the stock or other share capital . . . [or the] assets of any other person . . . where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create monopoly."

from online video distributors such as Netflix. A closer evaluation of competition in these markets, however, demonstrates that the merger is unlikely to have such anticompetitive effects.[4] Let me take these points in turn.

Distribution

Most mergers that receive antitrust scrutiny are combinations of rivals. Such mergers are troubling because they eliminate head-to-head competition between the firms or lessen competition among the remaining market participants. Usually, the primary focus is products and services sold by the parties, so-called "output markets," though mergers can also have an effect on the market for products and services purchased by the parties.

To evaluate output markets, antitrust analysis ordinarily adopts the perspective of a particular purchaser of the goods or services in question—for example, a purchaser of wireless service in New York City. Such buyers can choose among AT&T, T-Mobile, and other providers. A merger's removal of a significant competitive choice, for a particular set of buyers, can harm competition through higher price and lower quantity, among other effects.

Or consider an individual who wishes to fly from Washington, DC, to Chicago. Such buyers can choose among US Airways, United, and other airlines. Here, once again, the removal of a competitive option for those local consumers threatens substantial harm. This reduction in competition, considered from a particular purchaser's standpoint, was the central premise of the Justice Department's antitrust lawsuits challenging the AT&T/T-Mobile and US Airways/American mergers.

The Comcast/TWC merger is nothing like that. A consumer in a particular New York City apartment seeking traditional "multichannel" video service chooses among TWC and other providers. Comcast is not an option unless she moves to another city. Similarly, consumers in Philadelphia can pick among Comcast and other options, but TWC is out. Before and after this merger, consumers would have the exact same number of options to choose from. This is true not only of video service, but also Internet access, telephone service, and bundles of all three.

[4] For purposes of my testimony, I have not attempted an exhaustive analysis of the transaction, which would include an assessment of additional issues, such as video advertising, the limited programming assets contributed by TWC, and the efficiencies that the parties expect from the merger.

Nor are Comcast and TWC plausibly *potential* competitors. Comcast has evinced no interest in building facilities to compete with TWC in TWC's present territory, or vice versa.

The lack of overlap means that the usual concern of antitrust enforcement is completely absent. This is not to say that cable prices won't rise anyway if the merger is approved. They might. ESPN, among other programmers, has achieved remarkable price rises in recent years in its negotiations with distributors, increases that distributors pass along to consumers. Comcast has a powerful incentive to bargain for lower prices, but programmers have considerable bargaining power. The key point is that the proposed merger has no tendency to affect consumer prices through any reduction in competition between the merging parties.

Video Programming

As noted above, mergers can have an effect not only in output markets, but also in markets for products and services purchased by the parties. For example, suppose the only two employers in a small, isolated town compete for labor. If they merge, the merged firm may thereby acquire increased "monopsony" power. A monopsonist may have an incentive to inefficiently reduce its hiring in order to drive down wages. Monopsony is thought to be a significant issue in labor and agricultural markets, because a cutback in the purchase of labor or agricultural commodities might plausibly reduce the price of those inputs.

Once again, the Comcast/TWC merger is nothing like that. Video programming is different from labor or grain. When a farmer sells grain to a buyer, that sale reduces the amount of grain left over for other buyers. By contrast, when ESPN sells programming to Comcast, nothing has been used up. ESPN remains free to make a similar deal with TWC or Cablevision. Comcast and TWC are not competing for the rights to a scarce resource. As a consequence, the merger provides no similar opportunity to economize on this input as a way to reduce its price.

A related concern is that a post-merger Comcast might have greater bargaining power with programmers, thanks to its enlarged subscriber base. Enhanced bargaining power, to the extent that it simply shifts profits among firms, is not an anticompetitive harm. But in any event, it is hardly clear that Comcast would be able to strike a better bargain. On the one hand, the stakes would be higher for ESPN, compared to today, because ESPN could lose more revenue from lost viewers if its contract negotiations with an enlarged Comcast broke down. On the other hand, Comcast would have more to lose too, as more customers could plausibly complain or cancel their service in the event of a breakdown. To conclude that Comcast gains bargaining power on a per-subscriber basis, it is necessary to establish that there is some special, disproportionate consequence to the programmer in the case of bargaining failure.

One such disproportionate consequence might arise if the post-merger Comcast were so large that, without its business, a programmer would be unable to effectively function. But post-merger Comcast lacks the requisite scale. If we take as a starting point the Federal Communication Commission's previously expressed view on this subject, a video distributor must have more than 30 percent of traditional video subscribers to pose such a risk.[5] But the FCC's view was likely too cautious when it was reached in 2007; indeed, it was rejected by the D.C. Circuit for understating the degree of competition in video markets.[6] It is surely too conservative today. Among other developments, the rise of online video provides opportunities for programmers to reach viewers without selling their content to a traditional distributor. This transaction, which results in a share of traditional video distribution slightly less than 30 percent, is therefore unlikely to be of a sufficient size to make a meaningful difference in this respect.

Foreclosure of Online Video

A final possibility, raised by some mergers, is that a transaction might lessen competition by enabling foreclosure—that is, by undermining rivals' ability to compete, resulting in consumer harm. The exclusion of competitors is potentially even more worrying than the distortion from changed prices, because it can slow new entry and thereby harm innovation. Under certain circumstances, a merger can increase the risk of foreclosure, by strengthening the resulting firm's incentive and ability to exclude. A full antitrust analysis of the Comcast/TWC transaction therefore requires an evaluation of the prospects for foreclosure.

[5] FCC Fourth Report and Order, 23 F.C.C.R. 2134 (adopted Dec. 18, 2007; released Feb. 11, 2008).

[6] Comcast Corp. v. FCC, 579 F.3d 1 (2009).

In any complex business environment, it is possible to raise a speculative concern about an enormous number of theoretical foreclosure effects. Discussing them all is beyond the scope of my testimony, but let me focus on one prominently stated foreclosure concern, that a traditional video distributor such as Comcast might have an incentive to inhibit the competitive prospects of online video distributors. Netflix is the best-known example, but there has been enormous growth in this sector in recent years. Such firms threaten the traditional model of multichannel video distribution by enabling "cord-cutting."

Cord-cutting is a misnomer, because consumers still rely on a broadband Internet connection to access online programming. The broadband connection is often supplied by traditional video distributors, using the same physical plant. That combination of businesses provides a potential opportunity to undermine online video, by choking off the Internet access on which it relies.

But it also furnishes a powerful reason not to do so. Online video is an important and increasing part of the value provided by broadband Internet. Harming a growing business to preserve a declining one is a costly and doubtful business strategy. That fact reduces the incentive to engage in foreclosure.

If Comcast nevertheless wished to foreclose competition, how would it do so? The most obvious routes are cut off by Comcast's existing regulatory commitments, made as a condition of its NBC-Universal acquisition. These commitments include acceptance of the FCC's Open Internet rule. Critics have focused on an interaction between online video distributors and Comcast not subject to the existing restrictions. ISPs are increasingly receiving payment for direct interconnection to the ISP network. This practice of "paid peering" has raised concerns that such payments might harm online video, resulting in a form of foreclosure.

Paid peering is an ineffective tool of foreclosure. Online video distributors are under no obligation to pay directly for interconnection. They are typically free to contract with middlemen, such as backbone providers and content delivery networks, that in turn deliver the content to the ISP. Those alternatives mean that an ISP is unable to degrade online video delivered in this fashion without also degrading other traffic delivered by the middleman. Such protection is particularly potent for smaller distributors that are more easily pooled with other traffic.

To be clear, the fact of payment is not in itself problematic. Online video distributors and other content providers have long paid for interconnection, and Comcast has long received payment for interconnection. Payment for interconnection has always been made using some mix of cash and reciprocal carriage of the other firm's traffic. If a content provider or its agent takes on no reciprocal carriage, then cash is a natural alternative. In this respect, paid peering is a new variant of an old business practice.

Paid peering is best seen not as an instrument of exclusion, but as a means to put a price on the additional capacity demands resulting from the increased popularity of online video. It is efficient for the distributor and its end-users, considered collectively, to pay for that capacity, rather than spreading the expense among all ISP customers. Doing so better aligns use with cost and incentivizes both investment and economical use. Paid peering is not the only possible solution to that problem, of course. Surcharging heavy users, provided that the surcharge is not itself an instrument of foreclosure, is a viable alternative.

Comcast's recent interconnection agreement with Netflix, far from suggesting an antitrust concern, is a sign that the market is working well. The proposed merger does not change that. In considering whether to impose a prophylactic restriction on Comcast's ability to engage in paid peering, the current moment of experimentation seems a particularly inapt time. We should be particularly cautious about intervening in the absence of a demonstrated problem.

A thriving online video distributor requires, in addition to a broadband connection to users, access to programming. That fact suggests a second potential strategy for foreclosure, which is to inhibit access to programming. In particular, the traditional distributor, as part of its contract with a programmer, might insist upon restrictions in the programmer's dealings with online video distributors. For example, Comcast might insist that Disney not make certain types of online content deals, or insert contractual clauses that have a similar but more indirect effect.

The Justice Department has reportedly investigated these contracts.[7] I am unaware of public information about the prevalence of such contracts or their practical effect. A contract that disadvantaged online video might well be resisted by the programmer, who would prefer

[7] Shalini Ramachandran, "Favored Nations" Fight for Online Digital Rights, Wall St. J., June 14, 2012, at B3.

to make profitable sales to such firms, and therefore such a contract would be more costly to the distributor to secure. Overall, whether this is a profitable or likely foreclosure strategy is currently unclear.

The key question for present purposes, in any event, is whether the proposed merger worsens whatever foreclosure problem might exist. Comcast is prohibited from enforcing any such anticompetitive contracts by its NBC-Universal conditions.[8] That prohibition would be extended to TWC if the merger is approved. That extension has the effect of strengthening existing protections against this potential form of foreclosure.

* * *

In conclusion, a merger between Comcast and TWC is unlikely to have several effects posited by critics. It is unlikely to affect prices for consumers; to have anticompetitive effects on programmers; or to incrementally foreclose competition from online video by impeding connectivity or access to programming. Thank you for the opportunity to discuss these issues with the Subcommittee.

[8] Modified Final Judgment § V.C, United States v. Comcast Corp., No. 11-cv-106 (D.D.C. Aug. 21, 2013), available at http://www.justice.gov/atr/cases/f300100/300146.pdf.

Mr. BACHUS. Thank you, Professor.

And at this time, Mr. Grunes, we invite you to testify.

TESTIMONY OF ALLEN P. GRUNES, PARTNER, GEYERGOREY LLP

Mr. GRUNES. Thank you, Chairman and Vice Chairman, and Chairman—Ranking Member—sorry—of the full Committee, and Ranking Member of the Subcommittee, and Committee Members. I am very happy to be here. I have practiced antitrust law for about 25 years, and about half of that time I was with the antitrust division.

Now, Comcast and Time Warner Cable say they do not compete for subscribers, and you have heard that this morning. But the fact is that Comcast and Time Warner Cable do compete. That is what Brian Roberts, the Comcast CEO, told the Senate Judiciary Committee in Comcast's last mega merger with NBCUniversal. And Mr. Roberts was right. The two companies compete in a number of ways. For instance, they compete to carry local and regional sports teams, and they compete for advertising dollars.

Mr. Chairman, to help illustrate how sports programming in particular would be abused post-merger, I would ask unanimous consent to submit for the record an article by former Bush Administration official, Brad Blakeman. The article explains in detail the impact of the merger on sports and sports fans, and it is highly relevant here.

Mr. BACHUS. And without objection, all the witnesses can introduce any extraneous materials or records into the record.

[The information referred to follows:]

Newsmax

Comcast/Time Warner Merger Bad for Sports Fans

April 4, 2014
By Bradley Blakeman

The American sports fan needs to pay attention to the proposed huge cable merger between Comcast and Time Warner Cable. The merger could have serious implications for the cost and availability of sports for fans everywhere.

To get a preview of American sports if the FCC and Department of Justice approve the deal, just ask fans in Philadelphia and Portland: If you don't pay Comcast top dollar, you probably won't get your games.

I testified back in 2009 as a Sports Fans Coalition Board member before the Oregon state legislature about the way that Comcast was preventing Trailblazers fans that did not get Comcast from seeing their team play. For rural homes outside Comcast's service area and satellite TV subscribers, this meant being cut off from Portland's only professional sports team.

At about the same time, Sports Fans Coalition heard from college students in Philadelphia that because their dorm didn't get Comcast cable, the only way students knew if the Phillies had hit a home run was seeing fireworks over the stadium.

The merger with Time Warner Cable would just make this problem worse. Sports fans everywhere should be alarmed.

We have already seen Comcast squeeze competition when it comes to sports. They either use ownership or exclusive contracts of important channels to freeze out rivals or increase their costs. When Comcast took over of the Philadelphia market, Comcast relied on local demand for Phillies, Flyers, and 76ers games to depress satellite competition and thereby maintain high prices.

Comcast has repeated the regional-sports strategy across the country; if it gains unfettered control over Time Warner, Comcast can simply reuse the strategy in its new territories.

If the merger goes through, this strategy will be magnified in many of America's largest sports markets, including New York, Los Angeles, and Houston, not to mention Milwaukee and other mid-sized markets.

Comcast and Time Warner are already equity partners in the Major League Baseball Network and charter distributors of the Pac 12 fleet of networks. NBC Regional Sports Networks' (owned by Comcast) current 10-channel roster, with additions in L.A., will soon have Regional Sports

Networks in nine of the top 10 markets.

The merger will allow the new cable behemoth to leverage this control over sports programming into higher-priced exclusives for their own cable subscribers, leaving everyone either paying more or seeing less in the sports category.

Let's not forget that sports arenas often are built with taxpayer dollars and sports leagues enjoy multiple breaks, waivers, and other benefits under the law. The NFL, for example, enjoys non-profit tax status under the Internal Revenue Code and all professional sports leagues get antitrust exemptions under federal law.

With all this government largess flowing to sports leagues, fans have every right to insist that the games be made available to the most people possible. Comcast's past practices suggest that this just would not be the case, especially if it were to acquire Time Warner Cable.

This merger will also impact high school and local college sports coverage. Cable often is the only source of local high school and college sports programming. If the merger goes through, executives in Philadelphia skyscrapers will control parents' ability to watch their high school kids' games in communities as far away as Wisconsin and Texas.

The problems would not be limited to cable TV. A combined Comcast/Time Warner Cable would be by far the largest residential broadband provider in the U.S. As more and more sports move to online video, the merged company would have unprecedented control over fans' ability to watch their games online. Control over this Internet gateway would allow the merged companies to "Comcastize" online sports video the same way they will sports on television.

Speaking of television, fans can expect more and more games to migrate off free over-the-air broadcast and onto pay platforms. Comcast owns NBC/Universal, including NBC Sports and all of NBC's sports channels. If it makes more money for the giant cable operator, you can bet that the merged entity will move games off broadcast and onto cable networks, regional sports networks, and online video platforms owned by Comcast. For fans that rely on broadcast TV to watch sports, kiss your games goodbye.

The merger is subject to government approval. The Federal Communications Commission is the lead government agency tasked with the job of approving or denying Comcast's application. The FCC, by law, is only supposed to approve a merger if it finds that it serves "the public interest." Given recent history, and in today's cable business, the public's interest can be captured in two words: "lower prices."

The FCC, in fact, is supposed to ensure that cable prices are "reasonable." Here's a simple rule of thumb: unless the FCC thinks that there is a realistic chance that the deal will reverse two decades of rising prices, it should stop the merger.

Comcast, in announcing its deal, has said nothing about how it might save consumers money or improve service and access. Quite the opposite. David Cohen, Comcast's top executive in charge of lobbying, said that no one should expect rates to go down as a result of this deal. Instead, Comcast calls the deal "an exciting opportunity" for its customers, promising "accelerated deployment of existing and new innovative products and services."

I suspect that I'm not alone in thinking that a lack of excitement isn't what most customers call to complain about. Everyone, even people in the industry, knows that cable prices are high. Nowhere in any of its materials released in favor of the merger does Comcast suggest what economic effect it will have on consumers. Where is the "public interest" that is served by this merger?

Among household expenses, few things have risen quite as quickly as the cable bill. As recently as the 1990s, cable prices ranged from $7 to $11.50 per month. After years of price hikes, a decent cable package is now over $60 a month; the average cost is $86. Comcast, in 2013, collected about a $156 a month on average, per customer — and some people are paying much more than that.

Outpacing inflation, cable is now so expensive that it creates poverty issues: In poorer households it competes with basics like food, rent, or health insurance. If you wanted to help the poor, you could do worse than cutting cable bills.

The Comcast-Time Warner Cable merger would create a mega-empire in an industry that is already dominated by a few huge companies. For this reason alone the deal should be denied. But when it comes to sports, make no mistake: This deal is a foul ball for sports fans.

Bradley A. Blakeman served as deputy assistant to President George W. Bush from 2001-04. He is currently a professor of politics and public policy at Georgetown University and is a Board Member of Sports Fans Coalition and a frequent contributor to Fox News Opinion.

http://www.newsmax.com/BradleyBlakeman/Comcast-Time-Warner-Sports/2014/04/04/id/563702/

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Mr. GRUNES. Thank you, Mr. Chairman. And as for cable advertisers, they will have less choices if this merger goes through, including smaller local advertisers in your districts who may get shut out entirely.

Now, Comcast says that people have a multitude of choices for how they get broadband. You have heard that here today. But at an investment conference in 2011, Mr. Roberts said that Comcast had only one broadband competitor. He was talking about FiOS, which was and still is in only about 15 percent of Comcast's territories.

This merger is very likely illegal. The parties know it. That is why they are here talking about how they plan to fix it. But I am here to tell you what they will not, why it is illegal, and why the fix does not cut it. This time it is different.

Let us talk about video first since I think that is the easiest. They want to put together Comcast content with Time Warner Cable's wires. The antitrust theory is that after the merger, the company would have both the ability and the incentive to withhold NBC and sports programming from rivals, such as the satellite companies, the telcos, other cable systems, that would drive up their competitors' costs, and make them less competitive. That is called input foreclosure in antitrust jargon. Is it a radical theory? No. It is right out of the Comcast/NBCU complaint that the Antitrust Division filed in 2011. But this time, it is worse.

Now, let us talk about the even more serious issue of broadband. Comcast and Time Warner Cable shares of the broadband markets are much higher. We have not heard the witnesses talk about what those shares are, but by some estimates they are 50 percent or even more.

So what is the problem? Simple: online video distributors like Netflix, according to the Antitrust Division, are likely to be the best hope for additional video programming competition in Comcast and Time Warner Cable's territories. If Comcast can get a hold of about 50 percent of broadband subscribers through this merger, it puts itself into a position to influence how this new form of competition will play out.

The antitrust theory here is called "customer foreclosure." You had input foreclosure. This is customer foreclosure. Keep innovative competitors from being able to connect with their audience or charge them so their costs go up. Again, this is not a radical theory. It was mentioned as a concern in the 2011 Comcast/NBCU complaint. It is very similar to a theory that the Division, the Antitrust Division, actually litigated and won in the D.C. Circuit in the Microsoft case. The same analysis has been applied in other cases where the Internet is threatening an old business model. The key point is that a legitimate role of antitrust is to keep the pathways for innovation open. There is also a buyer power theory, which is discussed in my written testimony.

Finally, a word about remedies. If, as I believe, the merger is anti-competitive, the best remedy is simply to say no. Behavioral remedies do not work well. In fact, Professor John Kwoka, who studied empirically how well they work, said they are disastrous on the whole. They do not prevent prices from going up. Partial divestitures, such as shedding subscribers, also often fail. In this case, where Comcast would pick up New York, and LA, and other markets, it is likely to try to keep the most profitable subscribers and the most profitable markets and divest the others. That will not restore lost competition.

And I am happy to answer any questions. Thank you.

[The prepared statement of Mr. Grunes follows:]

PREPARED STATEMENT
OF ALLEN P. GRUNES
PARTNER, GEYERGOREY LLP

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

OVERSIGHT HEARING ON

COMPETITION IN THE VIDEO AND BROADBAND MARKETS:
THE PROPOSED MERGER OF COMCAST AND TIME WARNER CABLE

WASHINGTON, D.C.
MAY 8, 2014

Good morning, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee. Thank you for giving me the opportunity to appear before you. I will explain why the proposed takeover of Time Warner Cable ("TWC") by Comcast Corporation would be bad for consumers, bad for competition, and bad for innovation. I also will explain why it almost certainly violates the antitrust laws. Of particular concern is the merger's impact on the high-speed residential broadband market, which is the pathway for Internet content providers to reach their audience. The types of conditions imposed on the Comcast/NBCU joint venture simply would be inadequate here. This merger must be rejected.

By way of background, I have spent about 25 years practicing antitrust law, about half with the Antitrust Division of the U.S. Department of Justice and about half in private practice. I led investigations of dozens of media mergers when I was with DOJ and I have continued to work in media and telecommunications since leaving the Department. I have written and co-authored articles on the topic that have been published in the Antitrust Law Journal, the Northwestern Law Review, the University of Connecticut Law Review, and the George Mason Law Review, among others. I have also co-authored two articles and an op-ed on the proposed Comcast/TWC merger with Professor Maurice Stucke.

I. Introduction

Today's hearing is to examine competition in the video and broadband markets. In terms of the video market, we need only look at what the Antitrust Division had to say in the complaint it filed against the joint venture of Comcast and NBC Universal ("NBCU") in 2011 to understand why the proposed combination of Comcast and TWC is very likely to be anticompetitive and illegal. The same analytical theory of liability would apply here and the same type of competitive harm would be present, only more so. Moreover, the same staff at DOJ who investigated the Comcast/NBCU merger will investigate the proposed merger with Time Warner Cable. Many of the same issues DOJ found in the former are present to a more disturbing degree in the latter.

A merged Comcast and TWC would have both the ability and incentive to withhold sports, entertainment and other programming from other multichannel video programming distributors ("MVPDs"), and harm competition. The reduction in competition would lead to less pressure to control cable bills or to develop new offerings. Little wonder that Comcast is already suggesting remedies—its attorneys no doubt recognize that the proposed merger raises significant anticompetitive issues.

In terms of the broadband market, the Comcast/NBCU complaint and related documents lay out a theory of harm as to why the current proposed merger is likely to be anticompetitive on that score as well. The government raised concerns back in 2011 that Comcast's dominant position in many local markets would give it power to limit the growing competition from "online video distributors" ("OVDs") like Netflix, Hulu, Apple and others. As it alleged in 2011, "Comcast faces little programming distribution competition in many of the areas it serves. Entry into traditional video programming distribution is expensive, and new entry is unlikely in most areas. OVDs' Internet-based offerings are likely the best hope for additional video programming distribution competition in Comcast cable franchise areas."[1] The Division alleged that Comcast recognized the growing competitive threat posed by OVDs, had already taken several steps to respond to that threat, and had an incentive to encumber the development of these newer distribution technologies and raise their costs.[2]

That issue is front and center in this merger. The combination of Comcast's and TWC's residential high-speed broadband services, enhanced by additional Charter Communications subscribers in key market clusters, would give the combined firm far more power over the success or failure of OVDs.

The proposed merger would also increase the combined firm's buyer power over video content providers. The combined firm's larger size may lead to benefits as well as harms. A benefit would take the form of the ability of the merged firm to lower the prices it pays for video content. The harm is that it could induce content buyers to charge higher prices to competing distributors by insisting it should get better terms than any of its rivals. The Antitrust Division has challenged the use of so-called "most favored nation-plus" ("MFN-plus") pricing by dominant firms in the recent past. Again, this is not a novel theory and the facts presented in this merger suggest that it is an issue here as well.

[1] Complaint, United States v. Comcast Corp., Case No. 1:11-cv-00106 (D.D.C. Jan. 18, 2011), at ¶9, available at http://www.justice.gov/atr/cases/f266100/266164.pdf ("Comcast/NBCU Complaint").

[2] Comcast/NBCU Complaint at ¶¶52-54.

Comcast and TWC argue that they do not compete for subscribers and therefore the merger raises no real issues. But that is simply not correct. Comcast and Time Warner Cable do compete in certain product markets. I illustrate by discussing only two of those markets: regional sports and cable advertising.

In terms of remedies, the proposed merger will give the Antitrust Division and the Federal Communications Commission an opportunity to look back at the behavioral conditions they imposed on the Comcast/NBCU transaction. As discussed below, there are good reasons to conclude that merely applying these same conditions to Comcast/TWC would be insufficient to remedy the competitive harm here. Indeed, in a recent filing in connection with the US Airways/American Airlines merger, the Division itself explained why such behavioral conditions are often inadequate to remedy competitive harm. The most comprehensive study to date has shown that merger-specific regulation, like regulation as a whole, often does not work. Assuming that the Division finds harm to competition, as I believe it will, the merger should be enjoined, not made subject to dozens of conditions.

II. Knowledgeable and Rational Voices are Speaking Out, Including Consumers and Businesses

A Reuters poll in March showed that a majority of Americans – 52% of those polled – were critical of the proposed merger and skeptical about the alleged benefits of the deal.[3] Polls on mergers often have limited value because consumers are not familiar with the products or markets about which they are asked. That is most definitely not the case here. Consumers are well aware of both Comcast and TWC and undoubtedly many of the respondents are or have been customers of one or the other company. Given the long and continuous history of consolidation in the cable industry, many of the people who responded to the Reuters poll undoubtedly experienced first-hand the effects of prior mergers and acquisitions. From 2009 to 2013, Comcast increased prices for basic and premium cable packages far more than competitors AT&T, Cablevision and DISH Network. The public skepticism about this proposed merger is likely based on experience with unkept promises in the past. Hence there is skepticism about the promises being made today.

[3] David Ingram, "Americans take dim view of Comcast, Time Warner Cable deal," Reuters (March 26, 2014), available at http://www.reuters.com/article/2014/03/26/us-usa-antitrust-idUSBREA2P0BD20140326.

The focus of the antitrust laws is on consumer welfare. This transaction involves services primarily used by consumers, and the views of informed consumers should not simply be dismissed out of hand.

Moreover, despite the fact that Comcast is a dominant distributor in many parts of its geographic footprint and owns critically important programming assets, and thus is a force to be reckoned with, an increasing number of businesses in the content and distribution industries are willing to speak out about the likely adverse effects of this merger on competition. Among those recently raising concerns are Univision, a Spanish-language media company,[4] Cogent Communications, a leading Internet backbone network,[5] and Netflix, an online video distributor.[6] It therefore is just plain wrong for Comcast to claim, as it has, that opposition to the merger is coming from "the same group of people" who have opposed media and telecom consolidation without any basis, and there are no "rational, knowledgeable voices . . . coming out in opposition or even raising serious questions about the transaction."[7]

In fact, the concerns are coming from important voices in content and distribution, and include business leaders whom, I think it is fair to say, are both rational and knowledgeable. When Netflix signs a paid interconnect deal with Comcast and its CEO subsequently calls the deal an "arbitrary tax" and a "toll" that demonstrates Comcast's "leverage," we should not simply chalk those comments up to sour grapes or lack of understanding of the market.[8] Given that Netflix is one of the companies that has the potential to unseat cable's dominance, we should pay attention when it refuses to play by Comcast's playbook.

III. Overview of Transaction

[4] John Eggerton, "Falco Rips Comcast/TWC Combo In Earnings Call," Broadcasting & Cable (April 28, 2014), available at http://www.broadcastingcable.com/news/currency/falco-rips-comcasttwc-combo-earnings-call/130751.

[5] Kaja Whitehouse, "Cogent CEO Bashes TWC deal to FCC," New York Post (April 17, 2014), available at http://nypost.com/2014/04/17/cogent-ceo-bashes-twc-deal-to-fcc/.

[6] Reed Hastings, "Internet Tolls And The Case For Strong Net Neutrality," Netflix US & Canada Blog (March 20, 2014), available athttp://blog.netflix.com/2014/03/internet-tolls-and-case-for-strong-net.html. See also Netflix Letter to Shareholders (April 21, 2014), available at http://files.shareholder.com/downloads/NFLX/3109121545x0x745654/fb5aaae0-b991-4e76-863c-3b859c8dece8/Q114%20Earnings%20Letter%204.21.14%20final.pdf ("The Internet faces a long term threat from the largest ISPs driving up profits for themselves and costs for everyone else.").

[7] Sam Gustin, "Comcast Exec Says Time Warner Cable Deal Will Be Great for America," Time (April 1, 2014), available at http://time.com/44562/comcast-time-warner-cable-cohen/.

[8] See supra n.6.

Comcast is the nation's largest provider of video services (22 million residential customers at the end of 2012), internet services (19.4 million customers), and voice services (10 million customers). As the largest video content distributor in many areas of the country, Comcast controls the pipes. But it also creates content through its national cable networks (including CNBC, MSNBC, and USA Network), regional sports networks, broadcast television (including NBC and Telemundo networks) and movie studio Universal Pictures, which produces, acquires, markets, and distributes filmed entertainment worldwide.

In acquiring TWC, the second largest cable provider in the United States, Comcast would extend its footprint in five geographic areas: New York State (including New York City), the Carolinas, the Midwest (including Ohio, Kentucky, and Wisconsin), Southern California (including Los Angeles), and Texas. A combined Comcast/TWC would control as much as half of the country's high-speed broadband access at a time when a record number of Americans are using broadband to get their information, news, and entertainment. The combined firm would also have a significant if not dominant presence in 19 of the top 20 DMAs in the country. The proposed deal Comcast has made with Charter Communications, despite Comcast's claims that it would assuage market concentration concerns due to subscriber divestitures, actually would increase market concentration in the largest DMAs by adding Charter subscribers to existing Comcast and TWC market clusters. Those very same major markets are the most valuable to advertisers and the source of additional bargaining power.

In the past few years, DOJ has alleged, and the parties have not disputed, that both Comcast and TWC have market power in numerous local markets in the video and broadband markets. In its 2011 complaint against the Comcast/NBCU joint venture, the Antitrust Division alleged that "Comcast faces little video programming distribution competition in many of the areas that it serves."[9] Indeed, according to the Division, "[c]able has remained the dominant distributor even as other companies have entered into video programming distribution."[10] This remains true today. In its 2012 complaint against the Verizon Wireless/SpectrumCo commercial agreements, the Division alleged that each of the cable defendants, specifically including Comcast and TWC, "has market power for both broadband and video services in

[9] Comcast/NBCU Complaint at ¶ 9.
[10] Id. at ¶39.

numerous local geographic markets."[11] I see no reason to question this recent finding by the Antitrust Division. The current proposed merger would therefore combine these two giant video and broadband providers, each of which already has considerable market power in numerous local geographic markets, posing far more serious issues of horizontal market concentration than was found in the Comcast/NBCU merger, including significant market concentration in the nationwide market for access to high-speed broadband subscribers.

IV. Antitrust Analysis

Section 7 of the Clayton Act, as amended in 1950, is, at its core, an incipiency statute. It prohibits mergers and acquisitions when the effect of such mergers or acquisitions "may be substantially to lessen competition, or to tend to create a monopoly." The words "may" and "tend" are not accidental. The legislative history demonstrates that Congress understood what it was doing when it passed the Celler-Kefauver Act of 1950. Congress believed correctly that there were anticompetitive mergers that were not being prevented under the Sherman Act and the existing Clayton Act standards, and deliberately chose to make the merger standard one of incipiency. The Supreme Court has stated that Congress's use of the term "may" reflects the fact that the concern is with probabilities, not certainties. The incipiency standard is also mentioned in the 2010 Horizontal Merger Guidelines, which the DOJ and FTC apply.

In other words, the competition agencies are not supposed to wait until mergers produce a firm with full-blown monopoly power or markets susceptible to collusion – they are supposed to nip it in the bud.

One of the theories the Antitrust Division is likely to consider is similar to the theory it litigated in the *Microsoft* case: the proposed transaction may give the merged Comcast/TWC additional power to blunt the impact of innovation – in this case, in the form of content delivered over the Internet by firms like Netflix – that threatens to disrupt Comcast's traditional cable business as customers increasingly move away from bundled cable service into broadband alternatives. The antitrust laws do not say: wait until Comcast has that power, has

[11] Complaint, United States v. Verizon Communications Inc. et al., case number 1:12-cv-01354 (D.D.C. Aug. 16, 2012), at ¶ 33, available at http://www.justice.gov/atr/cases/f286100/286100.pdf ("Verizon/SpectrumCo Complaint").

exercised it, and then fix the problem. Rather, they say: stop the tendency to monopolize in its incipiency.

a. Market Definition

Analytically, the Division is likely to look at the merger in terms of the services offered by Comcast and Time Warner Cable. The two candidate product markets I will focus on are video programming distribution services, and residential high-speed broadband services. Each of these has been recognized as an antitrust market in recent transactions, and they are likely to be the markets of most interest here.

i. Video Programming

In the Comcast/NBCUniversal merger, the Antitrust Division identified the relevant product market to be "the timely distribution of professional, full-length video programming to residential customers."[12] It noted that video programming distribution is characterized by professionally produced, full length content and includes live programming, sports and general entertainment. That is likely to be one of the relevant product markets here as well.

ii. Residential Broadband

In the Verizon Wireless/SpectrumCo matter, the Division identified a relevant product market to be "[t]he provision of broadband Internet services to residential customers."[13] It noted that residential broadband services are characterized by high speeds and allow customers to access large quantities of data for purposes such as high-quality streaming video, gaming, applications, and various forms of interactive entertainment. The Division distinguished residential high-speed broadband from mobile wireless services, which it regarded to be in a separate product market. Contrary to Comcast's claims, it appears highly unlikely that the lines between the wired and wireless markets have blurred so much in the past two years that DOJ will change its views here. Indeed, there are technical, cost and consumer usage reasons to believe that the two markets will remain separate from an antitrust point of view for the foreseeable future.[14]

[12] Comcast/NBCU Complaint at ¶38.
[13] Verizon/SpectrumCo Complaint at ¶29.
[14] See, e.g., William Lehr and John Chapin, "Rethinking Wireless Broadband Platforms," (April 17, 2009), at 9, available at http://people.csail.mit.edu/wlehr/Lehr-Papers_files/Lehr%20Chapin%20Georgetown%20April%202009%20Talk.pdf ("Wired and wireless broadband are

The market of most concern in this merger is the market for access to broadband customers. The combined firm would have an enormous share of the national high-speed broadband market – as much as 50% by some estimates. Moreover, this is a market with very few competitors. In fact, in 2011, Comcast's CEO characterized Comcast as having only *one* real broadband competitor.[15]

b. Competitive Effects

i. The Merged Firm Would Have Greater Incentive and Ability to Withhold Video Programming from Rivals

In challenging the Comcast/NBCU transaction, the Division alleged that Comcast would have both the incentive and ability to withhold programming from other distributors, including other cable companies, satellite providers and telcos. In antitrust terms, DOJ's theory is referred to as "input foreclosure." It is well-accepted in the economic literature, and can hardly be called novel or radical.[16]

The key allegations in the Comcast/NBCU complaint were as follows. First, Comcast had engaged in such conduct in the past. According to the complaint, "Comcast has long recognized that by withholding certain content from competitors, it can gain additional cable subscribers and limit the growth of emerging competition. Comcast has refused to license one of its RSNs [regional sports networks], CSN Philadelphia, to DirecTV or DISH. As a result, DirecTV and DISH's market shares in Philadelphia are much lower than in other areas where they have access to RSN programming."[17]

Second, the addition of NBC Universal programming would enhance Comcast's ability to pursue a withholding strategy. According to the complaint, "Control of NBCU programming will give Comcast an even greater ability to disadvantage its competitors. Carriage of NBCU

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fundamentally different. . . . Market structure will remain different."). See also In re Economic Issues in Broadband Competition, Ex Parte Submission of the United States Department of Justice (January 4, 2010), at 9, available at http://www.justice.gov/atr/public/comments/253393.pdf ("Wireline and wireless broadband services have fundamentally different cost structures.").

[15] See Susan Crawford, Captive Audience, at 172 (citing Morgan Stanley conference call on March 2, 2011).

[16] See, e.g., Jonathan Baker, "Comcast/NBCU: The FCC Provides a Roadmap for Vertical Merger Analysis," 25:2 ANTITRUST 36 (2011).

[17] Comcast/NBCU Complaint at ¶48.

programming, including the NBC broadcast network, is important for video programming distributors to compete effectively."[18]

Finally, this withholding strategy could be executed because of Comcast's dominant position in many local markets. DOJ noted in the complaint that "[c]able has remained the dominant distributor even as other companies have entered video programming distribution."[19] It defined the relevant geographic markets to be "the numerous local markets throughout the United States where Comcast is the incumbent cable operator, covering over 50 million U.S. television households (about 45% nationwide), and where Comcast will be able to withhold NBCU programming from, or raise the programming costs to, its rival distributors, both MVPDs and OVDs."[20] It went on to note that the anticompetitive effects of the transaction could actually extend to all Americans because these competitors serve areas outside of Comcast's cable footprint.[21] As a result, the Antitrust Division concluded that the Comcast/NBCU transaction violated Section 7 of the Clayton Act.

The antitrust issue here with respect to the video distribution market is therefore simple to state: In the Comcast/NBCU merger, Comcast, with its existing footprint, was found to have the incentive and ability to harm competition through withholding of programming. Does the current merger, which significantly expands that footprint, confer any additional power on the merged firm? Common sense would suggest, "of course." Post-merger, markets in which TWC is the dominant video distributor would be brought into the fold, and thus have the same power to withhold NBCUniversal programming. What's more, TWC will also bring some regional sports networks with it, thereby enhancing a withholding strategy. To the extent that the Division found the combination of Comcast and NBCU to be anticompetitive in 2011, there is every reason to assume that the agency will find the combination of TWC and NBCU anticompetitive, and for the same reasons.

Comcast essentially has two responses to this conclusion. Its first response is simply to ignore it. Since the day the merger was announced, Comcast has continually stressed that

[18] Comcast/NBCU Complaint at ¶49.
[19] Comcast/NBCU Complaint at ¶39.
[20] Comcast/NBCU Complaint at ¶43.
[21] Id.

consumers today cannot choose between Comcast and Time Warner Cable, and therefore (according to Comcast) the merger will not lessen consumer choice. But that is not the right question. Indeed, the same was true in the Comcast/NBCU merger, where Comcast stated throughout the process that the companies really did not compete for consumers in the same markets. The Antitrust Division nonetheless found the deal to be anticompetitive.

Comcast's second response is to argue that having a bigger footprint does not affect its incentive or ability to withhold programming. This argument defies logic as well as common sense. By adding markets and taking TWC out of the picture, such a withholding strategy is easier, not harder. Indeed, in Congressional testimony at a hearing involving the earlier NBCU deal, Comcast pointed to Time Warner Cable as an independent competitor as a reason that Comcast would not have an incentive to raise its rivals' costs by raising the cost of NBCU programming.[22] It has changed its tune now. In light of the additional Charter subscribers Comcast will acquire in key markets already served by Comcast or TWC, the withholding strategy issue becomes even more foreboding.

ii. The Merged Firm Would Have Greater Control over High-Speed Broadband and the Ability to Limit Competition from OVDs

In terms of the broadband market, the transaction also appears to be anticompetitive. There is a "nascent" form of competition by online video distributors ("OVDs") such as Netflix, Hulu and Apple. These OVDs have the power to be the "next big thing." One of the positive functions of our antitrust laws is to promote economic liberty by keeping the path to innovation open. Innovation is the engine of economic growth. And the economic literature has long abandoned the notion that monopolies and monopoly profits are needed for innovation. The reason this is important is that incumbents, who are threatened by innovation, can use exclusionary tactics to "kill the baby in its cradle." Even if they cannot kill the new idea, they can delay it or make it more expensive. In antitrust law, this is known as "cheap exclusion."[23] It is "cheap" because the cost to the incumbent may be quite low, while the impact on the innovator may be quite large. The theory of harm here is customer foreclosure.

[22] See http://arstechnica.com/tech-policy/2014/04/franken-comcast-called-time-warner-cable-a-competitor-until-they-wanted-to-merge/ (with a link to the testimony of Comcast's CEO).

[23] See Susan A. Creighton, D. Bruce Hoffman, Thomas G. Krattenmaker, Ernest A. Nagata, "Cheap Exclusion," 72 Antitrust L.J. 975 (2005).

Once again, we may look to the complaint in the Comcast/NBCU transaction to understand why this transaction is likely anticompetitive in the broadband market.

First, innovative OVDs represent a growing competitive threat to Comcast's local dominance. As the Antitrust Division stated in the Comcast/NBCU complaint, "OVDs' Internet-based offerings are likely the best hope for additional video programming distribution competition in Comcast's cable franchise areas."[24] The complaint elaborated as follows:

> Online video viewing has grown enormously in the last several years and is expected to increase. Today, some consumers regard OVDs as acceptable substitutes for at least a portion of their traditional video programming distribution services. These consumers buy smaller content packages from traditional distributors, decline to take certain premium channels, or purchase fewer VOD offerings, and instead watch that content online, a practice known as "cord-shaving." A smaller but growing number of MVPD customers also are "cutting the cable cord" completely in favor of OVDs. These trends indicate the growing significance of competition between OVDs and MVPDs.[25]

The competitive effects discussed in the Competitive Impact Statement deserve to be quoted at some length because the Division really stakes out the turf for mergers when innovation is a core concern, as it is here:

> Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as firms' acquisition of the ability to raise prices above levels that would prevail in a competitive market. It also ensures that firms do not acquire the ability to stifle innovation. . . . A merged firm can more readily harm competition when its rivals offer new products or technologies whose competitive potential is evolving. Nascent competitors may be relatively easy to quash. For example, denying an important input, such as a popular television show, to a nascent competitor with a small customer base is much less costly in terms of foregone revenues than denying that same show to a more established rival with a larger customer base. Even if a vertical merger only delays nascent competition, an increase in the duration of a firm's market power can result in significant competitive harm. The application and enforcement of antitrust law is appropriate in such situations because promoting innovation is one of its important goals. The crucial role of innovation has led at least one noted commentator [Professor Herbert Hovenkamp] to argue that restraints on innovation "very likely produce a far greater amount of economic harm than classical restraints on competition," and thus deserve special attention. By quashing or delaying the progress of rivals that attempt to

[24] Comcast/NBCU Complaint at ¶7.
[25] Comcast/NBCU Complaint at ¶34.

> introduce new products and technologies, the merged firm could slow the pace of innovation in the market and thus harm consumers.[26]

The very same concerns are present here, only to a much greater degree. The merged firm's control over a substantial share of the broadband market – as much as 50% by some estimates – is a potent tool to delay or impede the growth of OVDs as a substitute for Comcast's traditional cable business.

As I have written elsewhere, DOJ's approach to online innovation has been consistent over time.[27] It derives from the D.C. Circuit's decision in *Microsoft*. I have to believe that this consistency probably owes much to the fact that *Microsoft* was fully litigated, and the theory had passed muster with the D.C. Circuit, including Judge Douglas H. Ginsburg. Litigation, while rare at the agencies, provides a crucible for theories and approaches to be tested in the real world of trials and appeals. Litigation provides discipline and sets the metes and bounds for later enforcement actions.

In *Microsoft*, the evidence was that Microsoft saw both Netscape and Java as a threat to its operating system monopoly, and took action based on that perceived threat. The action was intended to prevent Netscape from getting the scale it needed to emerge as a full-fledged competitor, and to mislead developers into adopting Microsoft's competing (and incompatible) version of Java. There was objective evidence of both a threat and a response.

According to DOJ, the same ingredients were present in Comcast/NBCU. OVDs represent an innovative threat. The innovation has come about because of the disruptive power of the Internet. An incumbent cable firm, if given the chance, could be expected to slow or stop the innovation through exclusionary conduct. And finally, DOJ asserted in Comcast/NBCU that there was evidence Comcast viewed OVDs as a threat and took steps to respond to that threat.[28]

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[26] Competitive Impact Statement, United States v. Comcast Corp., Case No. 1:11-cv-00106 (D.D.C. Jan. 18, 2011), at 20-22, available at http://www.justice.gov/atr/cases/f266100/266158.pdf.

[27] Allen Grunes, "The Next Big Thing," Competition Policy International Antitrust Chronicle (December 12, 2012), https://www.competitionpolicyinternational.com/the-next-big-thing/.

[28] Comcast/NBCU Complaint at ¶46.

As noted earlier, Section 7 of the Clayton Act contains an incipiency test. Thus DOJ is not forced to wait until Comcast uses the power it has achieved through merger to engage in exclusionary conduct. Rather, such power is to be nipped in the bud.

iii. The Proposed Merger May Harm Upstream Suppliers Through Increased Bargaining Power

The transaction would increase the bargaining power Comcast would have over important suppliers, such as content companies. One potential benefit, which Comcast points to, is that such an increase in bargaining power could help lower Comcast's costs. But an increase in buyer power may also be used anticompetitively to induce suppliers to charge higher prices to rivals. Moreover, there is no guarantee that cost savings would be passed on to consumers, especially if there is limited competition to force that result.

Both the 2010 Horizontal Merger Guidelines and prior DOJ litigation illustrate concerns about buyer power. The Merger Guidelines include an example of an illegal merger that does not directly harm consumers:

> *Example 24*: Merging Firms A and B are the only two buyers in the relevant geographic market for an agricultural product. Their merger will enhance buyer power and depress the price paid to farmers for this product, causing a transfer of wealth from farmers to the merged firm and inefficiently reducing supply. These effects can arise even if the merger will not lead to any increase in the price charged by the merged firm for its output.

In United States v. Cargill, the Division challenged a merger that would have created a monopsony purchaser of grain in some local markets. The merging companies, however, sold grain in world markets, in which they faced competition from many other grain sellers. Thus, even if the merged firms imposed a loss on farmers by cutting back the quantity of grain they bought from them, consumers of the merging companies would not be harmed because they had numerous other sources of supply. The harm in the upstream market, however, was sufficient to prompt the Division to challenge the merger.[29]

iv. Competition, Not Promises by Merging Parties, Leads to Real Consumer Benefits

[29] United States v. Cargill, Inc., No. 1:99CV01875 (D.D.C. July 8, 1999), available at http://www.justice.gov/atr/cases/f2500/2552.pdf. See also Maurice Stucke, "Looking at Monopsony in the Mirror," 62 Emory L.J. 1509 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2094553.

In numerous places in the Comcast/NBCU complaint, the Division alleges that competition has forced, and is continuing to force, the incumbent cable companies to innovate and improve their service offerings. The complaint describes how competition from the satellite providers, and later the telephone companies, has led to improvements in service, and how developing competition from OVDs is "likely the best hope for additional video programming competition in Comcast's cable franchise areas."[30] Competition, not promises by parties wanting to close a deal, is what benefits consumers.

The complaint describes the role of competition as follows:

> Today, consumers buy video programming services only from the distributors serving their local areas. Incumbent cable companies continue to serve a majority of customers, offering services consisting of multiple channels of linear or scheduled programming. Beginning in the mid-1990s, cable companies first faced competition from the direct broadcast satellite ("DBS") providers. More recently, firms that traditionally offered only voice telephony services – the telephone companies or "telcos," such as AT&T and Verizon – have emerged as competitors. The video programming offerings of these competitors are similar to the cable incumbents' programming packages, and their increased competition has pushed cable companies to offer new features, including additional channels, digital transmission, video-on-demand ("VOD") offerings, and high-definition ("HD") picture quality.
>
> Most recently, online video programming distributors ("OVDs") have begun to provide professional video programming to consumers over the Internet. This programming can be viewed at any time, on a variety of devices, wherever the consumer has high-speed access to the Internet. Cable companies, DBS providers, and telcos have responded to this entry with further innovation, including expanding their VOD offerings and allowing their subscribers to view programming over the Internet under certain conditions.[31]

Critically, the complaint describes the lessening of competitive pressure from the NBCU transaction:

> Comcast has an incentive to encumber, through its control of the JV, the development of nascent distribution technologies and the business models that underlie them by denying OVDs access to NBCU content or substantially increasing the cost of obtaining such content. As a result, Comcast will face less competitive pressure to innovate, and the future evolution of OVDs will likely be

[30] Comcast/NBCU Complaint at ¶9.
[31] Comcast/NBCU Complaint at ¶¶2, 3.

> muted. Comcast's incentives and ability to raise the cost of or deny NBCU programming to its distribution rivals, especially OVDs, will lessen competition in video programming distribution.[32]

These words apply with even more force in the current transaction. In fact, Comcast's decision to charge Netflix for interconnection shows that the government's predictions in 2011 were on the mark. This development also shows why behavioral conditions, even with the best of intentions, are often insufficient.

V. Comcast's Arguments

a. "We Don't Compete"

Comcast has argued that the combination would not reduce competition because the two cable providers do not compete in local markets. If that claim is taken at face value, there is presumably nothing that would prevent it Comcast from extending its footprint across America by acquiring all the remaining cable companies. It seems difficult to discern a limiting principle, since the same justification for the Comcast/TWC transaction could easily be offered in two years for a deal involving Cox or Charter. Cable companies tend not to compete with one another for customers. After letting this merger through, could DOJ seriously argue that Comcast's expansion into Iowa or Oklahoma may somehow "substantially lessen competition or tend to create a monopoly?" Hardly. Thus, this deal with TWC is critical. Comcast is crossing the regulatory Rubicon.

Moreover, the assertion that Comcast and TWC do not compete for consumers does not mean or imply that they do not compete at all. They certainly compete in many dimensions, including for exclusive rights to carry local and regional sports in a number of geographic areas, and for advertising dollars.

i. Sports

By acquiring TWC properties in Designated Market Areas ("DMAs") in which Comcast already operates, Comcast will have an incentive to raise the license fees for its affiliated regional sports networks (RSNs). In particular, the more of an affiliated RSN's television territory is covered by Comcast's footprint, the greater the chance that Comcast could induce

[32] Comcast/NBCU Complaint at ¶54.

DBS and telco customers in that territory to switch to Comcast (for example, by withholding programming or raising RSN prices) in order to follow must-have RSN programming. Both the DOJ and the FCC recognized in their review of the NBCU transaction that vertical integration allows Comcast to capture this "externality" that is otherwise not available to an independent cable network. Economists have shown empirically that prices for RSNs increased with vertical integration, and more relevant here, the overcharge increased with the size of the affiliated cable operator's downstream footprint.[33]

Further, both Comcast and TWC have shown a propensity to withhold sports programming in order to thwart competitors and gain new subscribers: Comcast pursued such a strategy in Philadelphia (Phillies) and Portland (Trailblazers), while TWC did so in Los Angeles (Dodgers) and Houston (Astros).

There are four DMAs in which (1) both Comcast and TWC currently operate and (2) either Comcast or TWC own an RSN: New York, Charleston (SC), Maine, and Kansas City. These holdings provide a basis for the merged firm to charge higher license fees for its rivals, which will likely be passed onto consumers in the form of higher cable bills. Moreover, in Los Angeles, New York, Portland and other markets already served by Comcast or Time Warner Cable and where the merged company would acquire Charter subscribers, the incentive and ability for the new company to withhold sports programming from competitors is magnified significantly.

ii. Advertising

The merger is likely to affect advertising and advertising-related markets in which Comcast and TWC compete for advertising dollars or to represent advertisers.

If the merger is consummated, the merged firm would likely have the power to increase prices in the spot cable advertising market through its control over a large number of subscribers and key market gateways. In addition, in eliminating Comcast's chief competitor in the spot cable advertising representation services market (which happens to be TWC), the merged firm would have an even greater ability to harm competition by increasing prices to its MVPD customers and controlling access to national spot advertising, regional Interconnects, and the vast majority of local spots on MVPD systems.

[33] See Kevin W. Caves, Chris C. Holt & Hal J. Singer, "Vertical Integration in Multichannel Television Markets: A Study of Regional Sports Networks," Review of Network Economics, at 66 (2013).

The spot cable advertising market allows national, regional, and local advertisers to cost-effectively geo-target (advertise in specific areas) during the two to three minutes reserved each hour for MVPDs as part of a carriage agreement with cable programmers. Advertisers have three options for purchasing advertising. First, NCC Media ("NCC") is the one and only gateway to purchase national advertising, or advertising across multiple geographic areas. NCC has no competitors and national advertisers have no other choice except to contract with NCC. Yet, if the proposed merger is consummated, the merged firm would have an 80 percent ownership interest in NCC.

Second, advertisers purchase regional spot cable advertising through joint ventures known as "Interconnects." Interconnects roughly align with DMAs and provide a one-stop-shop for an advertiser seeking to reach all subscribers in a given DMA. Interconnect revenues are an important source of income for MVPDs. And access to the Interconnect is a critical avenue for regional advertisers. If the proposed transaction is consummated, the merged firm would have control over the Interconnect in 41 of the top 50 DMAs. In 34 of these DMAs, Comcast would own well over 50 percent of the represented subscribers.[34]

Finally, local spot cable advertising is an especially important market because geo-targeting allows small, local merchants to spend scarce advertising dollars more effectively. Local spot cable advertising is sold to local businesses either by the MVPD directly *or* by its representative.[35] Comcast has offered to trim the number of MVPD subscribers in the combined entity to 30 percent of the macro MVPD marketplace. If Comcast's proffer is accepted and the proposed transaction is consummated, however, the merged firm would still directly control MVPD subscribers for spot cable advertising sales in 38 of the top 50 DMAs. In addition, the firm's post-combination control of spot cable advertising in the top 10 DMAs

[34] In order of DMA rank, with percentage of owned subscribers, these DMAs are: Los Angeles (52%); Chicago (63%); Philadelphia (65); San Francisco-Oakland-San Jose (83%); Boston (Manchester) (66%); Atlanta (56%); Houston (58%); Detroit (53%); Seattle-Tacoma (78%); Minneapolis-St. Paul (62%); Denver (96%); Cleveland-Akron (Canton) (64%); Sacramento-Stockton-Modesto (73%); Portland, OR (78%); Pittsburgh (65%); Raleigh-Durham (Fayetteville) (68%); Charlotte (59%); Indianapolis (59%); Baltimore (60%); Nashville (62%); Hartford-New Haven (52%); Kansas City (62%); Columbus, OH (71%); Salt Lake City (76%); Milwaukee (72%); Cincinnati (81%); San Antonio (63%); Austin (58%); Harrisburg-Lancaster-Lebanon-York (81%); Greensboro (75%); Albuquerque-Santa Fe (81%); Jacksonville (83%); Louisville (74%); and Memphis (65%).

[35] At present, Comcast is the largest spot cable advertising representation services provider. TWC is the second largest.

would be even more significant. The merged firm would own and represent well over 50 percent of the subscribers for spot cable advertising sales in nine of the top ten DMAs (and in many instances over 80 percent) and would control the Interconnects in all of these DMAs.

The effect of this much control at the national, regional and local levels is problematic for several reasons. Such an outcome would particularly harm independent MVPDs because they would become dependent on their biggest competitor, Comcast, for access to the Spot Cable Advertising market. Moreover, this outcome would allow Comcast to singlehandedly exclude certain MVPDs from participating in NCC and any combination of Interconnects. And it would allow Comcast to use its market power to force an MVPD into a representative deal with Comcast or jeopardize its fair share of the advertising dollars in that particular market. Finally, this outcome would harm local merchant advertisers because the merged firm would have the incentive to limit advertising options, increase prices, or both.

b. Efficiencies

Although the lower US courts (but not the Supreme Court to date) have recognized an efficiencies defense, none have relied upon it to permit a problematic merger. Under the efficiencies defense set out in the Horizontal Merger Guidelines, the merging parties must first show that the efficiencies are merger-specific, that is, the firms cannot reasonably achieve these efficiencies by other means.

Second, the efficiencies must be verifiable. As the Merger Guidelines recognize, "[e]fficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms. Moreover, efficiencies projected reasonably and in good faith by the merging firms may not be realized." Consequently, the merging parties have "to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm's ability and incentive to compete, and why each would be merger-specific."

Third, the efficiencies must benefit consumers, such that "consumers will not be worse off as a result of the merger." The agencies will inquire whether the cognizable efficiencies likely would be sufficient to reverse the merger's potential to harm consumers in the relevant market, for example, by preventing price increases in that market.

Consequently, efficiencies are more likely to make a difference when the likely adverse competitive effects, absent the efficiencies, are not great. The greater the anticompetitive concerns, the greater and likelier the claimed efficiencies must be. Efficiencies are never a justification for mergers to monopolies (or near monopolies).

Comcast generally presents two sorts of efficiency claims in its public interest filing. First, that its business is a high fixed cost business, and the merger will allow it to spread costs across a greater number of subscribers, and thus invest more. Second is the claim that Comcast will provide its superior products to Time Warner Cable subscribers.

What is important to note about both of these efficiency claims is that they do not appear to be merger specific. Moreover, they relate largely, if not entirely, to fixed costs. Finally, they have not been quantified. The Division has traditionally viewed efficiency claims skeptically, did so in the Comcast/NBCU deal, and may be expected to do so here as well.

c. Remedies

Comcast essentially proposes two remedies: first, to bring TWC within the terms of the consent decree that it entered in connection with the NBCU merger. Second, to divest subscribers to bring itself under a self-identified 30% cap for its video subscribers (although not for its broadband subscribers). These remedies are, at best, questionable. More likely, they are entirely inadequate to address the significant competitive harms posed by the merger.

First, one should ask the question: If Comcast had tried to do the deals in different order, and had first proposed a merger with TWC and only later had sought to acquire NBCU, would the DOJ have permitted the NBCU transaction or would it have sought to block it? My guess is that the concerns would have been far greater in that case, and DOJ would have gone to court to block. So should the outcome be different given that the transactions were done in the other order? No.

In words that still ring true, the Supreme Court stated many years ago that the best remedy to an anticompetitive merger is not to allow the merger. That should be foremost in the minds of courts.[36]

There are many reasons to be skeptical of behavioral remedies. First, as economists John Kwoka and Diana Moss have noted,

> The characteristics of the new behavioral remedies – their scope, their intrusiveness, the need for ongoing oversight – raise a number of significant concerns about their likely operation and effectiveness. Significantly, many of these concerns are similar to those raised by traditional industry regulation. Traditional industry regulation is rooted in the belief that the conduct of a profit-maximizing firm with market power can be effectively constrained by the imposition of operating rules combined with administrative oversight. Behavioral remedies in an antitrust context have similar presumptions, objectives, and methods.[37]

Moreover, a major retrospective study by Professor Kwoka suggests that behavioral remedies are spectacularly unsuccessful in preventing post-merger price increases.[38] And even the DOJ has recently expressed skepticism in the context of the recent settlement of the US Airways/American Airlines merger case. The government pointed out that proposed behavioral remedies, which it refused to adopt, "would be exceedingly difficult to craft, entail a high degree of risk of unintended consequences, entangle the government and the Court in market operations, and raise practical problems such as the need for ongoing monitoring and enforcement."[39]

Finally, with respect to the proposed divestitures of subscribers to Charter Communications, this is at best a bait-and-switch. While the overall number of subscribers held by the merged entity would be lower as a result of system sales to Charter, the level of

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[36] United States v. E. I. Du Pont De Nemours & Co., 366 U.S. 316, 329–31 (1961).

[37] John E. Kwoka, Jr. and Diana L. Moss, "Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement," at 22, available at http://antitrustinstitute.org/sites/default/files/AAI_wp_behavioral%20remedies_final.pdf.

[38] John E. Kwoka, Jr., "Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes," 78 Antitrust L.J 619 (2013)

[39] Response of Plaintiff United States to Public Comments on the Proposed Final Judgment, United States v. US Airways Group, Inc., Case No. 1:13-cv-01236-CKK (D.D.C. March 10, 2014), at 30 n.52, available at http://www.justice.gov/atr/cases/f304200/304233.pdf.

concentration in key markets, including the crown jewels of New York and Los Angeles, would be higher as a result of Charter swapping some of its subscribers in these markets to the merged entity. Comcast is not planning to shed subscribers in the largest and most valuable markets. Further, the proposal does little to reduce the parties' share of the high-speed broadband market, which would remain well over 30%.

VI. Conclusion

Thank you for giving me the opportunity to appear before the Subcommittee. In my view, the proposed merger is anticompetitive and the proposed remedies are inadequate. The merger should therefore be rejected.

Mr. BACHUS. Thank you, Mr. Grunes.

And at this time, Mr. Gottsch, you are recognized.

TESTIMONY OF PATRICK GOTTSCH, FOUNDER AND CHAIRMAN, RFD-TV

Mr. GOTTSCH. Thank you. Good morning, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee. My name is Patrick Gottsch. I along with my daughters, Raquel and Gatsby, who I am proud to say are sitting right behind me today, represent the founders and majority shareholders of Real Media Group, owners of RFD-TV, RURAL TV, FamilyNet, and RURAL RADIO on Sirius XM Channel 80. Thank you for the opportunity to testify about the importance of independent programming and the impact of consolidation in the cable industry from a rural perspective.

RFT-TV is about as independent as one can get. After 8 years of rejection, in December of 2000, RFD-TV was finally launched as a public interest channel on DISH, and then added to DirecTV in 2002, thanks to Congress and the FCC establishing Section 335 of the 1992 Cable Communications Act. The 146 independent program producers associated now with RMG, along with the millions of viewers who value the rural and agricultural news, western sports, and traditional family-oriented entertainment featured on our channels, have Congress, the FCC, and Charlie Ergen to thank for having the foresight to create opportunities to give independent channels a chance to exist and prosper.

In 2007, RFD-TV evolved into a for-profit entity, and Rural Media Group was formed. Recognized now as one of America's leading independent networks, RFD-TV was ranked most reasonably priced in the recent 2013 Independent Cable News Survey. Nielsen rated and distributed into over 40 million homes in cable and DBS, RFD-TV is the number one channel now for C&D County viewership, number one for time spent viewing, and for adults 50 plus as a percentage of our overall audience composition.

In 2008, RFD-TV signed an 8-year master affiliation agreement with Comcast. Following success in Nashville, in October of 2010, Comcast launched RFD-TV on all systems in Colorado, New Mexico, and Utah. RFD-TV worked closely with Comcast's Denver office and invested heavily in this launch by purchasing billboards, radio ads, organizing radio remotes, and training Comcast telemarketers. The launch was a resounding success with RFD-TV generating an average 2.8 percent lift with connects up 15 percent on the D-1 tier in all these Comcast markets. Independents try harder and have to deliver.

As you know, in January 2011, the Comcast/NBCUniversal merger was approved. Since then, Comcast has not launched RFD-TV in a single new major market and has declined to carry RFDHD in any of their markets, despite the provisions added to the merger designed to protect independents. On August 13th of this past year, despite strong ratings, low costs, and over the vehement objections from thousands of Comcast customers represented by these binders in front of me, we were given only a 30-day notice. Comcast dropped RFD-TV on all its cable systems in Colorado and New

Mexico. In 1 day, RFD-TV lost 470,000 homes, 43 percent of its very limited Comcast distribution.

To date, RFD-TV has worked diligently to understand Comcast's decision and to find a solution. The City of Pueblo, the State of Colorado, and even the Colorado governor's office mobilized significant efforts to persuade Comcast to reverse its decision and return RFD-TV's popular rural and western-themed programming to these two States with such strong ties to the western lifestyle.

Meetings have also been held with the regional Denver office and with Comcast programming executives in Philadelphia, to no avail. Why was RFD-TV dropped despite all this support? It is the question that everybody has, no matter who we meet with. But it seems to be simple. We are just a true independent.

RFD-TV enjoys excellent relations with most all other cable operators. In fact, this past year, Charter launched RFD-TV on their Fort Worth system, and in October, Time Warner added RFD-TV to franchises in the State of Kentucky. Our concerns with Comcast now taking over this major western city and another rural State should be obvious. In addition, 30 million homes may be denied the choice to access this proven channel and a wall will be built between rural and urban America if Comcast does not reverse its recent behavior with RMG and RFD-TV.

In the past, the United States Government has taken critical steps to ensure that rural America has a balance of services offered between rural and urban populations. The information super highway must go down each and every country road and provide two-way communication in order that city and country remain connected, just as it was when the 1893 Mail Communications Act led to the establishment of our namesake, rural free delivery, or RFD-TV.

Thank you, Mr. Chairman, for allowing me not to wear a tie, and I look forward to answering all your questions.

[The prepared statement of Mr. Gottsch follows:]

RURAL MEDIA GROUP

Testimony of Patrick Gottsch
Founder and Chairman
RFD-TV

Before the U.S. House Committee on the Judiciary

Hearing on
"Competition in the Video and Broadband Markets:
the Proposed Merger of Comcast and Time Warner Cable"

May 8, 2014

RFD-TV Rural America's Most Important Network   RURAL TV Television for a Growing World   FAMILYNET   RURAL RADIO

Patrick Gottsch May 8, 2014

Overview

Good morning, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee. My name is Patrick Gottsch – I am the founder and Chairman of the Rural Media Group, the parent company of RFD-TV, RURAL TV, FamilyNet, and RURAL RADIO on SiriusXM Channel 80. Thank you for the opportunity to testify today about RFD-TV's experience as a rural independent programmer, and the impact that continued consolidation in the cable industry has had in limiting access to the rural independent programming RFD-TV has worked so hard to deliver.

Rural Media Group is a family-owned business that focuses on serving the needs and interests of rural America and connecting the rural and urban areas of our great country. In 2000, Rural Media Group launched RFD-TV to serve the needs of rural America with agribusiness, equine, rural lifestyle, western sports, music, and family-friendly entertainment programming. RFD-TV also serves the very important purpose of connecting city and country again, by bringing rural issues to urban citizens and connecting city folks with their rural roots.

RFD-TV is about as independent as one can get. RFD-TV is a successful independent programmer with a significant viewership that is passionate about us. They are passionate because we have content not easily found elsewhere and we provide information many in rural communities have come to rely on. RFD-TV is recognized as one of America's leading independent cable television channels and is distributed to over 41 million U.S. homes. As Nielsen ratings indicate, as a percentage of our overall audience, RFD-TV is currently ranked as the nation's #1 cable channel for Adults 50+, #1 in C&D County Viewership, and #1 for Time Spent Viewing (Adults 50+). It was also voted the #1 Bargain over all 400+ cable channels by the 2013 Independent Cable News survey of independent operators.

In spite of all of these accolades, following its merger with NBCUniversal, Comcast dropped RFD-TV in all of Colorado and New Mexico. Because there is no clear business reason to understand Comcast's decision, we can only speculate that RFD-TV has become competitive with Comcast's affiliated programming. As RFD-TV's example shows, in the face of increasing vertical integration by Multichannel Video Programming Distributors ("MVPDs") with massive market share, even passionate viewers who are rising in number cannot keep a channel they love.

Proposed Comcast-Time Warner Cable Merger

Efforts by Congress and the Federal Communications Commission ("FCC") have historically fostered the development of independent programmers, sought to bring new services to rural areas and underserved populations, and promoted localism. For example, the 1992 Cable Act was adopted in part to prevent large cable operators from creating barriers to entry for independent programmers, and to restrict cable operators from favoring affiliated programming. Section 612 of the Communications Act requires the FCC to promote "competition in the delivery of diverse sources of video programming." In adopting the

1992 Cable Act, Congress was concerned that vertical integration of cable operators and cable programmers limits the variety of independent programming available on cable systems and reduces the number of voices available to the public.

The proposed merger between Comcast and Time Warner Cable presents a number of potential concerns for independent programmers – and particular concerns for a rural independent programmer like RFD-TV. As a consolidating industry rushes to attract age 18-34 viewers in urban areas, it's vitally important and in the national interest that the broad groups of consumers falling outside that target demographic are also served. For example, RFD-TV's delivery of rural programming to both urban and rural areas contributes to connecting city and country and gives rural communities programming that is not only of interest or entertaining but that is often critical to more fully understanding rural economic issues. Agriculture markets are international in scope and very important in rural areas, yet those markets are often nearly ignored by urban focused economic and market reporting.

Sadly, the choice and diversity in rural independent programming that RFD-TV offers is threatened by ongoing consolidation and vertical integration in the cable industry. Comcast is a vertically integrated powerhouse with a track record of favoring affiliated programming channels. When an independent programmer becomes stronger and more competitive, its ratings increase and Comcast's incentives to foreclose that competition increase as well. Comcast has the strength to foreclose such competition now, and will be in an even stronger position to do so following its merger with Time Warner Cable. A merged Comcast-Time Warner would control 23 of the top 25 television markets and 37 of the top 40 television markets (SNL Kagan, Comcast and TWC Combined – Top 50 DMA Analysis). And, many current Comcast customers will be prevented from switching over to DISH or DirecTV, which both carry RFD-TV, because of substantial contract penalties keeping them on Comcast's cable system. If Comcast continues on its current course, RFD-TV will be blocked from more one third of all U.S. cable subscribers.

RFD-TV's History and Its Experience with Comcast

In 2000, Rural Media Group launched RFD-TV to serve the needs of rural America with agribusiness, equine, rural lifestyle, western sports, music, and entertainment programming. RFD-TV is truly the industry resource and business channel for rural America. It produces more than 30 hours per week of rural-focused live newscasts, including from its Washington, D.C. based bureau (located at the USDA), which focuses on providing information relevant to rural viewers about developments on Capitol Hill and within the Executive Branch agencies. RFD-TV also provides regular reports from its Chicago news bureau reporting each day directly from the grain and livestock pits at the Chicago Mercantile Exchange. RFD-TV supports rural communities by investing in and supporting women- and youth-focused programming and activities, including broadcasting female and youth western sports and conventions. RFD-TV provides a daily western sports roundup during its rural evening news segment, providing viewers with the latest coverage of the rodeo industry, the PBR and horse shows.

RFD-TV signed its first distribution agreement with DISH Network in 2000 as a direct result of the rules adopted by the FCC implementing the congressional mandate for Direct Broadcast Satellite ("DBS") providers to set aside a portion of their channel capacity for noncommercial educational or information programming. It subsequently signed carriage agreements with Mediacom and DIRECTV in 2002 and the National Cable Television Cooperative in 2003. Since then, what has followed is truly an American success story. RFD-TV quickly found a large audience with its original and unduplicated 24-hour schedule, filling a void for viewers seeking programming devoted to the rural lifestyle. By September 2006, RFD-TV's combined satellite and cable carriage surpassed 30 million households.

In 2007, in order to grow and position the RFD-TV network on cable systems in urban markets, Rural Media Group, Inc. was formed and RFD-TV became a for-profit entity. Over the next several months, long-term agreements were quickly reached and signed with the following MVPDs: Comcast Corporation, Time Warner Cable, Verizon FiOS, Cox Communications, Mediacom, Suddenlink Communications, Charter Communications, and Bresnan Communications, in addition to restructuring existing agreements with DISH Network and DIRECTV. During this period of explosive growth, RFD-TV launched its international channel RURAL-TV, RFD-TV The Magazine and RFD-TV The Theatre. In 2012, Rural Media Group purchased FamilyNet, and in July 2013, RURAL RADIO was launched on SiriusXM. Today, RFD-TV carries programming from 146 independent programmers and enjoys nearly nationwide carriage on cable systems and nationwide carriage on DISH and DIRECTV.

RFD-TV continues to enjoy great ratings and strong viewership. RFD-TV for weekend primetime in May 2013 was ranked #72 in Denver (out of 289), #46 in Colorado Springs/Pueblo (out of 288) and #66 in Albuquerque, NM (out of 267) – in the top 25% of channels by ratings in each of these markets. (Nielsen Media Research, May 2013). Moreover, as a percentage of our overall audience, RFD-TV is the #1 cable network in multiple categories including among adults 50+, farmers and ranchers, and C&D counties (counties with populations less than 5,000). It also ranks #1 in time spent watching. (Nielsen Media Research, 4Q 2013; 2013 Fall GfK MRI). In addition, it was voted best value among independent programming networks. (Independent Cable News January/February 2014).

In 2008, RFD-TV signed an 8-year master affiliation agreement with Comcast. Following success in Nashville, in October 2010 Comcast launched RFD-TV on all systems in their Colorado, New Mexico, and Utah markets. RFD-TV worked closely with Comcast's Denver office, and invested heavily in this launch by purchasing billboards, radio ads, organizing radio remotes, and training Comcast's telemarketers. The launch was a resounding success, with RFD-TV generating an average 2.8% increase in subscribers, with connects up 15% on the D-1 Tier in all these Comcast markets, according to Denver-based Comcast marketing executives. Independents try harder and have to deliver.

In spite of RFD-TV's record of success and strong viewership in Comcast markets, however, following the merger between Comcast and NBCUniversal, Comcast stopped launching RFD-TV in new markets and has declined to launch RFD-HD in any markets at all. On August 13, 2013, over vehement objections from thousands of supportive RFD-TV viewers who were given only a 30-day notice, Comcast dropped RFD-TV on all its cable systems in Colorado and New Mexico. RFD-TV lost nearly 400,000 homes in Colorado and more than 70,000 subscribers in New Mexico – 43% of its very limited Comcast distribution. In quick succession, on August 15, 2013, Comcast launched another programming network on these same Colorado/New Mexico cable systems. That network – Al Jazeera America, the successor to Comcast's part-owned Current TV network – had little to no viewership track record to put up against RFD-TV. In comparison, RFD-TV's ratings are increasing and its carriage on non-Comcast cable systems is expanding.

Sadly, we fear RFD-TV may have been a victim of its own success. In response to RFD-TV's increasing popularity and viewership, especially in the Adult 50+ demographic, Comcast removed RFD-TV from markets where RFD-TV's viewership was especially high – perhaps favoring Comcast's lower-viewed but affiliated Retirement Living TV (RLTV) network , which targets the same age Adult 50+ demographic.

Comcast's decision to drop RFD-TV is supported neither by RFD-TV's ratings nor by cost concerns. RFD-TV's per subscriber carriage rate is very modest among programming networks. Comcast's decision to drop RFD-TV came without any rate dispute or carriage dispute. RFD-TV has not raised its rate since 2008, the start date of its carriage agreement with Comcast.

Moreover, Comcast's decision to stop carrying RFD-TV is inconsistent with the wishes of Comcast's own subscribers, and came despite efforts to meet with Comcast and seek a delay or reconsideration of the decision. RFD-TV worked diligently with Comcast and state and local government officials to understand Comcast's decision and to find a solution. The City of Pueblo and Colorado Governor Jim Hickenlooper attempted to persuade Comcast to reverse its decision and return RFD-TV's popular, rural and western-themed programming to these two states with strong ties to the western lifestyle. Meetings were held with Comcast's regional Denver programing executives to no avail. RFD-TV then requested a meeting directly with Brian Roberts (Chairman and CEO of Comcast Corporation). On September 11, 2013, RFD-TV met with Comcast's programming executives in Philadelphia where it presented RFD-TV's most recent Nielsen weekend prime-time ratings, along with emails from over 4,000 Colorado/New Mexico customers requesting RFD-TV's return. In spite of all these efforts, Comcast denied RFD-TV's request for carriage.

In contrast to its problems with Comcast, RFD-TV enjoys excellent relations with other cable operators. In fact, just this past year, Charter launched RFD-TV on their Fort Worth system, and in October, Time Warner Cable added RFD-TV to many of their franchises throughout the state of Kentucky. Our concerns with Comcast taking over this major western city and another rural state should be obvious.

RFD-TV's current carriage agreement with Comcast expires on December 31, 2015. RFD-TV continues to be carried by a limited number of Comcast cable systems outside of Colorado and New Mexico. Given Comcast's actions to date, however, RFD-TV has every reason to believe that after its current carriage agreement expires, Comcast will drop RFD-TV across its entire footprint altogether – blocking RFD-TV from reaching thirty million homes, or approximately one third of all U.S. cable subscribers.

Action Must be Taken to Protect and Foster the Growth of Independent Programmers

Actions by any programming distributor "taking undue advantage of programming vendors" is inconsistent with Section 616 of the Communications Act and FCC goals to foster the development of independent programmers and to meet the needs of underserved markets. RFD-TV's carriage issues with Comcast started after Comcast merged with NBCUniversal. The 2011 merger was granted by the FCC with conditions, in part, to ensure that Comcast did not discriminate against independent programmers in favor of affiliated programming. However, Comcast's treatment of RFD-TV and RFD-HD appears to be inconsistent with the intent of the FCC's non-discrimination merger condition requiring Comcast to make 10 channels available to independent programmers over an eight year period of time.

With the proposed merger of Comcast and Time Warner Cable, Comcast will control 23 of the top 25 Nielsen-rated television markets in the United States. Without access to those top media markets, RFD-TV would be severely limited in attracting major advertisers, which provide the necessary funding to invest in its rural news programs. Rural Americans across the country depend on the unduplicated news and information RFD-TV provides. Moreover, RFD-TV would be disadvantaged as compared to those with access to the key urban media markets when competing for programming and licensing of content. In addition, RFD-TV, its 146 independent programmers, and all of the rural/agricultural associations, including the American Farm Bureau Federation, FFA, and 4-H, who depend on RFD-TV for distribution, are concerned that we will be shut-out of these important urban markets, limiting our joint efforts to bridge the gap between rural and urban America through coverage of events and agribusiness issues that are critical to rural communities and not covered by other programming networks. RFD-TV provides family-friendly programming 24-hours a day and it continues to receive requests from additional programmers for carriage.

Comcast's removal of RFD-TV from its cable systems in states with large rural populations and western lifestyles, and the continued refusal to provide such programming to interested consumers across the country, discriminates against both independent programmers like RFD-TV and the rural consumers it serves, and should be reversed. Furthermore, additional measures, such as more granular reporting by MVPDs of independent and affiliated program carriage relationships for both rural and non-rural programming, are needed to ensure that rural independent programmers like RFD-TV are protected against such discrimination in the future.

In the past, the United States Government has taken critical steps to insure that rural America has a balance of services offered between the rural and urban populations. The Information Super Highway must go down each and every country road, and provide two-way communication to ensure that city and country remain connected, just as it was when the 1893 Mail Communications Act led to the establishment of Rural Free Delivery, or RFD. In the modern era, RFD-TV has provided such a bridge connecting city and country. To preserve the choice and diversity in programming, including access to rural independent programming, that consumers in both rural and urban areas enjoy, Comcast should reverse its decision to stop carrying RFD-TV and begin distributing RFD-HD in its service territories.

Thank you.

Mr. BACHUS. Thank you very much, Mr. Gottsch.

And at this time, Mr. Schaeffer, you are recognized for your opening statement.

TESTIMONY OF DAVE SCHAEFFER, CHAIRMAN AND CEO, COGENT COMMUNICATIONS GROUP, INC.

Mr. SCHAEFFER. Well, thank you, Chairman Bachus, Ranking Member Johnson, and the entire Committee for the opportunity to voice our concerns.

This particular transaction is not about video, but rather about the future. It is about the Internet. You know, 15 years ago I had the good fortune and maybe the good luck to found a company on a simple principle that the Internet was going to be the only network that mattered, bandwidth was a commodity, technology would allow us to drive down prices forever. Those bets turned out to be correct. It was difficult. We went through a tough market segment, and we have been a good 'net citizen in helping lead that technology fight and driving down the costs of bandwidth.

Comcast, however, has not been quite as good of a 'net citizen, and is actually looking to be a worse 'net citizen going forward if they are allowed to combine their network with that of Time Warner. So the Internet is based on the idea of free exchange of traffic. One of the mechanisms that traffic is exchanged is peering. So while Comcast signed a consent decree as part of its last merger with NBCUniversal and said it is not going to interfere with traffic inside of its network, it has actually been very clever. It interferes with traffic before it enters its network.

So the Internet today has allowed 2.7 billion people wirelessly and another billion people wire line to connect. Over half of the population of the world exchanges information. The Internet is 44,000 networks. Those networks interconnect one of two ways: they buy connectivity from companies such as ours, or they peer and they connect through those peering connections.

Comcast does not operate a global network, in fact, should be buying connectivity to the global Internet, but has used its market scale and scope to extract an unusual concession. It wanted free connectivity peering to the Internet. Even though it did not operate a global network, it did not carry its fair load. But because it represented so many customers, backbone operators, like Cogent and others, agreed to peer with them.

That was not good enough for Comcast. As Comcast's market power continued to increase, as consumers had less choice, they actually started to demand payments for connectivity. A larger Comcast will demand even greater payments.

Let me use an example of Netflix. Netflix is our largest customer. We are their primary carrier of Internet traffic. Netflix buys that connectivity from Cogent because we deliver the highest quality at the lowest price. We have dozens of competitors. We win business every day by competing and offering the lowest price and the highest quality.

Netflix wanted to do business with us. They continue to be our largest customer, but there was a problem. We could not deliver all the traffic that Netflix was delivering to Comcast customers. We deliver no traffic to a Comcast customer that a paying Comcast does not request. When we deliver that traffic, the ports, or connections, between our network and Comcast became full. We went back to Comcast and said could you please upgrade these connections in a normal pattern and practice that we have been doing for years. Even though you, Comcast, are not really qualified to be a global peer, we will give you free connectivity. Allow us to deliver the content at our expense to the customers that you are charging, those 20.7 million customers that you collect $30 million a day from.

Comcast refused. They not only refused Cogent, they refused every other major backbone, and in doing so forced Netflix, an innovative company, into a corner. They forced Netflix to have to go and directly enter into a contract with Comcast, paying a higher price for a less robust product. That is not a free market. That is an abuse of market power. A larger and more combined company would have even more market power.

So there are two parties that do not sit in front of this Committee today: tens of millions of consumers. I think this Committee cares about them and will protect those consumers, as well the FTC, the Justice Department, the FCC. But there are also entrepreneurs and innovators. We today sell service to thousands of edge providers. I cannot predict where the next You Tube or the next Netflix will come from. I can tell you, though, that their business models are highly dependent on getting inexpensive connectivity. And what they are not dependent on is entering into a bilateral agreement, paying a toll to an inefficient operator, such as Comcast, who has not honored the commitments that they have made to date. Why should you in this Committee expect them to honor those commitments going forward?

Thank you very much.

[The prepared statement of Mr. Schaeffer follows:]

Written Statement of Dave Schaeffer
Chairman and Chief Executive Officer
Cogent Communications Group, Inc.

Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law

Hearing On:

"Competition in the Video and Broadband Markets: the Proposed Merger of
Comcast and Time Warner Cable"
Thursday, May 8, 2014

I. Introduction

Chairman Bachus, Ranking Member Johnson, and members of the Subcommittee: I appreciate the opportunity to testify before you today regarding a matter of great public importance, one that stands to have immediate and lasting impact for consumers and competition alike—the proposed merger of Comcast Corporation ("Comcast") and Time Warner Cable, Inc. ("TWC"). Thank you, Chairman Goodlatte and Ranking Member Conyers, for your leadership on this important issue. I am the founder, Chairman and Chief Executive Officer of Cogent Communications Group, Inc. ("Cogent"). Consistently ranked as one of the top five Internet networks in the world, Cogent is in a unique position to offer its perspective on the proposed merger of Comcast, the nation's largest cable company, with TWC, the nation's second largest cable company. This merger is bad news for the cable industry. But this merger is less about cable than it is about the future of the Internet. Comcast is the nation's largest last-mile broadband Internet service provider ("ISP") and TWC is the nation's third largest. In sum, this merger has the potential to cause grave anticompetitive and consumer harms for tens of millions of Americans who require access to high-speed, high-quality, affordable broadband Internet access.

As you no doubt observe every day in your districts, the Internet is an unprecedented platform for innovation, job creation, entrepreneurialism, education, entertainment, free expression and civic life. There is no limit to the commercial and societal advances that the Internet can foster. But critically important to that bright future, and to the United States continuing to be the world's center of Internet innovation and commerce, is maintaining Internet access as an open and unimpeded channel of communication, transmitting and receiving all content on nondiscriminatory terms and without regard to the sources of the bits of data that move across the Internet. The proposed Comcast-TWC merger threatens that bright future, as set forth below.

II. Cogent's Business

Cogent is a multinational Tier 1 ISP headquartered in Washington, D.C. Cogent carries Internet traffic from edge providers, who offer content, services, and applications over the Internet, and other ISPs across thousands of miles to end-user consumers and businesses, and back. Cogent thinks of itself as a utility taking data packets from one point and delivering them to another point. A substantial amount of the world's Internet traffic is carried by Cogent.

Cogent's story, like those of many of the innovative edge providers that consumers and businesses value and depend upon today, is one of entrepreneurialism and innovation. Cogent began its operations in 1999 with a simple, yet trailblazing vision: Internet bandwidth should be marketed, sold and purchased as a commodity, without regard to the sources of the bits of data that move across its network. Guided by that philosophy and seeing tremendous value where others did not, Cogent began assembling its network by buying distressed and bankrupt fiberowning companies. Through times trying and exciting as a start-up, Cogent has grown tremendously and, in the process, helped change the way the Internet operates.

Cogent's network was built from the ground up to handle Internet traffic, instead of being built on top of a legacy circuit-switched network. Cogent offers Internet access to thousands of entrepreneurs and innovators for their web-based services, and to small and medium-sized businesses for their day-to-day operations, at industry-leading and ever-lower prices. Cogent started its business by offering Internet access to commercial end-user customers at a price one hundred times less than the prevailing rate: 100 megabits-per-second for $1,000 per month, as compared to $1,500 per month for a 1.5 megabit-per-second connection. Similarly, we offered data transit services at a price of $10 per megabit-per-second when the prevailing market rate was $300 per megabit-per-second in carrier-neutral data centers. And over the past five years, Cogent has lowered its prices for data transit by approximately 22 percent per year, such that today we sell transit for an average price of $1.31 per megabit-per-second. (At the same time, ISPs like Comcast have raised the cost of Internet access to their broadband subscribers.) As these examples show, Cogent has led the charge in spurring competition in the transit marketplace and continues to offer data transit and Internet access at ever-decreasing prices.

Cogent's business philosophy—selling high-speed Internet connectivity and data transit as a commodity at industry-leading prices—has benefited competition, innovation and consumers. Cogent's pricing structure enables pioneering Internet start-ups to develop new and disruptive services and applications and grow and scale their businesses to reach millions of customers around the world via the Internet. Like these innovative start-ups, Cogent's more established customers—such as universities, other ISPs, telephone and cable television companies, web hosting companies, content delivery networks, and commercial content providers—depend upon a high-speed and reliable network to carry on their business activities and reach their customers.

To that end, Cogent interconnects with over 5,000 networks and exchanges traffic with peer networks to enable our customers to reach the entire Internet and customers, consumers, viewers, and the like across the globe. Cogent has settlement-free interconnections, or peering arrangements, between its network and most major ISPs, such as Comcast. These agreements are settlement-free because they entail an exchange of traffic—but, notably, not of compensation: Cogent does not pay large ISPs like Comcast, and Comcast does not pay Cogent, for the peering arrangement under which we exchange traffic and interconnect our networks.

III. Settlement-Free Peering

A simplified illustration will show how peering arrangements work. Suppose that content provider "XYZ" is a Cogent customer, and that a subscriber of, for example, Comcast, a "last-mile" broadband ISP, wishes to access XYZ's content. The Comcast subscriber—residential users like your constituents and yourselves—will send a request through the Comcast network, which will pass that request to Cogent at the interconnection or peering point between Comcast and Cogent. Cogent, in turn, will deliver the request to XYZ. The response—the XYZ Internet content that Comcast's subscriber requested—will be transmitted from XYZ through Cogent's network, at which point it will be routed to an interconnection or peering point with Comcast and handed off to Comcast. Finally, Comcast will deliver that content to its subscriber via its own network. The only way to reach Comcast's subscribers is through Comcast. And, as this illustration shows, the ability of Comcast's subscribers to access any lawful Internet content of their choice is dependent upon the interconnection of Comcast's network to the other networks that, collectively, comprise the Internet.

The importance of interconnection to Cogent, its customers and, more fundamentally, the efficient operation of the Internet, simply cannot be overstated. Cogent's experience with Comcast illustrates the threatening, harmful and anticompetitive practices that a merged Comcast and TWC would intensify.

IV. Cogent's Experience With Comcast

As mentioned above, ISPs like Comcast and Cogent have historically peered with one another for free given each network's scale. For most of Cogent's history with Comcast, Comcast has been a good peering partner. As Comcast's subscribers demanded more content from Cogent's customers, Comcast would add capacity to the interconnection points with Cogent to handle that increased traffic. The added capacity ensures a smooth, uninterrupted, high-quality and fast user experience.

Over the past two years, consumer demand for streaming video and other bandwidth-intensive content has increased dramatically. During this time, as Cogent began carrying Netflix traffic in mid-2012, our relationship with Comcast soured. As Comcast subscribers clicked through to view the latest episode of *House of Cards* or *Orange Is the New Black*, Netflix necessarily had to send large amounts of data over Cogent's network to provide Comcast's subscribers an uninterrupted, reliable and fast viewing experience. The increased traffic led to congestion at interconnection points. But Comcast refused to continue to augment capacity at our interconnection points as it had done for years prior. The result was degradation in service for our customers and for Netflix's viewers (who are also Comcast subscribers). You have all no doubt experienced it before—buffering, delays, and granular pictures; sometimes, you can't even load the video you want to watch.

To remedy the congestion, Comcast demanded that Cogent enter into a "commercial relationship" with Comcast to connect to Comcast's network and reach Comcast's subscribers. Despite being asked to do so, Comcast never made Cogent an offer that would allow this "commercial relationship" to come about. This was a truly unprecedented move as, historically, large networks like Comcast and Cogent have never paid one another for the exchange of peering traffic. Cogent refused Comcast's efforts to extract access tolls, but, in an effort to improve interconnectivity, Cogent offered to pay for the hardware costs associated with increasing capacity. Had Comcast accepted Cogent's offer, the problems would have been solved. But Comcast remained silent, and let the packets of data continue to drop on the floor at peering points.

The resulting traffic jam hurt Comcast subscribers and Cogent customers. For example, one of our business customers in the Boston area has many employees who telecommute from home. Those employees with Comcast Internet service at home experienced problems accessing and using their company's network because of the traffic jam. This is but one example showing that Comcast's peering squeeze hurt more than just Netflix viewers.

Faced with no choice, Netflix recently agreed to interconnect directly with Comcast—for a fee. Unlike Cogent, Comcast is not providing Netflix with transit services. Comcast cannot carry traffic internationally like Cogent can, and Comcast cannot connect Netflix to every other network that comprises the Internet like Cogent can. For these reasons, and contrary to media accounts, Cogent is not an expendable "middle-man" who is being cut out by such direct connection arrangements. We are still, and will continue to be, an integral part of the Internet ecosystem. Except now, Comcast is extracting an additional payment, in the form of a toll from

Netflix, simply to deliver that which Comcast's subscribers have demanded and already paid for. Cogent has not, and will not, pay a similar toll.

Since it began extracting such tolls from Netflix—and while its proposed merger is under review by the Department of Justice and the Federal Communications Commission—Comcast has come back to Cogent and suggested it will add capacity at our interconnection points. Comcast may upgrade capacity today because it sells peering to Netflix, but what happens when Cogent transmits the next Netflix's traffic, or the traffic of the next Amazon or YouTube? Experience instructs that Comcast will again attempt to extract tolls from us or from our customers directly.

Our experience with Comcast is telling and makes plain Comcast's motives: It is no coincidence that companies like Netflix offer content that competes with Comcast-owned programming and its content-delivery platform, Xfinity. By refusing to augment capacity to reach its subscribers at any time, Comcast is effectively blocking its subscribers from accessing any Internet content they want and for which they already have paid. If Comcast subscribers' Netflix viewing experience is beleaguered by buffering, they are more likely to tune their TV to Bravo, a Comcast-owned network, switch on their Comcast X1 set-top box, or log into Comcast's TV Everywhere app on their tablets. Comcast is seeking to own the entirety of its subscribers' viewing and entertainment experience; as the last-mile ISP providing the only way to access these subscribers, Comcast will continue to exert its control over this last mile to dominate its subscribers' experience. Such efforts are anticompetitive and harm consumers.

Comcast's motives are made more transparent in light of Cogent's experience with other, smaller cable companies like Cox, Cablevision, and Charter. These companies have not tried to throttle Netflix traffic; instead, they upgrade capacity as the need arises. Notably, these companies do not own substantial content and are not wedded to a larger mission to control their subscribers' entertainment experience or content-delivery mechanisms.

Fundamentally, Comcast's strategy is to get everyone to pay them, either through paid peering with content providers like Netflix, paid peering with backbone providers like Cogent, or both. When providers simply have no choice but to pay, these costs will necessarily be passed on to consumers. The proposed merger cannot be found to comport with the public interest when the new entity will have significantly enhanced power to execute this anticompetitive strategy.

V. A Comcast-TWC Merger Will Harm Competition and Consumers and Stifle Innovation

A merged Comcast and TWC will make current anticompetitive practices demonstrably worse and incent the merged entity to find new, more powerful ways to exercise its dominance. The sheer size of the merged entity will allow it to exercise control over Internet content in unprecedented ways. The merged entity will be able to reach between an estimated forty and sixty percent of wired broadband Internet subscribers in the United States.[1] They will be the

[1] Netflix Letter to Shareholders, April 21, 2014, *citing* Adam Ilkowitz, "Surprise! Comcast Takes TWC," *Nomura Securities*, Feb. 13, 2014, http://files.shareholder.com/downloads/NFLX/3109231631x0x745654/fb5aaae0-b991-4e76-863c-3b859c8dece8/Q114%20Earnings%20Letter%204.21.14%20final.pdf (last visited Apr. 30, 2014); Jeff John Roberts, *Antitrust Issues abound as Comcast explains Time Warner Cable deal in the Senate*, Gigaom (Apr. 9, 2014), http://gigaom.com/2014/04/09/antitrust-issues-abound-as-comcast-explains-time-warner-cable-deal-in-the-senate/ (last visited Apr. 30, 2014); Mark Cooper, *Buyer and Bottleneck Market Power Make the Comcast-Time Warner Merger "Unapprovable"*, Consumer Federation of America, at 6 (Apr. 2014), *available at* http://www.consumerfed.org/pdfs/CFA-Comcast-TW-Merger-Analysis.pdf (last visited Apr. 30, 2014).

dominant broadband Internet provider in 19 of the nation's 20 largest television markets.[2] And for many Americans, they will be the only fast broadband Internet provider available.[3]

The merged entity would exercise its bottleneck control over access to tens of millions American broadband subscribers in ways outlined above, would possess even more power to extract payments from well-capitalized and established companies like Netflix, and continue to demand the same from Cogent and other backbone providers. No matter how competitive the marketplace for transit is – and it is extremely competitive – the simple fact is that, in order to access the merged entity's subscribers, backbone networks must interconnect with it. One entity controlling access to so many of America's "captive eyeballs" should immediately raise red flags.

Meanwhile, the next-generation start-up Internet company that offers content competitive with Comcast's—or competitive with an entity that reluctantly has agreed to pay Comcast for dedicated access—will not be able to afford Comcast's rent-seeking tolls. The effect is that Comcast will have barred innovative and nascent competitors from entering the marketplace, thus stifling innovation and harming consumers. And the edge providers who have no choice but to pay will have to pass these costs on to consumers.

The merged entity would also develop ways to manage its broadband network, whether directly or indirectly, to favor content to which it grants dedicated access as a result of deals it

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[2] Comcast takeover of Time Warner Cable to reshape U.S. pay TV, Reuters (Feb. 13, 2014) http://www.reuters.com/article/2014/02/13/us-comcast-timewarnercable-idUSBREA1C05A20140213 (last visited Apr. 30, 2014).

[3] Despite Comcast's argument to the contrary, wireless broadband Internet, digital subscriber line (DSL), limited deployment of Google fiber, and a potential future for satellite Internet are not meaningful competitors to Comcast for broadband Internet service. Cecilia Kang, *Comcast the little guy? There's competition everywhere, the company argues*, Washington Post (Apr. 8, 2014). http://www.washingtonpost.com/blogs/the-switch/wp/2014/04/08/comcast-the-little-guy-theres-competition-everywhere-the-company-argues/ (last visited May 1, 2014).

executes with particular content providers, like that with Netflix. Comcast will also favor its own content by, for example, ensuring adequate transit capacity for its content and excluding from data caps any Comcast-owned content. Comcast will argue these new practices fall under the guise of "reasonable network management" and may be buried somewhere in their fine print,[4] but, in reality, Comcast will be prioritizing its own content over others and granting dedicated access to those content providers who pay Comcast to reach its subscribers. Such practices do not comport with the spirit of an open and dynamic Internet, are anticompetitive, and harm consumers.

VI. Conclusion

The Comcast-TWC merger raises a host of anticompetitive concerns and consumer harms. But perhaps none are as profound as those which threaten the innovative and entrepreneurial character and future of the Internet. This merger will give Comcast unrivaled power – through its massive market share and captive subscribers – to control the way in which the Internet operates. I appreciate the Subcommittee's attention to these very real and important concerns and urge you to continue your searching inquiry into this proposed merger.

[4] Comcast, Frequently Asked Questions about Network Management, http://customer.comcast.com/Pages/FAQViewer.aspx?seoid=Frequently-Asked-Questions-about-Network-Management (last visited Apr. 30, 2014).

Mr. BACHUS. Thank you, Mr. Schaeffer.
At this time, Dr. Labovitz?

TESTIMONY OF CRAIG LABOVITZ, Ph.D., CO-FOUNDER AND CEO, DEEPFIELD

Mr. LABOVITZ. Thank you. Thank you, Mr. Chairman, Ranking Member Conyers, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee. I am pleased to be here today to discuss some of the technical issues that may be relevant to your consideration of the proposed Comcast/Time Warner Cable merger. At the outset, I want you to know that Comcast and Time Warner Cable are two of the many companies with whom my company, DeepField, has commercial relationships. The views expressed in my testimony are my own.

I am both an academic researcher and a commercial vendor. My current company, DeepField, provides network management and analytic solutions to a range of large content companies and consumer Internet providers. My career has included roles as the chairman of the Principal Internet Industry Engineering Association in North America, as well as the project director of several National Science Foundation research project studying Internet architecture.

I received a Ph.D. in the study of Internet architecture from the University of Michigan in 1999. In 2010, I collaborated on the largest research study of Internet traffic to date. Earlier this year, my company, DeepField, along with academic and industry research partners, began work on a large-scale follow-up study to the 2010 study. My testimony this morning is largely based on these research efforts.

Ten years ago, the Internet was both much smaller and looked very different than it does today. Early on, almost all traffic traveled across an Internet core consisting of 10 to 12 large national and international Internet providers, including companies like AT&T and Level 3. The Internet core connected the majority of content providers with the many thousands of consumer access networks around the world, such as Earthlink and AOL.

These interconnections between providers are known as peering. Unlike telephony, the exchange of Internet traffic has largely developed without regulation. Both today and in the early days of the Internet, service providers such as AT&T sometimes negotiate the exchange of Internet traffic with other large providers without paying for access or traffic rights. The industry calls these arrangements settlement free peering.

Both today and in earlier Internet periods, consumers have paid access networks, such as AOL, and in turn those access networks have paid larger providers, such as AT&T, for connection to other access networks and large providers. The industry calls these arrangements transit peering.

Over the last 10 years, technological advances and market forces have dramatically transformed the landscape of core Internet connection. These market forces include consolidation, such as the Google's acquisition of YouTube, and the rapid growth in Internet content and advertising revenue. Our research has documented the accelerating impact of these market forces. Internet traffic was once broadly distributed across thousands of companies, but by 2009, half of all Internet traffic originated in less than 150 large content and content distribution companies. Today just 30 companies, including Netflix and Google, contribute on average more than one-half of all Internet traffic in the United States during prime time.

There have also been significant changes to interconnection at the core of the Internet in recent years. Specifically, today there is much more direct interconnection between access networks, such as Verizon, and content providers, like Hulu and Google, than there were previously. The removal of transit provider "middlemen" is because content and access networks seek greater efficiencies of scale and economy.

Our research has also found a significant degree of vertical integration and blurring of traditional distinction between companies, content providers, and they will build global backbones. Cable Internet service providers offer wholesale transit. And transit Internet providers offer content distribution and cloud hosting services. For example, Level 3 is both a large transit provider as well as the second largest content distribution provider.

Finally, our ongoing work has found growing diversity and complexity in the Internet "cyber supply chain." This refers to the increasingly diverse set of third party infrastructure and services supporting the delivery of Internet content. Websites once came from computers directly owned and managed by the content owners located in tens of thousands of enterprise machine closets and enterprise data centers around the world. Today the majority of Internet content leverages one or more of multiple third party content distribution services, hosting providers, exchange points or cloud providers, often with many diverse direct interconnections to networks like Comcast or Verizon. Examples of companies providing these different services are identified in my prepared statement.

I hope my testimony and my research findings help provide the technical context of the increasingly complex economic and engineering issues associated with Internet content delivery and interconnection. I thank you for your time and attention. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Labovitz follows:]

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STATEMENT OF CRAIG LABOVITZ, PHD

Co-Founder and CEO of DeepField

Before the House Judiciary Committee Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Hearing on "Competition in the Video and Broadband Market: the Proposed Merger of Comcast and Time Warner Cable"

May 8, 2014

Mr. Chairman, Ranking Member Conyers, Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee,

I am pleased to be here today to discuss some of the technical issues relating to the current state and historical evolution of Internet interconnection that may be relevant to your consideration of the proposed Comcast-Time Warner Cable merger. At the outset, I want you to know that Comcast and Time Warner Cable are two of a substantial number of companies with which my company, DeepField, has commercial relationships. However, the views expressed in my testimony are my own.

I am both an academic researcher and commercial vendor. I have studied and published numerous papers on changes in Internet infrastructure and interconnection over the last 20 years. My current company, DeepField, provides network management and analytics solutions to a broad range of both large content companies and consumer Internet providers.

My research interest in Internet infrastructure dates back to the earliest days of the Internet. In the early 1990s, I began my career as a backbone engineer on the National Science Foundation (NSFNet) research precursor to today's Internet.[1] My NSFNet work covered a range of technical projects, including the design of the software that enabled the first commercial interconnections to the Internet. Later, my professional and research responsibilities expanded to include roles as the chairman of the principal Internet industry engineering association in North America[2] and as the project director of several National Science Foundation funded research projects studying Internet infrastructure.

My research resulted in a PhD in the study of Internet architecture from the University of Michigan in 1999. In 2010, I collaborated with industry and academic partners to complete the largest research study of Internet traffic to date, which explored changes in the interconnection and traffic demands across more than 150 Internet providers around the world over a three-year period.[3] Earlier this year, my company, DeepField, along with academic and industry partners, began work on a large-scale follow-up study to the 2010 work. The facts and conclusions in my statement are largely based on these research efforts.

Ten years ago, the pre-Facebook and pre-Netflix Internet was both much smaller and looked very different than it does today. In the earlier stages of Internet development, almost all traffic travelled across an Internet "core" consisting of 12 large national and international transit providers, including companies like AT&T, Cogent and Level3. The Internet core interconnected the majority of all content providers with the many thousands of consumer access networks around the world such as AOL and EarthLink.

The industry calls these interconnections between providers "peering," though the term has become broadened in recent years to include a range of varied technical and economic models for exchanging traffic. Unlike telephony, which evolved over a century with tariffs defining the payments associated with the exchange of voice calls, the exchange of Internet traffic (*i.e.,* peering) has largely developed without regulation.

Internet providers negotiate terms associated with the exchange of traffic with commercial partners. For example, the service providers in the early Internet core, such as AT&T, exchanged Internet traffic without paying for access or traffic rights, believing that other core transit networks provided similar economic value and had made equivalent levels of infrastructure investment. The industry calls these arrangements settlement-free peering. Similarly, smaller access networks, such as EarthLink, sometimes exchanged Internet traffic with other small access network settlement-free, although the early lack of infrastructure and centralized data centers often made the infrastructure costs associated with these connections prohibitive.

As a general matter, most Internet companies played narrow technological and economic roles in the early Internet economy. Access networks such as dial-up (*e.g.*, AOL) and cable operators provided last-mile connectivity to enterprise and consumers. Consumers paid access networks for Internet connectivity and, in turn, access networks paid transit providers (such as AT&T) for carriage to other access networks and transit providers. The industry calls these Internet traffic carriage relationships between providers transit peering. Businesses and content providers, such as Netscape, also paid access networks or connected directly to one of the large transit providers.

Over the last ten years, technological advances and market forces have dramatically transformed the landscape of core Internet interconnection. These market forces include consolidation (*e.g.*, Google's acquisition of YouTube, Yahoo's acquisition of Flickr) and the rapid growth in Internet content and advertising revenue. Technical advances include the rapid growth of centralized Internet exchange points (*e.g.*, Equinix, Terremark/ Verizon), content distribution networks (*e.g.*, Akamai, Level3, Limelight) and hosting/cloud providers (*e.g.*, Amazon, Rackspace).

Our research has documented the accelerating impact of these market forces.[3] Whereas Internet traffic was once broadly distributed across thousands of companies, we found that by 2009 half of all Internet traffic originated in less than 150 large content and content distribution companies. By May of 2014, this number had dropped by a factor of five. Today, just 30 companies, including Netflix and Google, contribute on average more than one half of all Internet traffic in the United States during prime time hours.

In addition to the consolidation of content traffic volumes among a smaller group of companies, our research has shown significant changes to interconnection at the core of the Internet. Specifically, we have found an increasing density of direct interconnection between access networks such as EarthLink and content providers like Hulu and Google. Largely, we believe this is a process of disintermediation, or the removal of transit provider "middle-men," as both content and access networks look to achieve greater efficiencies of scale and economy.

By way of example, in 2007, Google used transit providers such as Level3 for more than 70% of its traffic to consumers. In sharp contrast, we found that by 2010 more than 80% of all Google traffic flowed directly between Google infrastructure and access networks such as EarthLink or Verizon. We have observed a similar trend of direct interconnection across a broad range of other cloud and content companies, including Akamai, Level3, and Amazon, further diminishing the role of transit providers. While our data provides visibility into the existence of these direct interconnections, we have limited insight into the substance of those commercial relationships.

Our research has also found a significant degree of vertical integration and blurring of traditional distinctions between companies in the Internet ecosystem. In the emerging new Internet economy, content providers build their own global backbones, cable Internet service providers offer wholesale national transit, and transit Internet providers offer content distribution and cloud/content hosting services. [4] For example, Level3 is both a large transit provider as well as the second largest content distribution network (CDN). Similarly, Comcast is an access provider, a transit provider, and recently announced a content distribution product. Perhaps best illustrating this trend towards integration, we observe that Google is a hosting provider, a cloud provider and recently become a high-speed network access provider in Kansas City, Austin and Provo. Google also continues to sell advertisements and offer a popular Internet search service.

Finally, our ongoing work has found growing diversity and complexity in the Internet content delivery "cyber supply chain." By this, we mean the increasingly diverse set of third-party infrastructure and services supporting the delivery of Internet content. Web sites such as www.netscape.com once came from computers directly owned and managed by the content owners (*e.g.*, Netscape) located in tens of thousands of enterprise machine closets and datacenters around the world. Today, the majority of Internet content leverages third-party content distribution services (*e.g.*, Akamai, Limelight, and Level3), hosting providers (e.g. RackSpace), exchange points (*e.g.*, Equinix) or cloud providers (*e.g.*, Amazon, Google).

For example, Netflix uses Amazon's cloud computing service for movie control and catalog management. Netflix also uses several Internet providers, including Cogent and Level3, for transit to reach some number of consumer access networks. Prior to last year, Netflix contracted with three content distribution networks to deliver their video content (Level3, Akamai, Limelight). More recently, Netflix shifted the majority of its video delivery from third-party CDN to a newly built private content distribution network. The private Netflix CDN includes computer servers co-located in access network data centers as well as large server farms deployed in Equinix facilities.

I hope my testimony and my research findings help provide the technical context for the increasingly complex economic and engineering issues associated with Internet content delivery and interconnection.

I thank you for your time and attention. I would be pleased to answer any questions you may have.

[1] http://www.nsfnet-legacy.org/about.php

[2] North American Network Operators Group (NANOG). www.nanog.org

[3] Craig Labovitz, Scott Iekel-Johnson, Danny McPherson, Jon Oberheide, and Farnam Jahanian. "Internet Inter-Domain Traffic". In Proceedings of the ACM SIGCOMM 2010 Conference on Applications, Technologies, Architectures, and Protocols for Computer Communications (SIGCOMM '10), New Delhi, India, August-September 2010.

[4] NetCompetition.org, "A First-Ever Research Study: Estimating Google's U.S. Consumer Internet Usage and Cost. 2008. L. Dignan, "Comcast Feeling the Heat from Competition." ZDNet, http://blogs.zdnet.com, October 2007. Greg Goth: New Internet Economics Might Not Make It to the Edge. IEEE Internet Computing 14(1): 7-9 (2010).

Mr. BACHUS. Thank you, Doctor. At this time, we will proceed under the 5-minute rule with questions. In order that each Member has sufficient time to ask questions of our large panel, we expect to have two rounds of questioning. And I will say that Members who are not Members of the Subcommittee but Members of the whole Committee, as we start that second round, I will yield my time to you because I am told that that is the only way that we can accomplish that. So, Mr. Gohmert, you have been here the entire hearing, so you will commence the second round.

I will recognize myself for 5 minutes. Mr. Cohen, your response to a question by Senator Amy Klobuchar, who is my counterpart in the Senate, was that “We carry independent networks because we are always focused on the consumer. If you have compelling content and you can make that case that our consumers want to watch that content, we will carry it.”

First, I would ask you if you stand by that statement. But secondly, I would just caution you what may be a consumer in Philadelphia and what may be a consumer in Coosa County, Alabama, which is an agricultural county, or in Colorado, is a totally different consumer.

Mr. COHEN. So, thank you, Mr. Chairman. And the answer is I definitely do stand by that statement, and I completely acknowledge the second part of what you are saying. We try and assess what our customers want in individual local markets, so whereas we do centralize negotiation of content deals out of headquarters in Philadelphia, there is enormous input from local systems as to what channels and what programming their customers might want to say.

And just to put flesh on the bones of this, I mean, we think we are, if not the most, one of the most independent programmer friendly distributors in the industry. We carry 160 independent programming networks. And in the last 3 years, we have negotiated and given expanded distribution for 120 of those networks. So we are a company that really does try and find the niches. Most of those networks may not have national distribution, but we really try and find the niches of programming that customers in particular markets are interested in.

Mr. BACHUS. Thank you. Mr. Gottsch, in your experience, has Comcast lived up to the statement of Mr. Cohen?

Mr. GOTTSCH. Well, of the——

Mr. BACHUS. Yes, there we go.

Mr. GOTTSCH. Excuse me. The 160 programmers that Mr. Cohen mentioned, we are proud to be two of those programmers with our RFD-TV channel and our FamilyNet channel. But that has not been the case here in the last year and specifically since the last merger.

We, in fact, as I mentioned in our statement, were taken off in Colorado and New Mexico. And in those States, there was not a rate dispute. We were under contract. We had the support of the City of Pueblo, the State of Colorado, and the governor’s office in Colorado. When it was announced that RFD-TV would be removed on August 13th, we had a lot of customers that were contacting us directly who said they could not get a hold of Comcast, or that

Comcast customer service was telling them that it was a rate dispute.

We invited folks to write us and that we would personally deliver their letters and their concerns to the Denver office, which we did. We have seven of these binders, so over 4,000 customers were asking Comcast not to remove us, yet we still were removed in August of 2013.

Mr. BACHUS. Thank you. And I would say that, you know, and maybe it is not just the numbers, but content. I know that with mergers in the radio business, Birmingham, which is an SEC football town, is getting a lot of hockey news, and we get a lot of soccer, which is growing, but most people my age do not know what the rules of soccer are. There is football, baseball, and basketball. So I would just call it a challenge, but it is a challenge that if you become bigger, you need to be aware of it.

Mr. COHEN. Sir, we're—look, I am sympathetic to this argument. I was actually involved at the time of this decision. And, you know, in a perfect world if money was not an issue and if bandwidth was not an issue, and in the RFD-TV case bandwidth was the much more substantial issue, those systems in Denver and Albuquerque are very bandwidth constrained, and our local teams there made a judgment that it was more important for us to add more high definition channels of popular programming, like the Smithsonian Channel and the Food Channel, that those were more valuable to the customers in that market.

And it is nothing punitive against RFD-TV. We continue to carry RFD-TV to about 600,000 or 700,000 of our customers, including in Kentucky and Nashville, I mean, the markets where we first started with them. Let us always stay focused on the consumer. It is not that they do not have a choice. If RFD-TV is sufficiently important to them, they can switch to DISH and DirecTV and those markets, both of which carry RFD-TV.

So we are not controlling consumer choice here. We are primarily an urban clustered cable company. And this content, even in Colorado, the bulk of our base is in the urban areas of Colorado, and we make the best judgments we can.

Mr. BACHUS. Yes. I think that sort of encapsulates, I think, the fear that, you know, the rural market gets left out. And I would say we would be very sensitive to that because, you know, there are still a lot of people in rural areas. But I will let Mr. Gottsch respond, and then my time is up.

Mr. GOTTSCH. Yes, just a brief reply. The curious thing here, the question that we cannot get answered is out of the 160 independent channels that Comcast carried, they appear to have taken off one of the most popular channels in the Colorado and New Mexico markets. Our Nielsen ratings are higher than the other 159 channels in many day parts and throughout the week.

And then, again it was the support of local governments and the request of Colorado that if there is going to be 160 independents, is there not room for one independent channel devoted to rural interests, which make up 27 million homes in this country. There appears to be 11 million homes of the 29 million that Comcast is taking over and 70 million people. Just one channel devoted to rural America is all we are asking for.

Mr. BACHUS. Thank you. At this time, I will recognize the Ranking Member of the full Committee, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. The minority lead ownership in the video and broadband marketplace is good business, it is an important societal goal, and it helps to expand our economy. And that is a value that many people hold dear.

When Comcast announced its merger with Time Warner, it stated that it anticipated that the FCC would require it to get under the 30 percent limit for cable TV systems. And so, there was an agreement that has been worked out with Charter to sell the 3.9 million channels that, or—excuse me—subscribers that would be required to get under that 30 percent benchmark.

Did Comcast, Mr. Cohen, consider doing smaller transactions with African-American and Hispanic companies instead of giving the whole 3.9 million to Charter?

Mr. COHEN. So, Mr. Johnson, I know you are aware of our commitment as a company to minority participation and ownership as well as in access to minority-centric programming. And so, this was a significant part of our discussion and remains a significant part of discussion.

The problem is that there was no way to accomplish the significant tax efficiencies and competition and public interest enhancing efficiencies that we have been able to generate through this three-part transaction with Charter by dividing the systems into smaller pieces and making them available for smaller companies, whether they are minority or not minority to be able to bid for them. It was a topic of discussion. We have had discussions with numerous minority-owned groups who are interested in purchasing cable systems. And I will report to you the same that we have reported to them, which is we will continue to look for opportunities to create minority ownership in the cable system space.

Mr. JOHNSON. And what about enabling already-existing minority-owned providers to get larger?

Mr. COHEN. So I am running through my mind and do not think it would be appropriate to disclose the various groups that we have talked to. I honestly am not sure whether any of them are existing minority owners of cable systems. But to the extent we would engage in this kind of a process, we would obviously not exclude those types of groups from participating.

And if I can, Mr. Chairman, I mean, I think that I have some credibility speaking to this because 4 years ago when we were doing the NBCUniversal transaction, I talked about our company's commitment to minority ownership in the cable channel space. I referenced TV One, which we helped to create as a cable company after our acquisition of AT&T Broadband, and which we continue to support. And it is one of the great success stories of a minority-owned channel.

And in the NBCUniversal transaction, we committed to launch eight new minority-owned independent networks over an 8- to 10-year period. We have launched four of those already, two of them African-American owned and two of them owned by Hispanic-Americans. So this is a space where minority ownership of businesses, wealth creation opportunities, and conversation shaping opportunities is very important to us as a company.

Mr. JOHNSON. All right, thank you. As you know, African-Americans view television programming at a more significant level than the general population. Yet there seems to be a disproportionately small amount of programming geared toward urban and African-American audiences. On its basic cable programming tier, does Comcast carry any African-American controlled and operated networks? And if so, are those networks carried on the basic tier in every market, or only in select franchise areas?

Mr. COHEN. So I am not sure what our basic tier is anymore, but I can tell you that our most popular tier is our basic digital tier. And on that tier we carry 11 African-American owned or targeted networks, which is the sum of African-American owned or operated networks that we know about.

Now, I know only three of them are African-American owned—TV One, ASPiRE, and Revolt. We do not necessarily know whether these other networks are majority African-American owned, minority. But they identify themselves as African-American targeted networks, and we carry all 11 of them on our most popular digital tier.

Mr. JOHNSON. All right, thank you. How do you respond to claims that Comcast/NBCU has blocked certain content providers, like Univision Sports, from being carried on your services, or unfairly place channels of other content providers, like Bloomberg News, because they compete with NBCU channels?

Mr. COHEN. Two very different questions, but the answer would be the same to both, which is I would deny those charges. I think they are not true. In terms of the way we treated Bloomberg News, the irony of the Bloomberg News situation was that Bloomberg News was positioned in the place it was in the channel lineup before we owned CNBC, so there could not have been any discriminatory intent.

But I do not even rely on that argument anymore. We had a dispute with Bloomberg News. It was resolved at the FCC. We have now repositioned Bloomberg News to news neighborhoods as they have requested——.

Mr. JOHNSON. What about Univision?

Mr. COHEN [continuing]. And we have resolved that matter entirely.

Mr. JOHNSON. All right. Would you care to respond to the claim about Univision Sports?

Mr. COHEN. I am sorry. I was worried about the time, but I am happy to answer that.

Mr. FARENTHOLD [presiding]. And I was going to go there in my line of questioning, too.

Mr. COHEN. I will quickly say we carry eight Univision networks. Univision has come to us and they have asked for additional carriage of three Univision networks, and we are under discussions with them. We are one of the largest, if not the largest, carrier of Hispanic programming——

Mr. JOHNSON. What about sports?

Mr. COHEN [continuing]. Fifty-eight channels. So as a business matter, we will resolve our issues with Univision in due course.

Mr. JOHNSON. All right, and I will yield back.

Mr. FARENTHOLD. Thank you very much, Mr. Johnson. I do want to follow up a little bit on that, Mr. Cohen. I do want to point out, I do not want to sound hostile to this merger because I really think that the government needs to stay as much out of the business world as possible. But I have had some concerns raised by constituents and some interest groups that I have agreed to talk to you guys about. And I think that is the purpose of this hearing is to get the stuff on the table.

And, you know, one of my concerns is that I learned last week that a combined Comcast/Time Warner Cable will serve 91 percent of the Hispanic households in the U.S., and it will be the top distributor in 19 out of the 20 top Hispanic markets. We know that you guys own Telemundo, one of the current providers of Spanish language programming. And along with what Mr. Johnson was asking, what assurances can you give us that you will not discriminate against non-Comcast/NBCUniversal owned programming produced by other companies? And do you have internal procedures in place to prevent that kind of discrimination?

Mr. COHEN. So I should have waited for your follow-up. I would have been able to give a more complete answer. So first of all, we have not been able to verify those numbers, just for the record. But I have observed before in this transaction that sometimes big is bad, and I understand that. But sometimes big is good, and sometimes big is very good. And when you have a company like Comcast, which has this extraordinary commitment to diverse programming, but, in particular, to Hispanic and Hispanic-themed programming, covering a greater percentage of the Hispanic population in the United States is a really good thing because we will bring that commitment to those communities in the same we have brought it to the current Comcast footprint.

So we have a significant commitment to carrying Hispanic programming. As I said, we carry 58 Hispanic or Hispanic-themed cable channels currently, and we have a long-term retransmission consent agreement with Univision. And we carry eight Univision networks, so——

Mr. FARENTHOLD. I guess, this kind of follows up on my overall concern about the difficulty for new programmers to break into the market. Univision's Sports Network is a perfect example. They are actually, I think, not on you all's stations, but they end up the number one Spanish language sports, so it kind of argues against being good business to have it on there. You hear Mr. Gottsch here testify about the fact that his ratings in markets where he was removed from your cable system were higher than some of the other channels that you won.

So I guess the level of vertical integration there, the fact that NBC owned so many stations that would potentially compete with these——

Mr. COHEN. So let me respond to that, and fortunately for us this is one of the most litigated issues that exists in antitrust law, and that is the percentage of the market that a single company can have before there is a risk that it can foreclose content to its consumers. Twice the FCC had extended proceedings to determine what was that percentage of the market. Twice they concluded that if one cable company had more than 30 percent of the market, there would be an undue risk of that company serving as a bottleneck or extorting improper pricing from channels.

Mr. FARENTHOLD. One of the—yes.

Mr. COHEN. Twice the D.C. Circuit struck that down finding that there was no evidence that with a 30 percent share a cable company would be able to control the market. We are coming in below 30 percent, and the answer to the question is that any cable channel has more than 70 percent of the country to be able to go after.

Mr. FARENTHOLD. All right. I am running out of time. Okay, go ahead, but I am running out of time here.

Mr. COHEN. One quick answer. One quick. The protection that exists is the program carriage rules. There are legal rules that prevent us from discriminating against a new channel or an existing channel in favor of content that we own. So that is something that already exists under the law. We are not allowed to do it.

Mr. FARENTHOLD. One of the mitigating factors I think that is actually going to gain you support in this is as new technologies are developing out and you are getting more cable companies, you have got FiOS competing.

Mr. COHEN. Right.

Mr. FARENTHOLD. You have got Google Fiber coming in. There are going to be more options in the short term. But I am also concerned about the programming. I will use an example from Corpus Christie where I live. We have two cable companies. We have Time Warner and we have Grande. Comcast owns the rights to the Astros baseball games. I would assume there is not going to be a lot of incentive there for you to sell the rights to carry the Astros baseball for, you know, a few cents or a buck a subscriber to Grande when you can use it to bring in, you know, hundred-dollar Internet/cable/phone.

How are we going to address the issue of fair access to your programs? And that could be taken to the extreme to say, all right, we are going to pull NBC and Bravo and E!, too, or we are going to jack them up to competing cable companies or FiOS in the same market.

Mr. COHEN. So I smile only because I wish we had that problem with the Houston Regional Sports Net, and that your concern——

Mr. FARENTHOLD. Well, it is part of the Astros' fault. They are not doing very well.

Mr. COHEN. If you really wanted to watch the Astros, that would, like, be good news for that network. But the Houston RSN is a perfect example really of why the fear about our control of this is overstated. That network is really controlled by the two teams, by both the Astros and the Rockets. We have a minority ownership interest in it. We manage it, but they control the pricing of the network. They control the distribution of it.

But again, even if that were not true and we were controlling that, that is on the program access side, so you have the program access rules. And I would note that under the NBCUniversal order, a small cable company that does not like the terms that are being offered actually has a right of arbitration just on that regional sports net without any other cable channels bundled with it.

Mr. FARENTHOLD. Well, I have run the red light, so we will move along. And I will have a couple more questions in the second round of questioning——

Mr. COHEN. Thank you——

Mr. FARENTHOLD [continuing]. For some of the other members of the panel. We will now go to the Ranking Member of the full Committee, the distinguished gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman, and I thank all the witnesses for their important contributions. I have a strong feeling that we may have to have another hearing on this because of the complexity of the material.

I would like to start off with, well, just observing that Mr. Hemphill left out the consumer welfare is the key objective of antitrust law. You said the goal of antitrust is to ensure dynamic competition and open markets. But I did not hear a lot about keeping prices low and choices for the consumer.

So I would like to turn to Mr. Grunes, who said that 30 percent of the cable market share is not enough to be anti-competitive. But really no court has ruled that 30 percent is, as a rule, not enough to be anti-competitive. And the Supreme Court has also ruled that 30 percent of a market was a troubling trend toward concentration. And also, what about the 40 percent control of the broadband Internet? How do you see this as something that we may not overcome if this merger were to go through?

Mr. GRUNES. Thank you, Ranking Member Conyers. Two points. First of all, I did not advocate 30 percent as not being a problem. The merging parties——

Mr. CONYERS. Oh, Mr. Cohen was the one that made that——

Mr. GRUNES. Mr. Cohen, yes. And I would point out a couple of things. First of all, Judge Diane Wood of the 7th Circuit, who is also a former Antitrust Division lawyer and a University of Chicago professor, found that 20 percent was large enough in the Toys R Us case depending on the markets. The issue here is not simply numbers. A subscriber is not a subscriber is not a subscriber. When you have the top 10 or top 20 markets, that gives you power in each of those markets, and that is the power we should be concerned about.

In terms of the broadband shares, I am not sure whether it is 40 percent, 50 percent. It could be as high as 60 percent. But the one thing I can say is that we have not heard Comcast or Time Warner Cable come into today and say we are going to get those shares down to 30 percent. They are talking about the video shares. They have not said a word about the broadband shares.

Mr. CONYERS. Thank you so much.

Mr. HEMPHILL. If I might just add to clarify, if you do not mind, Mr.——

Mr. CONYERS. Well, I do mind right now because I am under a very tight time limit. Maybe on the second round.

Mr. HEMPHILL. Maybe on the second round.

Mr. CONYERS. Let me turn now to Mr. Polka. Comcast is a cable company and a programmer, and that raises a double concern with me because of potentially higher prices and fewer choices, which is what we are concerned about. And I think the Department of Justice is going to take a little while sorting this out, and I do not know if it is resolvable to be honest with you at first blush. What are your cautionary comments to the Committee about this?

Mr. POLKA. Very cautionary. As I mentioned in my opening comments, these are really three separate mergers that we are talking about, not just a horizontal merger, because you have got the combination of programming assets of both Comcast and Time Warner Cable. You have got the combination of Comcast distribution and other programming assets that combine anti-competitively. And, Mr. Chairman, I would note that Grande Communications is a member of ours and is very concerned about the nature of this big deal and prices that they will be charged ultimately that their consumers will have to absorb.

And then the ability of the large company, even though it may not be 30 percent of the market, to be able to control and have influence over other programmers, other large media companies that they deal with in terms of what prices are charged to the Comcast/ Time Warner Company, which ultimately affects the prices of our other member companies. So we are very concerned.

Mr. CONYERS. Let me just squeeze in here to Dave Schaeffer going out of the door. As the Comcast market power increases, so can the prices that they demand. Is that a point that you made in your discussion?

Mr. SCHAEFFER. Yes, sir, Mr. Conyers. In fact, we have seen Comcast point to the fact that they have declined Internet pricing by 92 percent over a 15-year period. In fact, Internet pricing at the core of the Internet transit has gone down 99 percent over that same period. So we have seen a decline of eight times as much as Comcast has passed on to its customers. Secondly, you know, a lot of the conversation here has been around video programming.

Mr. GARCIA. I am sorry. Could you explain that? I did not understand his response just about the percentages of Internet traffic.

Mr. CONYERS. Well, wait a minute. We——

Mr. GARCIA. No, I am not taking over. I just want him to explain.

Mr. CONYERS. Yes, I know, but let him finish, and we will get back to you. Yes?

VOICE. Go ahead.

Mr. SCHAEFFER. I will try to answer that when we get there. But, you know, the ultimate way in which video content can be distributed to consumers is over the Internet. So today, American consumers use about 300 minutes a day per capita of video. Only 15 minutes of that is delivered over the Internet. Over time, the cost of publishing that content continues to decline, and if allowed to operate freely, probably somewhere between 220 and 250 minutes a day will eventually be delivered over the Internet.

Comcast through its interconnection strategy is deciding to limit the ability of over-the-top video because it directly competes with its linearly programmed video and gives it an additional control point over the production of that video. So it is another way to increase pricing.

Mr. CONYERS. Thank you very much. And thank you, Mr. Chairman.

Mr. FARENTHOLD. Thank you very much. We will now go the gentleman from North Carolina, Mr. Holding, for his round of questioning.

Mr. HOLDING. Thank you, Mr. Chairman. I am sure that my constituents back at home who are Time Warner customers want to cut right to the chase. So, Mr. Cohen, are my constituents who are

Time Warner customers going to face higher prices for services post-merger?

Mr. COHEN. So, Mr. Holding, there is nothing about this transaction that is going to lead to increased prices for consumers. I think there are significant consumer benefits that your constituents will see as a result of this transaction: faster Internet speeds, more video on demand choices, more free video on demand choices, the ability to watch more content on a streaming basis inside and outside the home, access to our X1 video platform, which is truly a groundbreaking new way of watching television. But there is nothing in this transaction that will result in an increase in prices for any Time Warner Cable consumer.

Mr. HOLDING. You said in the past that "We're certainly not promising that customer bills are going to go down or even increase less rapidly." You would still stand by those comments, though?

Mr. COHEN. What I said was, and I have a nasty little habit, which I hope no one wants to persuade me to stop, of telling the truth. So I was asked a question and I said I cannot guarantee that prices are going to go down, and I cannot guarantee that they are even going to increase at a lower rate. I think this transaction has the potential to slow the increase in prices because with our additional scale, our additional investment, and our ability to gain some purchasing advantages in the set-top box market, may be able to move the needle slightly on the programming side.

What other benefits we can get as a result of the combined scale of the company, consumers will see in terms of impact on their bills. And for us, consumers are always front and center. I think consumers are going to be the big winners in this transaction, and any moderation that we can bring to increases in their bills will certainly be one of the benefits that we would love to be able to see.

Mr. HOLDING. Mr. Schaeffer has made some fairly direct allegations, and even though the technical aspects of what Mr. Schaeffer is talking about are a little bit above me, I do get his point very clearly that the combined share of broadband and also the amount of share you have in top markets and so forth, you know, is powerful. So if you could take a minute and respond directly to the allegations that Mr. Schaeffer has made.

Mr. COHEN. So thank you for that opportunity. I am going to try and bring this down to a level that I can understand, which really requires coming up a little to more of a 30,000-foot level.

I think there are two different markets here that we need to consider. One is the broadband ISP market, what is called the last mile market, our delivery of broadband services to our customers. The second is the market in which Ms. Schaeffer and Cogent functions, which is the interconnection market, which is the first mile market, if you will. How Internet providers, how Google, Netflix get their content onto the Internet and into our ISP so that our customers can gain access to it.

I do not believe, and I will be interested whether Professor Hemphill agrees with this, that the market share that we are achieving in the broadband ISP market, the last mile market, is close to the level that it has any impact whatsoever on the first mile market. That market is an intensely competitive market. It is a market with dozens of network operators, content delivery networks, peering organizations, transit providers. As Mr. Schaeffer has described, it is a market in which he has competed vigorously for 15 years trying to offer the lowest price and the highest quality. It is a market where pricing has dropped 99 percent over the last 15 years.

And as a result of that, the Netflixes of the world, the Googles of the world, the Internet content companies, the young man working in his garage in your district who wants to be the next Netflix has dozens and dozens of choices as to how get his or its content onto the Internet to enable them to deliver it to our customers. And we think that market is functioning extremely well. We do not think that market and the structure of that market is affected at all as a result of this transaction, and that the questions that have come up recently about that market are better looked at on an industry-wide basis, which is exactly what Tom Wheeler and the FCC have said that they are prepared to do.

If you gave me the invitation, one thing I also want to reply to his description of our Netflix transaction, which as far as I know is wholly inaccurate. We did not force Netflix to enter into an interconnection deal with us. That was Netflix's idea. They came to us. It was their desire given the size of their traffic to cut out the middleman, their words—the middleman happened to be Cogent, by the way—and to deal directly with us.

And although our agreement with Netflix is subject to a non-disclosure agreement, and I cannot disclose the terms of the agreement, which I would do willingly, by the way, with permission from Netflix, I can tell you that it has been publicly reported, contrary to what Mr. Schaeffer said, that Netflix is paying not more to us under this agreement, but less. And I think Netflix made a commercially reasonable decision that given the size of their traffic, they did not need to deal with a wholesaler. They could deal with us directly, and they came to us and asked us to do that deal, and we did. And I would note that they turned around 2 weeks ago and announced that they had done exactly the same type of deal with Verizon.

Mr. HOLDING. Thank you, Mr. Chairman.

Mr. FARENTHOLD. Thank you. We will now go to the gentlelady, who has a child at the University of Texas, so I am sure she is looking for the Longhorn Network on her cable service, much like I am. Ms. DelBene? [Laughter.]

Ms. DELBENE. Thank you, Mr. Chair, and thanks to all of you for being here today. We appreciate you taking the time. You know, this merger obviously has the attention of many folks across the country, and my constituents are no different. They rely on cable access for TV as well as for broadband, and pricing is very, very important to my constituents. I hear about it from them on a regular basis, and their concerns about paying a higher price each year, many times beyond the rate of inflation for the same service they have had. And they are very concerned about the impact that this might have.

Following up a little bit on Mr. Holding's questions, Mr. Cohen, you have said that you do not expect this transaction to have an impact on prices per se. But if this is not going to have an impact and economies of scale are not achieved to help lower prices, then what can be done to help lower prices for consumers?

Mr. COHEN. I think that is a very good question, and I am not sure I have an answer to that. I think that when you look at the number one driver of cable pricing—by the way, this may come as a surprise. Mr. Polka has probably spoken more on this subject than anyone on the panel, and you might want to ask him the question as well. But the number one driver of cable pricing is the cost of programming, and the cost of programming is rooted ultimately—I think Mr. Polka would agree—in the cost of producing that programming and in the rights around programming, and, in particular, sports rights.

So that if you look over the last decade, there has been a 120 percent increase industry wide in the cost of cable programming. And yet the increase in the most common package of cable programming has risen at less than half that rate over that period of time. So cable operators large and small have been valiantly fighting to try and ameliorate the impacts to their consumers of the overall costs of programming. I am not sure what the answer is to being able to control the continual spiraling increases in programming and programming rights and, in particular, sports rights. But I think somewhere in that alchemy is the ultimate solution to at least moderating price adjustments.

If I can do one other point, though, I want to say that when you look at what happens in the pricing of programming, the FCC statistics deal with a particular package. If you look at the cost of cable programming on a per channel basis, the increase has only been about .2 percent over the last decade where inflation has increased 2.4 percent a year over that period of time. So that is about one-12th of the rate of inflation.

And if you look at promotional bundles, which is where the majority of our customers consume their content, the pricing of those bundles has been flat over the last 7 years.

Ms. DELBENE. Thank you. I want to ask Mr. Polka, though, the same question and also since you referred to him. So, Mr. Polka, what is your feedback?

Mr. POLKA. Sure. Thank you very much. David, you are correct that there are enormous sports rights costs as well as costs of production for programming that are paid by large companies that own content, such as Comcast/NBCUniversal. Large content companies, like Comcast/NBCUniversal, pay those rights, and then in turn pass those onto their customers who are cable operators, among which are the 850 members of the American Cable Association, whose median size is 1,500.

The fact of the matter is that with that control of content, with the rights that these content companies have, and particularly in the context of this merger, there is the ability to be anti-competitive in the use of that programming. And I will give you an example.

Our members purchase their programming through the National Cable Television Cooperative. It would be likely in this merger to see, and this is why we are asking for FCC and Department of Justice review, that Comcast/NBCUniversal as part of the larger transaction will seek to recover its programming and its sports rights costs, all right?

One way that they can do that how NBCUniversal charges Comcast for programming. Well, it is sort of one pocket to the other, so if NBCUniversal charges Comcast a higher price and that price then is then transferred down to the smaller providers of the National Cable Television are members who buy programming there, our prices as member companies and as competitors to both Comcast and Time Warner will rise, which will ultimately lead to rising prices to consumers.

So we are not convinced that this merger will lead to lower prices for consumers. In fact, to your point about choice, there really is no choice today because of how programming from companies like Comcast, Universal, and others, how programming is sold in bundles where bundles of programming must be purchased or no programming can be purchased at all. So ultimately, unless those bundles are broken up to consumers, all they are going to see if higher prices.

Ms. DELBENE. Thank you. And thank you, Mr. Chair. I yield back.

Mr. FARENTHOLD. Thank you very much. I see the next one up is the gentleman from Virginia, the Chairman of the full Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Let me direct my first question to you, Mr. Cohen. To the extent that Comcast is able to obtain discounts from programmers, is it likely that these programmers will seek higher payments from other video distributors to compensate for lost revenues?

Mr. COHEN. So I will give a short answer to that, but might yield my time to Professor Hemphill who might comment more knowledgeably. I think the answer to your question is no, and the reason for that is that in my lay terms, if you can assume that if we got a bigger discount that that would cause a programmer to go to a smaller cable company and try and make up that discount by getting a higher rate from that programmer, that would assume that in its initial negotiation with a smaller programmer, it left money on the table. That is, that it charged them less than what they could otherwise get. And that now that they got less from us, they would have to go back and get more from the other programmer. And I do not think that that is the way that markets work, and I think the economics and antitrust law is pretty is well settled on that fact.

Mr. GOODLATTE. Okay. Before we go to Professor Hemphill, if I have time I will do that, but I have some other questions. So next I am going to go to Mr. Schaeffer on the issue of in your testimony you argue that Comcast will be able to prevent content from reaching customers over the last mile. Do the requirements contained in the NBC order—in other words, when Comcast acquired NBC, particularly the open-Internet requirement—adequately address your concerns?

Mr. SCHAEFFER. So while Comcast has alleged that it is abiding by the net neutrality rules and not discriminating against content flowing over its network, it has refused to upgrade its connectivity to all of the major backbones globally. Comcast alleges in its written testimony that the vast majority of traffic reaching its customers goes through settlement free or non-payment peering connections. But then it also says that Netflix accounts for over 30 percent of the traffic going to its customers. So there is clearly an internal consistency since they are charging Netflix. They are not offering them a settlement free connection.

What, in fact, Comcast has done is by refusing to upgrade those connections, two things. One, they have denied their customers who they are charging the highest quality service that they could possibly deliver because they know that the request bits that those customers send will not be answered as the bits cannot flow back to their network. And secondly, they have created an inferior quality of service——

Mr. GOODLATTE. So let me interrupt you because I do not want to give you the opportunity to repeat all of your testimony. My question was, does the NBC order, particularly the open Internet requirements, adequately address your concerns, yes or no?

Mr. SCHAEFFER. No.

Mr. GOODLATTE. Okay. Next, let me turn to Mr. Polka and ask you, does the Comcast merger impact the cable hardware and software industry? In other words, does this transaction make the Comcast standard the industry standard, and does that have an impact on your cable provider members?

Mr. POLKA. I would say this, Mr. Chairman, and thank you for the question. I think that is a legitimate question that necessarily needs to be part of the review by the FCC and the Department of Justice. I have mentioned a number of video concerns today. There are many other aspects to this merger that do need to be reviewed, whether it is the cable advertising market, the broadband Internet competitive market, access to technology, development of technology, how that is used by the combined Comcast/Time Warner Cable, how that perhaps is meted out to other competitors. I think that is definitely a line of inquiry that the FCC and the DoJ have to pursue.

Mr. GOODLATTE. Okay. Let me hop back to Mr. Schaeffer and ask you, in your testimony you discuss how traffic delivery was congested as a result of delivering Netflix content. You also have stated that you asked Comcast to add additional ports to decrease congestion. What are ports, and are they expensive to add onto the network? And please be brief because I do want to come back to Mr. Hemphill to give him an opportunity to respond to some of these matters.

Mr. SCHAEFFER. Yes, Mr. Goodlatte. The port is the physical location where the traffic flows between the two networks. The capital cost is trivial, and we have actually offered to pay not only our capital costs for our ports to be added, but also to pay Comcast. And to date, they have refused to accept that offer.

Mr. GOODLATTE. Thank you. Professor Hemphill, Mr. Cohen deferred to you to supplement his answer. And if there is anything Mr. Schaeffer or Mr. Polka have said that you wanted to respond to, have at it.

Mr. HEMPHILL. Yes, sure. So I think on the first point, Mr. Cohen said, well, from an economic perspective, we would not expect some kind of shortfall in one market to be made up in another or vice versa; that a savvy company is going to negotiate it as best it can with all of its counterparties, and that there is not some quota it is trying to reach. It will think about each of those negotiations separately.

I think with respect to the conversation we have been having about ports and peering and whether any of this raises a foreclosure concern, I think it is important to understand that payment for connectivity, payment for interconnection is not new. It is not a new fight. It has always been the case that a payment is either going to be made through cash or through reciprocal carriage.

And so, to think about this as a foreclosure concern I think is wrong. I think what is really going on is a fight about who should pay for what in this, in a lot of ways, highly competitive business of interconnection.

Mr. GOODLATTE. Thank you. My time has expired. Thank you, Mr. Chairman.

Mr. FARENTHOLD. Thank you, Mr. Chairman. I will now go to the gentleman from New York, Mr. Jeffries.

Mr. JEFFRIES. Well, thank you, Mr. Chairman, and let me thank the witnesses for your presence here today. Let me begin by just associating myself with the remarks, and observations, and concerns of Mr. Johnson connected to the implications of this merger on women- and minority-owned businesses within the cable and Internet video space.

Let me also acknowledge that amongst the constituents that I represent, a substantial number of cable subscribers, as you know, obviously are Time Warner customers. And Time Warner has certainly been a very responsible corporate citizen in terms of its community engagement in Brooklyn and in Queens. And I have every reason to believe that that will occur given Comcast's track record, should this merger be approved, particularly as it relates to the expansion of Internet essentials.

But there are some issues that they are concerned about that I want to explore. So let me begin with Mr. Cohen. Now, you testified that the merger will result in substantial benefits to consumers, correct?

Mr. COHEN. Correct.

Mr. JEFFRIES. And you indicated that Comcast can promise faster Internet speed as a result of the merger, true?

Mr. COHEN. Correct.

Mr. JEFFRIES. You also indicated, I believe, that greater customer choice is a likely benefit of the merger, correct?

Mr. COHEN. Better customer choice in terms of on demand TV everywhere, correct. That is correct.

Mr. JEFFRIES. Okay. And then I think you also indicated that innovation will result from the merger, and then that could translate into enhanced video, voice, and/or Internet opportunities for the consumer, correct?

Mr. COHEN. Scale leads to investment in R&D and innovation, better networks, more secure networks, more reliable networks, and ultimately innovation of the future just like our larger global and national competitors are investing our need to be able to look around the corner and to develop products for 3 years from now and 5 years from now that we are not imagining today.

Mr. JEFFRIES. Okay. And I have no reason certainly to disagree with that, and I think that is a sound premise to operate under. However, as many of my colleagues have observed, there has been no commitment given today by either you or Mr. Marcus as it relates to the impact of this proposed merger on consumer price. And that, in fact, is the issue that the people I represent in Brooklyn and Queens, who are currently Time Warner subscribers, are most concerned about.

So let us see if we can get a little bit of clarity on that. Comcast is a publicly-traded company, correct?

Mr. COHEN. Correct.

Mr. JEFFRIES. And as a result of Comcast being a publicly-traded company, you have got a fiduciary obligation to your shareholders, true?

Mr. COHEN. That is correct.

Mr. JEFFRIES. And part of that fiduciary obligation, and I assumed connected to it you have concluded that this merger will likely result in greater profitability for Comcast if it were to be approved, correct?

Mr. COHEN. I think the answer is basically yes, but I really want to say this: A couple of years ago we woke up and we realized that we are now competing in a different class. And I forget, a couple of Members have referenced this, this world is changing with explosive speed. And so, the business rationale underneath the merger really relates to our ability to innovate, invest, and to stay competitive.

Mr. JEFFRIES. I understand.

Mr. COHEN. All right, so——

Mr. JEFFRIES. And I do not want to cut you off, but my time is limited.

Mr. COHEN. Okay.

Mr. JEFFRIES. You did acknowledge, though, basically, yes, you expect——

Mr. COHEN. Well, it is more profitable compared to what it would be——

Mr. JEFFRIES. Well, let me finish the question.

Mr. COHEN [continuing]. If we were not able to innovate, invest, and continue to grow.

Mr. JEFFRIES. Oh, I understand.

Mr. COHEN. Okay.

Mr. JEFFRIES. And that is a very sound point and consistent with your fiduciary obligations to your shareholders, and I would expect nothing less. I guess the question that my constituents would expect me to ask is, is it not reasonable for them to assume that pursuant to a merger likely to result in greater profitability and a bigger, better Comcast post-merger, that there will be some positive benefits for them in terms of impact on price?

Mr. COHEN. So I do not know whether it is appropriate for them to assume that. It is certainly our expectation that out of this transaction will come a significantly improved customer experience with customers more satisfied with their service. There is more to making customers happy than the just the price that we charge them. It is the value that we are delivering to them.

And we believe very strongly that consistent with our fiduciary duty to shareholders, we have to focus on price, focus on customer satisfaction, focus on customer service as a way to preserve and grow our customer base in an intensely competitive market, and that all of those interests are aligned.

Mr. JEFFRIES. Thank you.

Mr. BACHUS [presiding]. Thank you. And let me say this to the panel. After Mr. Smith of Missouri does his questions, we will take a 10-minute break because you all have been in the chair quite some time. Mr. Smith of Missouri is recognized for 5 minutes.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman. My first question is for Mr. Cohen. You testified that Comcast and TWC currently serve different geographic areas and do not offer services to the same consumers. Yes or no, will the consumers in either company's geographic areas experience any decrease in competition for video broadband or voice service if this transaction is approved?

Mr. COHEN. Unequivocally no, they will not.

Mr. SMITH OF MISSOURI. Okay, thank you. Mr. Polka?

Mr. POLKA. Yes?

Mr. SMITH OF MISSOURI. As you know, many of your member companies are in rural areas like the areas of Missouri that I represent. Though they do not in my area compete directly with Comcast or Time Warner, does this merger affect cable operators who do not directly compete with Comcast?

Mr. POLKA. Yes. Yes, they do, Congressman. And, in fact, our incoming Vice-chairman is one of your constituents, Patty Boyers from Boycom Communications. It does impact those companies that do not compete directly with Comcast and Time Warner in the acquisition of programming and in the acquisition of programming pricing.

As I mentioned before, with the combination of Comcast distribution assets with Time Warner Cable assets, because of their size and ability to demand lower prices from other programming content providers, it also does have an impact on the prices charged by all other multi-video programming distributors like Boycom, which means if, to David's point, we may not see this yet until there is more that comes out from the merger review. Our prices to our members, our wholesale programming prices, might increase, but certainly because of the ability of Comcast/Time Warner combined to drive their wholesale programming pricing down, it will create a bigger disparity in pricing between Comcast, Time Warner, and all other multi-video programming distributors who buy programming primarily through the National Cable Television Cooperative.

So the end result is Comcast will pay a lower rate, and the disparity in programming prices between Comcast and our members will increase.

Mr. SMITH OF MISSOURI. So virtually the 10 or so small companies in my district probably would see an increase while Comcast may see a decrease.

Mr. POLKA. That is what we expect to occur, yes.

Mr. SMITH OF MISSOURI. Okay. Mr. Schaeffer, as someone who has been involved in the Internet's backbone for some time, I would like to ask you a question about interconnection. What effect would the merged Comcast/Time Warner have in the marketplace negotiations with your company and other transient providers?

Mr. SCHAEFFER. It would have a significant impact in that Comcast would now control access to a greater number of consumers and extract additional market power. For those consumers, when they enter into a contract to buy broadband, they do not really I think mortgage their eyeballs. And I think Comcast views that they do.

Mr. SMITH OF MISSOURI. Okay, thank you. Mr. Patrick Gottsch, I was interested with your testimony about RFD-TV being dropped from Comcast in Colorado and New Mexico. What was the reason that they cited of why they dropped you?

Mr. GOTTSCH. Well, Mr. Cohen's explanation today that it was a bandwidth issue, and they had to drop one channel, and they picked our channel. The thing that concerns me is that is it now the policy of Comcast going forward when they need bandwidth, are they going to just be dropping independent channels from those markets without any regard to support from the audience, without regard to price, without regard to anything that an independent channel has going?

Mr. SMITH OF MISSOURI. Mr. Cohen, are there any reasons why RFD was dropped other than bandwidth?

Mr. COHEN. The answer is it was primarily a bandwidth driven determination. There was a determination by the local market that the consumer demand for that particular channel in that market put it at the top of the list to be considered being dropped. It had nothing to do with the fact that it was independent. It certainly had nothing to do with our 8 percent ownership interest in Retirement Living TV, which is a completely unlike channel.

Mr. SMITH OF MISSOURI. My concern is this is that it is a rural TV station, and folks in my area rely on it and watch it quite often. And if other people across this country in non-urban areas want to watch it, I hope that they have the opportunity. My question is, can you give me any documentation showing, like, the 400,000 households in the Colorado area where there were other independent or other cable television networks that had lower viewership than RFD that you did not drop?

Mr. COHEN. We can certainly follow up on that, and I will get back to you. We can put it in a QFR and address that in the QFR process.

I do want to emphasize, we still carry RFD-TV to 600,000 or 700,000 of our customers. And so, this is not a situation where we simply said this is a terrible channel and we do not want to have anything to do with it anymore. It was a local market decision. And again, I hear and I understand the content being rural content. I want to emphasize again we are primarily an urban cluster cable company. Even in western States, most of our consumers are in urban areas, so it is our goal to provide programming to our customers that they want to see, and we are not depriving anyone of access to RFD-TV because they have broad carriage on DISH and DirecTV, and all of the customers in those markets.

Mr. SMITH OF MISSOURI. Just only to your consumers, the 400,000 in Colorado and the 70,000 in New Mexico.

Mr. COHEN. Right.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman.

Mr. BACHUS. I thank you. At this time, we are going to reconvene at about 8 minutes after. And I thank you for your patience, and will allow you to take a——

[Recess.]

Mr. BACHUS. We will now resume our questioning under the 5-minute rule. And at this time, I recognize Mr. Garcia for questions.

Mr. GARCIA. Thank you, Mr. Chairman. Mr. Hemphill—am I pronouncing that right? Yes, there you are. Much has been made about the size of the proposed Comcast/Time Warner merger leading some to compare this with the failed AT&T/T-Mobile deal. But unlike that case, Comcast and Time Warner do not compete head-to-head in local markets. So how important do you think that distinction is in this case, and do you see adverse impacts from that merger based on that?

Mr. HEMPHILL. So size can be good. Size can be bad. It all depends on the transaction. So I think the size of the deal in itself does not tell us much about whether we should be concerned. As I mentioned before, I think the absence of head-to-head competition in output markets or, for that matter, in input markets is crucial to understanding the deal. That does not mean that Department of Justice should just pack up and go home. They still need to pay attention.

And we have heard a lot about at least conceivable or theoretical foreclosure effects, and I think it is important to take a close look at that. But that whole investigation, that whole way of thinking is quite a bit different from the usual merger analysis of output markets or, to a lesser degree, reduced competition in input markets.

Mr. GARCIA. As you are probably aware, I represent a very large Hispanic community, and so I have heard from some of my constituents who have a few concerns. I know some were addressed earlier today, and I was very satisfied with that. But I want to ask you, in my diverse community, a rapidly increasing part of the market with increasingly diverse and growing consumer needs, it is important that emerged Comcast/Time Warner shows a strong commitment to ensuring that new and creative Latino programmers are provided with the opportunity to reach that growing consumer market.

How do you think that can be achieved, and how can we make sure that what is I am sure one of the valued assets in this continues strong and continues providing the great service that it does?

Mr. COHEN. So this something we have spent a lot of time discussing both on the distribution side as well as the content side of NBCUniversal because we have a strong commitment to making sure that we have outlets not only for existing diverse voices, but for new diverse voices. So I have talked about the new channels that we have launched. I have talked about 58 channels of Hispanic and Hispanic-themed television. Let me talk about a few other things which I think is in the same space.

So one of the best ways with evolving technology to reach customers is through our VOD service, and we have substantially expanded the number of VOD, video on demand, hours that are available and, in particular, for diverse audiences, including the Hispanic community. Similarly, there is a lot of content that we are now delivering online, and which may not be enough to make up a channel or even a whole program. And that online content is a great outlet for young, new diverse producers/directors. They do not have to put a whole movie together to be able to get anyone to look at it. They can produce a 7-minute video, you know, on youth violence in South Miami, and that can be available for us to be able to put online.

So we have created on the distribution side the Xfinity Latino website, and that features about 9,000 choices and 2,500 hours of content that is available free to Xfinity Latino customers, and there is a great mix of content in that particular site. We also hosted the largest ever Hispanic video on demand event in 2013. It was called Xfinity Free View Latino, and we are going to do that again in September of this year.

So these are some of the ideas that we have created. I should say on the NBC side, one of the things I would point to is what we are doing in the news space, that we created a news vertical on the new NBC.com website. So we have a Hispanic news vertical, which is providing an opportunity to be able to target news-related programming to the Hispanic community, and also to allow young and aspiring producers and on air talent to sort of try out their talent on a website basis before they would go to the broadcast network.

Mr. BACHUS. Thank you. At this time I recognize Mr. Collins for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. Mr. Grunes, I am concerned about the impact of the merger, and we have had some conversations with both sides on this, on small businesses that advertise on cable television. Today small businesses are able to utilize cable television advertising to geo target their ads in a cost effective manner. However, an independent analysis by SNL Kagan has concluded that a merged company would control a very substantial share of this local cable spot advertising market, reducing competition and raising the cost of cable advertising for small businesses, which would affect my area in a big way.

Can you provide information regarding the scope of Comcast's cable advertising business if this merger is approved?

Mr. GRUNES. Thank you for the question. And I will start by saying in the last merger, the NBCUniversal/Comcast transaction, advertising markets were not really as important because broadcasting and cable advertising are traditionally viewed as in different markets. This one is different, so there are a variety of ways that advertisers can get onto cable at this point. My understanding, it is about a $5 billion market, and that post-merger the combined company would dominate two of the three ways that advertisers can get on.

The predictable result, in my view, is that smaller advertisers are simply not going to get access to local cable. That time will be sold elsewhere.

Mr. COLLINS. Okay. So your understanding is it is a negative impact. Mr. Polka, in your testimony you argue that the Comcast merger could have a detrimental effect on the viability of online video competitors, such as Netflix and Amazon, as it was going along. I share the concerns. I am concerned that the traditional FCC assessment of potential implications of a merger may no longer be adequate to promote and competition on both the content side and the telecom side. I think there is an interesting argument that could be made that in certain situations consolidation is used a shortcut to growth. And instead of investing and competing directly for subscribers, they simply buy each other's subscribers.

In your opinion, this merger in particular, does it remove the competitive dynamics that we are looking at here from the markets, that otherwise drive improved quality, increased choice, and lower costs, because it really seems that DoJ and FCC craft merger specific regulations to check the harms of really the competition and consumers and lose sight of promoting the competitive marketplace. So I am not as much antitrust. I am looking at the competitive marketplace. So, Mr. Polka, do you have a comment on that?

Mr. POLKA. Yes, sir. Yes, sir, we do. The fact of the matter is when a company like a Comcast and a Time Warner Cable, and particularly on the Time Warner Cable side where there are competitors such as an RSN or a Grande, which do compete with Time Warner Cable, there is an incentive to be anti-competitive and to charge higher prices. We do believe that there will be an impact on the competitive market for companies that are providing services competitively today to Time Warner Cable as a result of the combination with Comcast. So, yes, sir, we do believe that there will be an impact on competition.

Mr. COLLINS. Do you have any examples that might have led you to that conclusion?

Mr. POLKA. The fact that we see price disparity today among our member companies that are in competition with Comcast and Time Warner. And what we expect will be even greater ability to leverage programming sources in ways that will raise prices to competitors. If you are in a marketplace today with a competitor, I mean, it just stands to reason that you have an incentive to be anti-competitive, and that is what we expect in this market. And we expect that that will be fully reviewed, and we certainly will be raising those concerns at the FCC and the Department of Justice.

Mr. COLLINS. Okay. And that is fair. One of the things from my perspective is I believe, frankly, government should stay out of businesses except in a marketplace fairness kind of issue. And even then it should be at a very hands length. And we have had the conversation, and Mr. Cohen and I have discussed and others.

But, Mr. Cohen, I have a question for you. Sometimes my questions actually come from the witnesses' testimony, and yours has driven a question. A few minutes ago, my friend from Missouri asked a question about RFD-TV in Colorado, and basically asked you what I consider—you knew he was going to be testifying today. It would seem like you would have probably have become very much of an expert on what happened.

And you were asked a very direct question on the issue was there other independent channels or non-independent that had less than 400,000 subscribers than RFD on this dropping of them. Do you know if there less than 400,000 or are just withholding because of proprietary reasons? I am just curious as to why you would not know if there were other channels that had less subscribers.

Mr. COHEN. I was not sure that was the question. It might have been.

Mr. COLLINS. It was the question.

Mr. COHEN. I thought the question was——

Mr. COLLINS. Reclaiming my time. Reclaiming my time.

Mr. COHEN. I thought——

Mr. COLLINS. It was the question.

Mr. COHEN. I thought the question was were there other independent channels that were lower rated than RFD-TV was. I thought that was what the question was, and I do not know the answer to that question. We will get the answer to that question and respond in a QFR to that question.

Mr. COLLINS. Well, and I am glad you have QFR down. What is interesting to me is 400,000 in that market, even in an urban market, and I have both urban and rural, that seems pretty good. And to claim it is just an urban and rural kind of issue, that struck a little hollow because there are a lot of folks who have moved from the farm to the urban areas and still like to be connected to the farm. And so, that was just an interesting——

Mr. COHEN. I want to be really clear because I said this, too. I personally, and our company just does not have a problem with RFD-TV. We think it is good content. We are carrying it to 700,000 of our customers in multiple markets. There was a local market decision here that there was greater consumer demand to move to high definition for a number of other popular channels in the market. By the way, that is not a permanent decision. It was a decision that was made at the time based on bandwidth constraints as they existed at that time.

Mr. COLLINS. I am not——

Mr. COHEN. So I do not want to minimize the value of this network, the value of its content, its appeal to consumers, including our consumers. So I hope I am being very clear about that.

Mr. COLLINS. Well, and I——

Mr. BACHUS. And thank you.

Mr. COLLINS. Could I just have——

Mr. BACHUS. Yes.

Mr. COLLINS. I am not questioning your commitment to RFD or anything. My question was just a concern on the specificity of your answers given the fact that they would be here and this would be an issue. And that was the only purpose of my question as we go forward. And, Mr. Chairman, I yield back.

Mr. BACHUS. Mr. Cicilline is recognized for 5 minutes or 5 minutes and 30 seconds.

Mr. CICILLINE. Thank you, Mr. Chairman. I thank the panelists for being here, and I apologize for being in and out. I have a Foreign Affairs Committee hearing at the same time, so I apologize to the members of the panel. And if you have answered this question, I am happy to go onto my second one.

Mr. COHEN AND MR. Marcus, I presume, are in the best position to answer this. But would you speak to what the impact is or the projected impact on jobs? I know it will impact different sectors of your workforce differently, but obviously in general we, I think, imagine that mergers result in efficiencies that result in job loss.

And if you could talk a little bit about the workforces of the two companies and what a merged company's impact might be on jobs.

Mr. COHEN. Okay. New question for the day, so happy to answer it. So I think you have to break the jobs down into two different categories here. The vast majority of cable industry jobs are local system jobs. There are local technicians or local management teams, local call centers, the local people who run the system. And in that area of jobs, we do not forecast any impact on jobs in this transaction at all for the same reasons that we continue to say that we do not compete in any market.

When we take over a Time Warner Cable system in New York or in North Carolina, we do not have any employees there who are running cable systems. We will need their employees, and we will need approximately the same level of employment to operate the systems as existed before.

In terms of corporate headquarters jobs, corporate headquarters type jobs, you know, we each have a legal department. We each have an investor relations department. I mean, those are jobs which in a transaction of this type you are likely to see some rationalization and some elimination of employment. But it is only at the headquarters level, which is a very small minority of the jobs in both of our companies.

Mr. CICILLINE. Thank you. I know it has been said many times during this hearing that Comcast does not compete with Time Warner in a single zip code. And one of the things that Mr. Grunes argues in his written testimony is that the lack of direct competition in local markets could also be used to justify Comcast's acquisition of other major cable companies like Cox and Charter. And so, I would like to ask you, Mr. Cohen, how would you respond to that argument that there would be little to prevent Comcast from acquiring other major cable providers based on the lack of direct competition? And what do you see as the effect that this merger would have on future mergers in the communications marketplace, and what would, for example, prevent a well-capitalized company from horizontally merging with any video or broadband provider that is not a direct competitor in a local market?

Mr. COHEN. So as a former antitrust lawyer, a recovering former antitrust lawyer, I will give the only answer I can to that, which is that every transaction has to be viewed on its own merits. We have to look at each transaction as it comes along, and I do not think it is sound antitrust or economic theory to say you should not approve this merger because the next merger might not be able to survive antitrust scrutiny.

So I am very focused on this particular transaction. I think this potential transaction has strong consumer and public interest benefits. I think it has minimal antitrust and competition policy risks. I do not think in making any of those arguments I am creating a precedent that we could acquire anything we wanted to acquire and there would be no problem under the antitrust laws. And I do not think that this transaction or the questions that you are asking are creating a precedent that any other transaction in the cable or broadband or telecom space would have to be approved if this transaction were approved.

So I think you have to visit each transaction as it comes, and if this transaction is approved, that will result in a market that looks in a particular way. And when the next transaction comes along, it will have to be judged against that market on its own individual merits.

Mr. CICILLINE. I do not know if there are any of the other panelists who wanted to respond to that.

Mr. GRUNES. I just do not see a limiting principle, and that is something that I wrote about. Given the arguments we have heard here today, if they do not compete with somebody, then their argument is they are free to buy that company. And given the other argument, which is we get advantages of scale, well, you get advantages of scale if you buy everybody else as well. So it troubles me.

My view is that DoJ is going to look harder at this merger because of that issue because 2 years from now Comcast could be sitting in this room again with a different series of arguments with a different merger in front of it.

Mr. HEMPHILL. Just one quick thought about it. I completely agree with the earlier expressed point that you have to look at each transaction on its own merits. Two quick points. You could imagine an alternative transaction in which the foreclosure concerns that were raised—this case is not only about whether there is direct competition—where the foreclosure concerns were stronger than the ones that seem to be present here. And second, in which the existing prophylactic protection of the earlier NBCU consent decree and the continuing applicability of the open Internet rules to Comcast and post-transaction to Time Warner Cable where those were not present. So I think those are important distinctions here that you might not see in every transaction that comes down the pike.

Mr. GRUNES. And I think——

Mr. BACHUS. As you all testify, kind of pull that mic up a little bit because sometimes you turn away from them.

Mr. GRUNES. I think what Mr. Hemphill said is if we could see such a transaction, I think this is that transaction.

Mr. CICILLINE. Thank you, Mr. Chairman. I yield back.

Mr. BACHUS. Thank you. Mr. Issa for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. Hopefully this late in the day there is some original work I can still bring to the Committee.

I think in 2009 when the approved buying of content, a major amount, huge amounts of content, by a major force in cable occurred, we already passed a certain lexicon of where we are today. So I have less concerns specifically about the merger than I do about this Committee's role now and in the future.

I also serve on Energy and Commerce even though I have been on a leave of absence for a number of years. And being on both Committees, Mr. Chairman, what I discover is we have got a bad set of questions, which is on one hand we regulate over at Energy and Commerce, and we are constantly talking about the competitive environment as though E&C should worry about competing, particularly through the FCC. And then over here we look at the Sherman Antitrust and say check the box, do they meet it. And then we find that the Justice Department is a hybrid of the two.

So let me just state my concerns, and then hopefully we will get some question that may not apply only to today. I think we could agree that if the merger was all about an organization, Time Warner and Comcast, where they were going to combine and all they were going to do is supply data to anybody who wanted to put their entity onto the pipe and sell it to me. And if I was a cable customer and all I bought was a pipe that gave me data, and that is all of this is. We are no longer dealing in analog. Everything is data.

So then we would only be saying as a public utility, are you a public utility because you have an exclusive or is there competition for data. We cannot have that debate because you have become too complex a company. You are a major buyer and reseller of content. You are a major owner and developer of content, and if your in-house product competes against products that you may choose to buy, you may choose to negotiate buying, and you may choose to put somewhere in your channel spectrum and your packages in a way that are adverse to the view of that content seller. Can we all agree on that? Have I mentioned anything that is controversial to any of you that are for or against?

So if that is the case, then this Committee will have little choice but to see that, from what I can tell, you have met the basic criteria. You are dropping your percentage down to 30. You are not a new content entity. There is probably not going to be any credible argument before Justice that somehow things are changing in any particular market. And if there is, you are prepared to shed a market here, a market there in order to meet that. Does anyone disagree that that is probably where we are?

[No response.]

Mr. ISSA. Do you believe that there is a specific event in this merger that clearly tips over based on precedent? Is that correct?

Mr. GRUNES. Yes, sir.

Mr. ISSA. What is that?

Mr. GRUNES. I think that we are at a point in the broadband market and where Comcast's power over innovative competitors, the same competitors——

Mr. ISSA. Name the competitor. Be quick. I do not have a lot of time. Name one.

Mr. GRUNES. Netflix, et cetera.

Mr. ISSA. You are afraid that the delivery of data for Netflix will be adversely affected by this.

Mr. GRUNES. I am afraid that Comcast as an incumbent has an incentive to stifle the next big thing, and the next big thing is Internet.

Mr. ISSA. Okay. Anyone have anything else? That pretty well—okay. Then I will direct my question particularly to Mr. Cohen. Mr. Marcus, you could weigh in. X1 is a delivery from the net cloud that you are rolling out and you are very proud of. You have rolled it out. Announced it pretty much today, right?

Mr. COHEN. I mean, it is a video delivery system, cloud based. It is not an Internet delivery system. It is for our video product, not our broadband product.

Mr. ISSA. But it is a pay per view. It is an on demand.

Mr. COHEN. It has on demand, pay per view, video.

Mr. ISSA. Okay. So not for antitrust purposes on this side, but over at E&C the FCC could say that that is a great product, but since Netflix could feed into the DVR and come through that pipe and be entitled to a no premium cost equal access to what you are delivering on your X1 platform, the case could be made that all video content large and small would be delivered exactly the same from this DVR/pay per view because whether I buy it and Netflix delivers it to the X1 or I record it off an equivalent off air and put it in the X1. When I ask for it, it would be delivered the same. Technologically, that is correct, right?

Mr. COHEN. Theoretically, the FCC could open up our networks, could open up our user interface. We would obviously have serious objections to that, but theoretically the answer to your question is yes.

Mr. ISSA. But the FCC has said you have to give equal access and you cannot charge a premium for a non-in-house product versus an in-house product. That is already a given, right?

Mr. COHEN. Well, the problem is X1 is delivering a Title 6 cable service. The FCC could say that if we put, let us say, an Amazon app on our X1 platform, that having once decided to do that, we have to open that up and allow any competitor to have its app on our X1 set top.

Mr. ISSA. Okay. I want to close up because I only have one, but one is a lot to get in 5 minutes. What I see here today and what I am convinced that this Committee in its jurisdiction needs to do is we really need, Mr. Chairman, to have a pretty broad discussion about existing antitrust laws, the tie-ins, versus how the FCC, which does not fall under our jurisdiction, is creating or not creating competition using things both in the, if you will, the true data side and the video, which really is still true data these days. That, in fact, we really need to look at antitrust laws as the FCC implementation is going on because I am convinced today, Mr. Grunes, I am convinced today that the merger candidates have gone through the check the boxes necessary.

What I am not convinced about, and I hope that this Committee will do, is that in this world of antitrust versus competition, that our reach into the guidelines and what the FCC can or must be required to do is something that between this Committee and primarily E&C, we need to have a robust discussion because pro-competition versus anti-competition is really a question that is linked inseparably to current antitrust laws, which talk about market power that distort. But they do not really talk about market access that promotes.

And so, as somebody who looks at the cloud and its potential, I see your new product, Mr. Cohen, as a cloud that would say clearly to the FCC that they could create an environment in which all content would be delivered equally because once you have a pay per view or a non-pay per view, but a cloud product that delivers to me what I want to one unit, you can deliver anything video to that one unit. And there is really no difference in the bandwidth asked for. There is only a question whether I am using the product I recorded online so to speak, and now I want delivered or an alternate product.

Mr. BACHUS. Thank you——

Mr. ISSA. So, Mr. Chairman, I think this hearing is giving us a reason to do legislative and hearing reforms that really tie in what the FCC is doing under the competition, what they are doing under net neutrality in this Committee. And I hope we will seize the opportunity to expand our reach into that process because when we are done, I do think that we are not going to accomplish anything significant because I think you can check the box today. But I believe we should do more to make sure that there is access for the consumer. And I thank the Chairman and yield back.

Mr. BACHUS. Thank you, and we are hearing some of those concerns. At this time, I actually will go Mr. Johnson. We are going to go through the first, and Mr. Marino, and then Mr. Gohmert. Yes, Mr. Cicilline has already testified—I mean, already questioned. Mr. Marino is recognized for 5 minutes.

Mr. MARINO. Thank you. Gentlemen, I am a former prosecutor. I have six questions. I have 5 minutes. I would like yes or no answers with a brief description, if you would, please. Mr. Grunes—am I pronouncing that correctly?

Mr. GRUNES. Grunes.

Mr. MARINO. Grunes, thank you. I apologize. You said the next best Netflix could be stifled. Is that what you said, correct?

Mr. GRUNES. Innovation and——

Mr. MARINO. Innovation can be stifled.

Mr. GRUNES. Can be stifled, correct.

Mr. MARINO. Okay. Is that not what DoJ and the courts are for?

Mr. GRUNES. It is exactly what DoJ and the courts are for.

Mr. MARINO. Okay. Mr. Cohen, I am from Pennsylvania, and Comcast has a very large presence in Pennsylvania and in my district, which is the 10th Congressional District of Pennsylvania, my hometown of Williamsport. What will be the impact if this merger is concluded on present jobs and the prospect of future jobs—with an "S"—expansion?

Mr. COHEN. So the answer is in Pennsylvania, there is no job risks in this transaction. As I have said before and I will just briefly say it again, most of the jobs in cable are local system jobs, so the local Comcast system in Williamsport, there are no jobs at risk there. There are no Time Warner Cable employees anywhere near Williamsport that we would use instead of the employees in Williamsport. And obviously our headquarters is in Philadelphia, so——

Mr. MARINO. How about expansion?

Mr. COHEN. I think, you know, I do not know. I mean, we are continuing to grow jobs in Pennsylvania today, so I think we are going to continue to expand jobs.

Mr. MARINO. I appreciate that.

Mr. COHEN. But it does not have anything to do with this transaction, to be fair.

Mr. MARINO. All right. Now, I have heard from some of my constituents, independently operated opinion programs, and some of my Republic colleagues, that this merger will further expand more of an imbalance in opinion reporting with an already left of center media. What say you, Mr. Cohen?

Mr. COHEN. So as a cable operator, if that question is directed to me as a cable operator.

Mr. MARINO. Yes.

Mr. COHEN. We strive to provide diverse perspectives and diverse viewpoints across our entire platform. I think cable as an industry has been a huge enabler of the explosion of diverse viewpoints, and I would expect us to continue to enable diverse viewpoints to be expressed across our cable systems.

Mr. MARINO. I think you have answered my next question, which would be, what is Comcast's philosophy on delivering that political view, but we will go on to the subsequent. Please describe how Comcast decides to carry new programs, particularly if you are considering—well, it does not matter—if you are considering a left or a right center opinion programming.

Mr. COHEN. And so, we decide whether to carry programs based on our view of customer demand, customer interest, based on bandwidth needs, bandwidth constraints, based on financial viability of the networks. We never would make a decision about cable carriage for a channel based upon ideological perspective or viewpoint of that channel.

Mr. MARINO. And in conclusion, am I going to lose my local news service in Williamsport, Pennsylvania?

Mr. COHEN. I am sorry. Say that again?

Mr. MARINO. Am I going to lose, because of this merger, my local news service?

Mr. COHEN. So the local broadcast news?

Mr. MARINO. Local broadcasters.

Mr. COHEN. No.

Mr. MARINO. All right. Thank you. I yield back my time.

Mr. BACHUS. Thank you. At this time I recognize the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Okay. Thank you, Mr. Chairman, and thank all of you for being here. I was part of a hearing some years back in California, a field hearing, before the NBC/Comcast merger. And there were questions raised, concerns about potential for hurting compatibility. But since then, more recently it was reported, of course, people took note that Al Gore was pushing the sale of Current TV, and Glenn Beck, TheBlaze, were trying to buy it.

And it was reported that Al-Jazeera wanted to get their Sharia law pushed into the United States, and they were willing to pay big bucks, regardless of whether they had oil and carbon all over the money. They were willing to pay big dollars, but they would not do the deal unless Comcast was willing to keep them in its list of networks provided. So it was reported Comcast agreed, so Al Gore got all that oil and carbon-based money, and then that kept Glenn Beck off the air of Comcast.

Then more recently, TheBlaze has been trying to purchase another network that was reported to owe $20 million to Comcast, but that the feeling by some within Comcast was so strong about keeping Glenn Beck off the air that some reportedly were willing to forego $20 million that TheBlaze offered to pay off this networks' debt owed to Comcast just to keep them off the air. Now, I have no idea who the network is. They will not say. They have some kind of deal about that. But I was given a blurb from an email that indicates, and this is an email from somebody at whatever network it is. It is somebody at TheBlaze that says, "I want the ability to argue for Comcast"—he is trying to get the deal accepted by Comcast—"that they will not have to put 'Glenn Beck on the air prior to the 2014 election.'"

That may sound hard-nosed, but inside of that organization—talking about Comcast—there are some people who will see it that way. So December 1 accomplished that, so that would get the deal after the November elections. And this blurb was provided. There is too big a risk in my view of getting a flat no from Comcast if they smell the possibility that you intend to use the full Blaze platform to influence the American voters this November. Sorry, that is how they feel about you. I do not, but they do, and they are the ones who have to approve it.

Now, we heard Mr. Jeffries, he is a smart guy. He brought up the issue of fiduciary duty. And I am wondering how strong the feeling within Comcast of their fiduciary duty to stockholders is for monetary gain as opposed to political achievements of keeping conservatives off the air. We have heard the discussion about rural not being part of the push by Comcast, and I get that. Why would Comcast want people that cling to God and their guns?

But what we are talking about here is a very serious issue. If we are at the point where there is so much power within Comcast that they can say we are not going to accept the $20 million that will help Comcast because we do not want Republicans having conservatives talking on the air between now and then. Mr. Cohen, do you have a comment?

Mr. COHEN. Should I do Al-Jazeera first, and then I will do TheBlaze?

Mr. GOHMERT. No, I do not think you need to comment on that. Let us talk about TheBlaze and your feeling personally.

Mr. COHEN. So I do not think I have a problem identifying the network I am using about this.

Mr. GOHMERT. Well, I have no idea who it is.

Mr. COHEN. It is interesting. That network happens to be RLTV, which comes up in the discussion on RFD as well. That is a network in which have an 8 percent ownership interest. We have no management rights. We have no ability to control the sale of that network. Your reading of the email——

Mr. GOHMERT. Well, the issue is do you allow the purchaser to continue to be on Comcast, because that can kill the deal with Al-Jazeera——

Mr. COHEN. The question is the content description under the RLTV contract with us, and that is a content description that does not include news coverage or political commentary. But let me be clear. You read an email presumably from someone at RLTV who is allegedly reflecting the position of someone at Comcast. I will represent to you and I will tell you right now. I am going to go back and I am going to confirm this. I will represent to you that there is no judgment being made about carriage of TheBlaze based upon political perspective, and certainly absolutely no judgment about whether that network should on our cable systems before or after the election.

Mr. GOHMERT. Mr. Cohen, you are a smart man and apparently a smart attorney. You understand the consequences of not speaking truthfully before Congress.

Mr. COHEN. I do.

Mr. GOHMERT. Thank you. I see my time has expired, and I look forward to you having that conversation at Comcast.

Mr. COHEN. And we will report back to you.

Mr. GOHMERT. Thank you. I look forward to that. Thank you.

Mr. BACHUS. We will thank both of you. [Laughter.]

At this time, Mr. Johnson is recognized for 5 minutes. I understand you are going to yield part of your time to Ms. Jackson Lee.

Mr. JOHNSON. Yes, I am. I am going to take the first minute to ask a question, and then I will yield the balance to my colleague from Texas, Ms. Sheila Jackson Lee.

The latest impact of this merger would be the issue of broadband availability and the ability of every citizen to afford access to the Internet. Comcast has launched the Internet Essentials Program, which offers low income families affordable broadband and digital literacy training. That program is capped in terms of the number of years that a family can be a part of it, and then after that the market rate then applies. Is there anything that Comcast plans on doing for people who are still poor and still unable to afford the service after the qualifying period ends? And if you will answer that question for me, and at which time I will yield the balance of my time to Ms. Lee.

Mr. COHEN. Okay. In deference to Congresswoman Lee, I will give a very short answer to a question about which I am incredibly passionate. We are totally, irrevocably committed to Internet Essentials. For those on the Committee who are not aware, in 30 months we have signed up 300,000 families, 1.2 million low income Americans, to the Internet at home, most of them for the very first time in their lives. And we have trained 1.6 million low income Americans in basic digital literacy in-person training under that program.

Congressman, if I can, one correction. For everyone who is signed up for that program to date, they will remain eligible for the program and will continue to get $9.95 a month Internet service for as long as they have a child living in their household eligible to participate in the National School Lunch Program. It does not have to be the same child they have today. So if it is a young mother and she has got an 8-year-old today and goes on to have three more children, 20 years from now she will still be eligible for that pricing and that program.

And in terms of our plans for the program, our plans are to expand it to the entire Time Warner Cable footprint to bring the benefits of Internet Essentials to New York, to Los Angeles, to Dallas-Forth Worth, to Charlotte, to every community where Time Warner Cable does business today. And we are very excited about that, very passionate about it, very committed to it. And I would argue that it is another place where big is really good.

Mr. JOHNSON. All right.

Mr. COHEN. Having that expanded footprint will enable us to bring the benefits of that program to more low income Americans.

Mr. JOHNSON. Thank you. I yield to Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Johnson, thank you so very much for your courtesy. As a Member of the full Committee, I appreciate Mr. Bachus and Mr. Johnson for their courtesies, and acknowledge the

Ranking Member, Mr. Conyers. We worked on these issues, Mr. Conyers. And thank you for appointing me in a previous Congress to the task force that dealt with antitrust issues.

We may have to look at a legislative construct that responds to all of the comments being made today, and I thank all the witnesses that are here. And, David, thank you so very much. I am going to join Mr. Gohmert to ask that we have an opportunity to meet one-on-one on a litany of issues that I have that I will not be able to ask here. So I look forward to getting us scheduled quickly.

Innovation, greater customer choice—I am sort of following a line of questioning that we have heard and investment that will make a stronger infrastructure that I think that you and Time Warner are attempting to do. And we value that, just as we value the First Amendment and your privilege in the First Amendment. But all this ties to consumers. And so, I want to ask unanimous consent to put into the record a letter from the NAACP and NABOB and ask the question about stations like TV One that are not put on basic, but they are put on premium.

Does that not raise the cost? I am concerned about the consumer. And two, what would be your view of spinning off, allowing a station like that, a network like that, to spin off before this gigantic merger, and buy themselves out so they can grow?

Mr. COHEN. So thank you very much, Congresswoman. I would be happy to sit down with you and look forward to that. I answered part of these questions before——

Ms. JACKSON LEE. May I just pause for a moment? I know there is an ongoing matter on this issue, but I just want to put on the record——

Mr. COHEN. That is okay.

Ms. JACKSON LEE. I just want to put on the record my concern about the lack of service regarding the Astros and the Rockets. I am not asking for an answer. If you can answer the other question.

Mr. COHEN. I can answer that, too. So as a company, we are committed to providing diverse voices and diverse programming that represents the diversity of our customer base. We were very proud to have helped create TV One after the AT&T transaction. We remain a minority investor in it, as the congresswoman knows. TV One is actually carried on our most popular, lowest-cost digital tier to about 13 and a half million of our customers.

Ms. JACKSON LEE. Not on basic.

Mr. COHEN. Basic is sort of an old construct. This would be the equivalent of digital basic if you will. And in addition, we carry 10 other African-American owned or African-American directed channels. Every one of them is on this digital basic tier of carriage. So we agree with the sentiment you express, and we agree with the need to be able to deliver diverse programming on an affordable basis to the populations who have the most interest in it.

Ms. JACKSON LEE. You would be open to them to spinning off?

Mr. COHEN. That has been our commitment. In terms of TV One and their buy-out of us, I am not 100 percent sure they want to do that, but we have made quite clear that if they would like to buy us out, we will let them buy us out. We have reciprocal rights, as I think you know, and there has been a concern that, gee whiz, if we trigger our rights to buy you out, you have so much more money. You could just turn around and buy us out. We are prepared to work with Alfred Liggins and his mother to facilitate a buy out of our interest if that is what they are interested in pursuing.

Houston Regional SportsNet, all I can say is it is not the best corporate governance structure and deal that Comcast has put together in its corporate history. A lot of dysfunction in that. The network is in bankruptcy. We are working to try and achieve a resolution that works for the Astros and the Rockets as well as us that may or may not involve us staying involved in the network.

But consistent with our focus on consumers, you know, we do not want to stand in the way of consumers getting access to the Astros and the Rockets. We have tried very hard to make numerous creative suggestions to resolve those problem, and we are now doing that under the supervision of a bankruptcy judge. And I hope we will get to a satisfactory place for your constituents and all Rockets and Astros fans.

Ms. JACKSON LEE. If we can pursue this—I do not think you answered—thank you—the question on consumer price and your efforts to contain the price that the consumer has with this merger.

Mr. COHEN. Okay. So again, we have a focus on consumer pricing. We have talked previously in the hearing that the main driver of consumer pricing are programming costs. They have gone up about 120 percent over the last 10 years. Cable pricing has gone up at less than half of that rate, so we are doing a marginally acceptable job of being able to control passing out all those pricing increases to our consumers. We have tried to construct packages that are set at a lower price. Obviously they have fewer channels. Pricing and customer service are two issues that we think are vital to the future of our company and industry, and we are focused as much as we can on both of those issues.

Mr. BACHUS. Thank you.

Ms. JACKSON LEE. Let me thank the Chair and Mr. Johnson in his absence for their courtesy. Mr. Cohen, thank you so very much.

Mr. COHEN. Thank you.

Ms. JACKSON LEE. I look forward to us having the further conversation.

Mr. COHEN. Thank you.

Mr. BACHUS. Well, and let me say this. There is some expectation that the witnesses will tell the truth, and, you know, I noticed that you said you are happy and look forward to sitting down with Congresswoman Sheila Jackson Lee. So I am not sure——

Mr. COHEN. I really am. [Laughter.]

We have been friends for a long time.

Mr. BACHUS. I will take your word for it.

Mr. COHEN. And I do not know Mr. Gohmert that well, but I am looking forward to sitting down with him as well.

Mr. BACHUS. All right. Well——

Mr. COHEN. I like this.

Ms. JACKSON LEE. I make people happy. You see my smiling face? [Laughter.]

Mr. BACHUS. Yes. Well, you are a better man than I am, Mr. Cohen.

Mr. Farenthold?

Mr. FARENTHOLD. The gentlelady from Texas and I sit together often on the airplane.

Ms. JACKSON LEE. And we are friends. And, Mr. Bachus, we smile together, do we not? You have to clean that up.

Mr. BACHUS. No, I am kidding you.

Mr. FARENTHOLD. But I do join with the gentlelady from Houston in saying we are looking forward to getting our sports situation resolved. It bleeds down into Corpus Christie as well.

You know, I am a customer of both Time Warner and of Comcast. Corpus Christie is Time Warner, and my apartment here in D.C. is Comcast. I am actually looking forward to the improved Internet performance in Corpus Christie, and these dropped packets and network resets I keep getting every few months. So that is one thing I am really looking forward to in this merger. And I do want to align myself with Mr. Gohmert. If it comes out you guys are making programming decisions politically based, I think there is going to be a problem, and I certainly hope that is not the case.

I did want to talk about a couple of issues that were brought up. Mr. Schaeffer, you mentioned that the cost of adding additional ports, the hardware was trivial. But there is more to it than just hardware, is there not? I mean, you have actually got to get the pipes.

Mr. SCHAEFFER. So Comcast has sold its customer service that if those customers actually use the service at the rates that Comcast has sold it, their network would fail to operate. So in order to mask that problem, they have limited the boundary capacity between their network and the public Internet to help reduce consumers' use of broadband.

Mr. FARENTHOLD. Right. So this actually, though, makes their deal with Netflix sound good. They have immediately opened up 30 percent more bandwidth at your peering points, right? Because Netflix is not coming through your peering points.

Mr. SCHAEFFER. But there is so much additional traffic beyond Netflix that wishes to go to Comcast's paying customers that those ports still remain constrained.

Mr. FARENTHOLD. Mr. Cohen, I mean, that kind of makes you guys look like bad guys. You know, I am geek enough that I will run speed tests, and if I go to the Time Warner Roadrunner speed test I do much better than if I go somewhere else. Just the same happens if I stay on the Comcast network, I do better. In order to offer that high speed Internet, you have got to get your peering in order. Is that——

Mr. COHEN. I mean, I want to say this again. I mean, our peering is in order. We are good citizens in the peering network and in the peering world. We work very hard to work with all peering partners, whether it is settlement free peering or paid transit. As Professor Hemphill said, this is not headline news. This is——

Mr. FARENTHOLD. You all actually do better than Time Warner. I am going to be honest about that. Apologies to the folks down in Corpus Christie.

Mr. COHEN. I mean, I really think we are good citizens and we have good arrangements. And the issues that we have had have been truly isolated, and we have worked very hard to be able to resolve those without ever de-peering a partner of ours in the interconnection——

Mr. FARENTHOLD. I have got a couple of other questions, and I am running out of time. But you have your boxes, all your cable folks. I think you are almost entirely digital now where you have very few subscribers who do not have a cable box. Is that correct?

Mr. COHEN. Well, we are 100 percent digital.

Mr. FARENTHOLD. Right.

Mr. COHEN. So, yes, you need some type of a cable box——

Mr. FARENTHOLD. Cable card or box.

Mr. COHEN [continuing]. Or a converter box for every television.

Mr. FARENTHOLD. Do you have the ability then to pull those boxes to see how many people are watching what channel for what time?

Mr. COHEN. So with the advent of big data, this is beginning to be something that we are looking at and beginning to focus on. We probably do have the technological ability to do that. But as you may know, cable is subject to intense and restrictive privacy protections and privacy restrictions that go far beyond what applies on the Internet, for example, with what Google and Yahoo can do with the data that they obtain.

Mr. FARENTHOLD. But we can eventually get the data. You would know, so when Mr. Gottsch says he has got more viewers than some of your other people, you should have picked somebody else in Denver. I mean, the technology is to the point you just do not have it all implemented.

Mr. COHEN. That is correct.

Mr. FARENTHOLD. All right. And then, I also wanted to go back to—actually I will stick with you for a second, Mr. Cohen. Do you see the increase in video traffic on the network going up? Do you see a shift from this model of where you are watching TV in real time to where you are pulling something from Netflix, and where the entertainment program becomes more on demand? And does this help or hurt your bandwidth issues?

Mr. COHEN. All right. So, so far what we are seeing, we have to break this down in a slightly different way I think. We are seeing tremendously increased utilization of online video services, but we are not seeing a degradation in the amount of time that people watch television and watch video on demand, which is a part of our Title 6 cable service. So it has been——

Mr. FARENTHOLD. And I guess——

Mr. COHEN [continuing]. More a growth of the pie than a difference in a share of the pie.

Mr. FARENTHOLD. And I guess my point is, in making program decisions and operating in the public interest, I know that is kind of an archaic term in FCC lingo. But sports programming, news programming, stuff that needs to be live, it seems like there ought to be more availability in bandwidth on your cable dedicated to that sort of programming as opposed to stuff that you could get through alternative methods on demand that is not as time sensitive.

We could go into that, but I am out of time. I did want to suggest that that be something that would be considered, and it might be something that the FCC——

Mr. COHEN. The very quick thing I will observe—it is the second time you made reference to this—is please do not underestimate the amount of sports programming in particular that is now available online. So Major League baseball has a package or online. You can watch any Major League baseball game. NBA, the same thing. NCAA playoffs was all available online as well as on television. So it is just something that goes into your thinking.

Mr. FARENTHOLD. I just love my Longhorn Network. I love my Longhorn Network. Thank you very much.

Mr. COHEN. Thank you.

Mr. BACHUS. Thank you. There was some reference to speed, and of course that depends on the distance of that last mile. So, you know, sometimes you are comparing two different other type of wires. So what may be true in one case is not true in another. At this time, I recognize the Ranking Member, Mr. Conyers.

Mr. CONYERS. Thank you very much, Chairman. I wanted to remind Mr. Cohen that a few years back, I asked you at our hearings whether your merger with NBCUniversal would not result in the loss of jobs. Has that been proven true?

Mr. COHEN. I was actually hoping you would ask me that question because we had a long discussion about it.

Mr. CONYERS. We did.

Mr. COHEN. And I told you that it was a vertical transaction, and that there was no job loss to be expected. And I am very proud to report to you that if you look at the combined Comcast and NBCUniversal after 3 years, we are somewhere between 3,000 and 5,000 more jobs than we had at the time we did the transaction.

Mr. CONYERS. Excellent response, and I am happy that we had that discussion back then. It is still an important question. Attorney Grunes, in your view, how effective have the behavioral remedies imposed in the Comcast/NBCUniversal transaction been? And should similar remedies, in your view, apply in this case?

Mr. GRUNES. Thank you for the question. Generally speaking, behavioral remedies are like regulation, and just like regulation, behavioral remedies often do not work. Professor John Kwoka has done a study, a retrospective. It is the most comprehensive one. It looks at price increases. It looks at all the factors that go into the success of behavioral remedies.

There are problems with them. The problems can include evasion by the parties who are being regulated. I am not going to get into an argument with Comcast about whether it has or has not evaded certain of those remedies, but that is a problem. There is a problem with unforeseen circumstances. We have heard a little bit about that today in the sense of the remedies appear to cover the FCC's open Internet order. But Comcast went outside of that allegedly and made issues out there.

So my view is behavioral remedies generally are to be avoided. I am quite sure DoJ is going to look back since it has only been 3 years since the NBCU transaction and the behavioral conditions were put in. They will look back. They will see what worked and what did not work. And my guess is that at the end of the day, they are going to agree with me that the conditions they put in place were not adequate.

Mr. CONYERS. And they are difficult to enforce. Sometimes they are so broad in scope that it does not take much to circumvent them either.

Mr. GRUNES. They are difficult to draft. What is interesting to me is even in the recent airline merger, DoJ itself explained why behavioral remedies are not good when they explained why they would not accept some. It puts the government too much into a business. It puts the business at a different position than competitors. There are all those problems, including the drafting problem you have referred to.

Mr. CONYERS. Yes. Now, one of the witnesses—I think it was Professor Hemphill—said that the combined Comcast is not likely to foreclose online video distributors because online video is an increasingly valuable part of the broadband Internet business. What kind of a response do you have for that inquiry?

Mr. GRUNES. Well, Comcast is first and foremost a video company, and it is facing new competition from outside of its traditional business. According to the Department of Justice in the NBCUniversal complaint, Comcast took action against that new form of competition. And in my view, this merger only makes that more likely and likely to be worse.

Mr. CONYERS. Thank you. My last question to Mr. Schaeffer is, the suggestion that we have heard that Comcast Internet interconnection agreement with Netflix is a sign America is working well. Is that necessarily the case?

Mr. SCHAEFFER. I would argue it is a market that was distorted due to monopoly power. Netflix entered that agreement because it was the only way it could provide connectivity and content to its customers. Comcast controls the only pipe to those customers, and Netflix had to pay the toll to get to those customers, ultimately raising its prices.

Mr. CONYERS. Thank you. Mr. Chairman, I appreciate the time.

Mr. BACHUS. Mr. Conyers, as always, I appreciate your thoughtful questions. At this time, we recognize the gentleman from Missouri, Mr. Smith, for 5 minutes.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman. Mr. Cohen, why does Comcast charge some parties for interconnection agreements and offer others transit without compensation?

Mr. COHEN. So the structure of that interconnection market, which, by the way, I will answer the question, but the same answer would apply to everybody else in the ecosystem. So the structure of that market is that when traffic is in rough balance between an ISP like Comcast and a transit provider, then there is what is called settlement free peering. That is, if we are sending roughly the same amount of traffic to a Level Three as Level Three is sending to us, there is settlement free peering. When the traffic goes out of balance, the industry convention, and this is an international convention that applies among dozens and dozens—hundreds of transit providers and ISPs around the world, then there is cash compensation for the extra traffic.

So just by way of example, Cogent and Comcast had a settlement free peering arrangement for many, many years. It was only when their traffic went out of balance—and it did not go out of balance by 5 percent or 10 percent. We were in roughly one-on-one balance in terms of the traffic we were sending to each other. It went out of balance by 500 percent. Cogent started sending us five times as much traffic as we were sending to them. And that triggered the need for a discussion of the negotiation about moving to a form of a paid peering relationship.

Mr. SMITH OF MISSOURI. So it is only when it is out of balance.

Mr. COHEN. Correct.

Mr. SMITH OF MISSOURI. Okay. Mr. Schaeffer, some of your relationships with interconnection counterparties involve payment. Others do not. Is there a clear understanding regarding the degree of traffic flow that needs to change before a relationship switches from a free transfer to a paid transfer?

Mr. SCHAEFFER. So, in fact, Cogent does not pay any party globally for connectivity. We have two forms of connectivity. We have approximately 40 settlement free peers in which no monies change hands. And secondly, we have approximately 5,100 networks that buy full Internet transit from us. They are our customers. We do not sell a paid peering product. We do not buy a paid peering product.

I would also like to respond to a comment that Mr. Cohen made. No traffic went to Mr. Cohen's network that was not requested by his customers. Secondly, his network is asymmetric in its architecture. He sells a product that has greater download speed than upload speed. So, therefore, it is virtually impossible for any network to be in balance.

It was an interesting statement in Mr. Cohen's preparation that he claims that the overwhelming majority of traffic destined to Comcast customers goes through settlement free peering, but yet he outlines this requirement for ratios. It is impossible for our network or any network to meet that test.

Mr. SMITH OF MISSOURI. Okay, thank you. Mr. Cohen, do you want to respond to that comment?

Mr. COHEN. Yes. It is inaccurate. Comcast has settlement free peering arrangements with 40 companies, which means that for those 40 companies, the traffic roughly is in balance. And again, our traffic was roughly in balance with Cogent at one point in our business relationship.

Mr. SMITH OF MISSOURI. Okay. Mr. Polka, can you explain how the National Cable Television Cooperative operates to purchase programming and how it may be impacted by the Comcast merger?

Mr. POLKA. Happy to. Thank you, sir. The National Cable Television Cooperative is a partner organization for our member companies, our 800 to 900 member companies in smaller markets in rural areas. And they operate by working together collectively for our members to negotiate programming agreements. Within that membership include companies that are competitive to both Comcast and Time Warner, such as RCN, Grande, Wave Broadband, Wide Open West, and others.

What the coop does is it works to collectively negotiate a master programming deal for our members because otherwise if you have companies of 1,500 median size, it is very, very difficult as one small company to go out and negotiate major programming agreements with Viacom, Disney, Comcast, NBCUniversal, Fox, and otherwise. So the NCTC provides that benefit to smaller companies in the acquisition of programming, and that is basically the operation of the NCTC.

Mr. SMITH OF MISSOURI. And how it will be impacted from the merger?

Mr. POLKA. How it will be impacted is as a result of the size of Comcast/Time Warner after the merger. When we talk about combining distribution assets of both Comcast Cable and Time Warner Cable, they will be a much larger cable company. And as a result they in their own negotiations with those same programming vendors that I mentioned will have the ability and the leverage in the marketplace to lower their wholesale costs of programming.

That will impact the cost of programming to NCTC and our 900 smaller member companies that purchase programming through NCTC in two ways. Number one, as Comcast/Time Warner is able to lower its wholesale price, the disparity between what Comcast/Time Warner pays and what our members pay will be greater. There is also the possibility and the likelihood that as a result of this transaction, other programming providers may be asking for higher prices to offset lower prices paid by Comcast/Time Warner.

Mr. SMITH OF MISSOURI. Thank you, sir. I see my time has expired. Thank you, Mr. Chairman.

Mr. BACHUS. Thank you. Thank you, Mr. Smith. At this time, Mr. Jeffries is recognized for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chair, and thank you for providing this opportunity for a second round of questioning. And thank you certainly to the witnesses for your patience, your thoughtful testimony, and your indulgence.

I wanted to just explore some thoughts connected to the testimony provided by Mr. Hemphill. I believe that in your testimony you stated that the combined Comcast is not such a must-have that it gains a competitive advantage with programmers. Is that an accurate representation of what you testified to?

Mr. HEMPHILL. It is that.

VOICE. Turn your microphone on, please.

Mr. HEMPHILL. Nearly so. It is that the combined entity will not be such a must-have that it would generate the kind of bargaining power that would break a programmer's scale, and thereby give rise to concerns about losses on that side.

Mr. JEFFRIES. So Comcast now has, I believe, 22 million subscribers, correct? And I gather——

Mr. COHEN. That is correct.

Mr. JEFFRIES. Thank you, Mr. Cohen. And Time Warner has about 11 million subscribers, is that correct?

Mr. MARCUS. Correct.

Mr. JEFFRIES. And then if this transaction were to be approved, I believe because of the sell-off, there would be approximately 30 million subscribers with the combined entity?

Mr. COHEN. Actually it will be 29 million given the divestiture announcement that we made last week.

Mr. JEFFRIES. Okay, thank you. So I think one of the things that I am trying to work through and perhaps other Members of the Committee are trying to figure out is, what is the appropriate legal landscape through which we can interpret what an appropriate or an inappropriate market concentration may be. And as Mr. Cohen appropriately pointed out, you have got two D.C. Circuit Court opinions indicating that the 30 percent number was perhaps an arbitrary number, and that there was no reason for us to believe that the public interest may be adversely impacted. And then as Mr. Conyers correctly pointed out, there was a Supreme Court decision several decades ago, but it is still good law as far as we have been able to determine, albeit in the banking context, *United States v. Philadelphia National Bank*, that stated "A merger resulting in 30 percent of a market trending toward concentration in which four firms controlled 70 percent of the sale was presumptively illegal under Section 7 of the Clayton Act."

Could you provide us with some clarity as to where you think things stand, and perhaps Mr. Cohen can weigh in as well as Mr. Polka.

Mr. COHEN. Why do you not go first, Professor?

Mr. HEMPHILL. So I would be happy to react to that. I think Philadelphia National Bank, the old Supreme Court case, is a useful starting point. This is an opinion written by Dick Posner, my old boss, when he was a law clerk for Justice Brennan. In the 50 years since, we have learned a lot about how to think about market power both on the sell side and also as relevant here on the buying side.

And so, one thing you need to recognize, I believe, is that the buying side is really different from the selling side. It is not a game where we are worried about changing the price and thereby changing the quantity. We are instead thinking about bargaining power, and the FCC spent a lot of time thinking about bargaining power in the context of programming markets. And although there is no hard and fast rule that we can hold onto and say with economic certainty this is the right answer, we do have from the FCC their best shot, which, one, the D.C. Circuit has said not merely is arbitrary, but was too aggressive, was too conservative, and which marks the time six or 7 years ago when the market was somewhat different. I think it is clear that the competition has increased.

Mr. JEFFRIES. Thank you. Let me just let Mr. Polka react quickly to that.

Mr. HEMPHILL. Sure.

Mr. POLKA. I would say this as it relates to the 30 percent. I, like Mr. Cohen, am a recovering lawyer, so I cannot speak in detail about——

Mr. JEFFRIES. As are many of us.

Mr. POLKA. Exactly. Proud to be one. Cannot speak directly to the antitrust implications specifically, but as I said in my testimony and in my oral comments, this merger is about three different parts. It is not just a horizontal merger. We have programming and programming assets being combined. We have Comcast programming combining with new distributions. And we have the impact of what happens when Comcast distribution is combined with Time Warner cable distribution.

And as I was mentioning to Mr. Smith, there is an impact on the 30 percent approaching that where a company that approaches that size has enough leverage in the marketplace to be able to affect its wholesale programming costs that ultimately impact other direct competitors like RCN, Grande, and others.

Mr. JEFFRIES. Thank you. Mr. Cohen?

Mr. COHEN. So I am going to do quick things in respect of the time, which, first of all, I think Professor Hemphill made the basic point. I want to return to something that Mr. Grunes said earlier, which is it depends on the market. And the advantage we have with these two D.C. Circuit cases is that they dealt with this precise market. That is what they were looking at.

And they were also dealing not with the horizontal issues, but with the vertical issues that Mr. Polka referred to. And in reaction to their decision, although I fully agree with what Professor Hemphill said, I want to quote what Professor Christopher Yoo from the University of Pennsylvania has observed about those decisions, which is that "They represent a potentially insuperable obstacle to claims that allowing the transaction to proceed would adversely affect this market." "Potentially insuperable obstacle."

So I am very comfortable, and we are going to be under 30 percent by the way, not 30 percent, not over 30 percent. I think the express concerns of the sky is falling and the world is going to end as we know it are simply not supportable under the law.

The second things I just want to say quickly because I know folks were in and out. Mr. Polka continues to say that we are going to be able to extract lower programming costs. I wish we would. By the way, that would result in lower prices for consumers, which a lot of people are interested in. But that if we do that, competitors of ours are going to have to pay higher programming prices.

I covered this earlier. Professor Hemphill covered this earlier. It is an attractive comment. It just does not have any support in antitrust law or antitrust economics. That is not the way the markets work.

Mr. JEFFRIES. Thank you. I yield back.

Mr. BACHUS. Thank you. We are going to wrap this hearing up with Mr. Collins and me because we want to try to get out of here at 1:30. It may be two or 3 minutes past that. Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman. One of the best things about these hearings and especially ones like this, and some of the best results of the some of these hearings is actually having experts or ones who put themselves out as experts in certain areas. Being able to share not only with our questions that we have, but I like to put you basically, and I have to run for office and I have to do debates, so guess what? We are going to debate.

Mr. GRUNES AND MR. Hemphill, you are not off the hook. Mr. Grunes, would you please succinctly state or list specifically antitrust theory under why this merger may violate antitrust law? Mr. Hemphill, I would highly recommend you write these down because I am going to ask you to rebut them. [Laughter.]

Input foreclosure, customer foreclosure, and bargaining theory.

Mr. COLLINS. That is a little more succinct than I like, but we will go on from there. [Laughter.]

So I may come back to you if he needs that.

Mr. HEMPHILL. Right. So the more succinct from him, the harder for me I think.

Mr. COLLINS. You are learning quickly. [Laughter.]

Mr. HEMPHILL. With respect to the buyer power theory—that was one of your three, right? These are the three from the testimony, right?

Mr. COLLINS. Right.

Mr. HEMPHILL. Right. With respect to buyer power, I think that is wrong for the reasons we talked about before. The testimony itself—this is page 13—relies as its essential example on a quantity increase premised on a decrease in price. Unless you are in a market where you have a strategy of decreasing quantity in order to drop the price, this part does not hold. You know, there still might be a bargaining theory, but that is not an antitrust theory necessarily. You are going to need to do some more work to get there, and I do not hear that in the testimony itself, but we have already talked about that, I think, to some degree.

With respect to input foreclosure, you know, ultimately this is a comment within the testimony I think on regional sports networks in the main. I have not made a close focus of the, I believe, four different narrow localities in which that particular form of input foreclosure takes place. I think there are some general economic reasons for skepticism. But in any event, I think there as a comment before about something not being a headline issue. I think that is not a headline issue.

Finally, and I think most importantly, when we think about the antitrust issues, since there is not head-to-head competition, there is still a question of foreclosure. And we have spent a lot of time trying to think about the incentives and consequences of foreclosure incentives. The fact that the broadband is a profitable and increasing business reduces, though not to zero, it reduces the incentive to engage in foreclosure. And then you need to think through the very large number of different stories that an economic theorist can devise to tell a foreclosure story. You know, I get at a few of these in my testimony. Other folks have done exhaustive looks at that.

I think the most important one that we have been talking about has been with respect to Comcast/Netflix, roughly speaking. The fact that they did a deal both illustrates the workings of the market and tends to undermine the worry that this would be an instrument of foreclosure.

Mr. COLLINS. Thank you. Mr. Grunes, any rebuttal? Mr. Grunes?

Mr. GRUNES. I will submit something, if I may.

Mr. COLLINS. Well, I am going to ask the question. Submit in oral at this point, if you would. And I am not trying—— [Laughter.]

And I am not trying to be hard, but it is just very difficult because Members may or may not be able to see written response. They may be watching in their office right now, so even if it is brief. And if not, if you choose not to, I will not——

Mr. GRUNES. Okay. So just briefly to go back to the Netflix example, the argument there is, and Comcast has made the argument, the market is working because Netflix paid for interconnection. Netflix's response was we were getting so degraded on Comcast, and they have a nice visual on what was happening to the quality of their service, it was going down lower than HD, lower than

DVD, down to the VHS level, that they felt they had to do something about that.

And as a Netflix subscriber, I can tell you I would drop Netflix in a case like that before I would switch my Internet provider, and Netflix obviously understands that, okay? The fact that they paid and that their CEO then said Comcast is extracting a toll or a tax on us, we can afford it, others behind us cannot, I think tells a legitimate antitrust theory.

Professor Hemphill and I may disagree on this, but I think it is very much a similar theory to the Microsoft theory that the DoJ litigated. The difference here, because this is a merger, is that under Section 7 we are under an incipiency standard. You do not wait until they are monopolist. If this merger looks like it may be anti-competitive, you nip it in the bud.

Mr. COLLINS. Well, I do appreciate both of you. Thank you for your answers. I think it provides some insight that you do not normally get on direct questions, and I do appreciate it. Mr. Chairman, I yield back.

Mr. BACHUS. Thank you. Mr. Grunes, you are a Netflix subscriber. Do you watch House of Cards? [Laughter.]

Mr. COLLINS. Mr. Chairman, are you going to imply something there? Do not go to the metro. [Laughter.]

Some of the audience——

Mr. GRUNES. Under advice of counsel, I will not answer the question. [Laughter.]

Mr. BACHUS. We are waiting on Frank Underwood to get here, but I do not know. Two questions, and this will be the last two questions of the hearing. And I will ask Mr. Marcus or Mr. Cohen.

Mr. MARCUS. I was starting to feel neglected

Mr. BACHUS. There have been allegations that Comcast may exclude competitors from advertising interconnects that it operates. And after the merger, some commentators assert that Comcast will control approximately 82 percent of the top 50 urban advertising areas in the country. Can you provide assurances that Comcast will not exclude competitors or advertising firms from the advertising interconnects that Comcast operates? And I think Mr. Issa also expressed some concern about that.

Mr. MARCUS. Clearly your question.

Mr. COHEN. Thank you. So, Mr. Chairman, let me answer the question.

Mr. BACHUS. Well, that is just fine and probably better because Mr. Marcus——

Mr. MARCUS. I would be happy to give the assurance, but I am——

Mr. COHEN. It sort of goes to our conduct.

Mr. BACHUS. Yes.

Mr. COHEN. It also gives me an opportunity I think to correct the record on some of the things that have been said with respect to advertising. So I do not think it is relevant what the percentage of control of interconnects are that Comcast would have or of NCC, which is our national advertising cooperative. You usually have to start with the intensely competitive nature of the advertising market, so that advertising market is a $72 billion market, of which cable in the aggregate has about $5 billion. So we are about 7 percent of the advertising market.

So even assuming that we are going to control 82 percent of the cable advertising market, which I do not think is accurate by the way, but we will be controlling 82 percent of 7 percent of the market. And I do not think that present serious or cognizable antitrust risks or harms. Advertisers have massive other opportunities to be able to reach their eyeballs what they need. We are in the business of selling advertising. We are not in the business of excluding businesses who want to buy advertising from us.

And it also gives me an opportunity just to add two sentences on something in my oral testimony because the original question around this was a small business question, which is one of the huge pro-competitive impacts of this transaction is to make our combined company a much more effective business competitor in small- and medium-sized business sector. So we are going to bring big benefits to those businesses, and we are not going to take away any advertising opportunities that they have today.

Mr. BACHUS. So your short answer is that you are not going to exclude competitors or advertising——

Mr. COHEN. Correct.

Mr. BACHUS [continuing]. From the interconnects.

Mr. COHEN. Correct.

Mr. BACHUS. Okay. All right. You were considering whether to add an independent programmer to Comcast Network. Does Comcast consider whether the independent programming content would compete with Comcast-owned content? I know there was some mention that it was Rural Network, that you own 8 percent of them. You said that fact does not weigh in.

But how can you ensure that that is not a consideration? I mean, it just seems like it has to be in your pecuniary interests as something you have an ownership in.

Mr. COHEN. So I was going to say before you added that last comment, in view of the lateness of the hour, I am finally going to be able to give a succinct answer and say we do not, which is the answer to the initial question. We do not consider whether a new programmer is competitive with an existing piece of NBCUniversal programming. The way that is enforced is through the program carriage rules of the Federal Communications Commission, which legally prohibit us from discriminating against unaffiliated content because of affiliated content that we have.

And in response to your last question, I mean, how is it possible to separate that, the reason we can separate it is because you cannot assume that any particular subject matter that a channel leads into is only a matter of further dividing the pie. So let us take news as an example. If you have 100 people who watch news today, and we carry 10 news channels, and one of them is owned by us, and it is getting, let us say, 10 viewers of those 100, if we were to add another news channel, it does not mean that only 100 people are still going to be watching news. Our goal is when we add channels that more people want to watch. And so now, maybe we have 110 people watching news, and we are not losing any viewers from the news channel that we own or from any other news channel that we have on the network.

So we are trying to make our programming more attractive, more compelling, get more customers. It is not a zero sum game that if we put this network on that is sort of in the same genre as the network we have, we are going to lose customers.

Mr. BACHUS. Thank you. Would any of you gentlemen, Mr. Schaeffer, and Mr. Grunes, or Doctor, would you all like to respond? Any counter points on that?

[No response.]

Mr. BACHUS. Okay. All right. That is a good place to stop. Mr. Gottsch?

Mr. GOTTSCH. I would like to add one thing. Congressman Smith was asking about the ratings, and in the extended statement that we made, we have the ratings for all 288 Comcast channels as part of that record for the May period.

Mr. BACHUS. And Mr. Cohen did mention that some of those decisions are reconsidered, I do not know.

Mr. GOTTSCH. We hope so. I mean, I came to Washington, D.C. here very concerned about Comcast's attitude toward rural America and independents, and I am even more concerned now.

Mr. BACHUS. I think that we are all problem solvers. We would not have gotten as far as we did. So I appreciate this hearing. This concludes today's hearing. I thank all our witnesses for attending and for your patience. It was cooler at the end of the hearing than at the beginning, which is unusual.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record, and that includes Ms. Jackson Lee, who was going to introduce something. But any Member that wants to submit anything for the record, and if the panelists wish to submit additional information for the record.

Thank you. This hearing is adjourned.

[Whereupon, at 1:37 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Addendum to the Joint Prepared Statement of David L. Cohen, Executive Vice President, Comcast Corporation; and Robert D. Marcus, Chairman & Chief Executive Officer, Time Warner Cable Inc.

EXHIBIT 1

COMCAST

DMAs involved in Divestiture Transactions

DMAs	Comcast to SpinCo	Pre-Merger TWC to Charter	Charter DMAs to Comcast
Detroit, MI	x		New York, NY
Lansing, MI	x		Albany-Schenectady-Troy, NY
Grand Rapids	x		Burlington, VT-Plattsburgh, NY
Flint-Saginaw-Bay City, MI	x		Boston, MA (Manchester, NH)
Minneapolis-St. Paul, MN	x		Providence, RI-New Bedford, MA
NE Ohio (Cleveland-Akron, OH - Erie, PA)		x	Springfield-Holyoke, MA
Columbus - Toledo, OH	x	x	Hartford & New Haven, CT
Cincinnati - Dayton, OH	x	x	Los Angeles, CA
Ironton OH		x	San Francisco, CA
Wisconsin (Milwaukee, Green Bay)	x	x	Sacramento, CA
Indianapolis, IN	x		Fresno-Visalia, CA
Evansville, IN	x	x	Santa Barbara, CA
Ft. Wayne, IN	x		Monterey-Salinas, CA
Terre Haute, IN	x	x	Chico-Redding, CA
Lafayette, IN	x		Eureka, CA
Chattanooga, TN	x		Atlanta, GA
Tri-Cities, TN-VA	x		Macon, GA
Birmingham, AL	x		Raleigh-Durham, NC
Mobile, AL	x		Charlotte, NC
Huntsville, AL	x		Greensboro, NC
Dothan, AL	x	x	Greenville, NC
Bowling Green, KY	x	x	Wilmington, NC
Other KY		x	Seattle, WA
Louisville, KY	x	x	Spokane, WA
Lexington, KY		x	Yakima, WA
Paducah, KY	x		Portland OR
			Eugene, OR
			Medford, OR
			Dallas, TX
			Houston, TX
			Richmond, VA
			Norfolk VA
			Salisbury, MD
			Nashville, TN
			Knoxville, TN
			Jackson, TN
			Memphis, TN

EXHIBIT 2

COMCAST

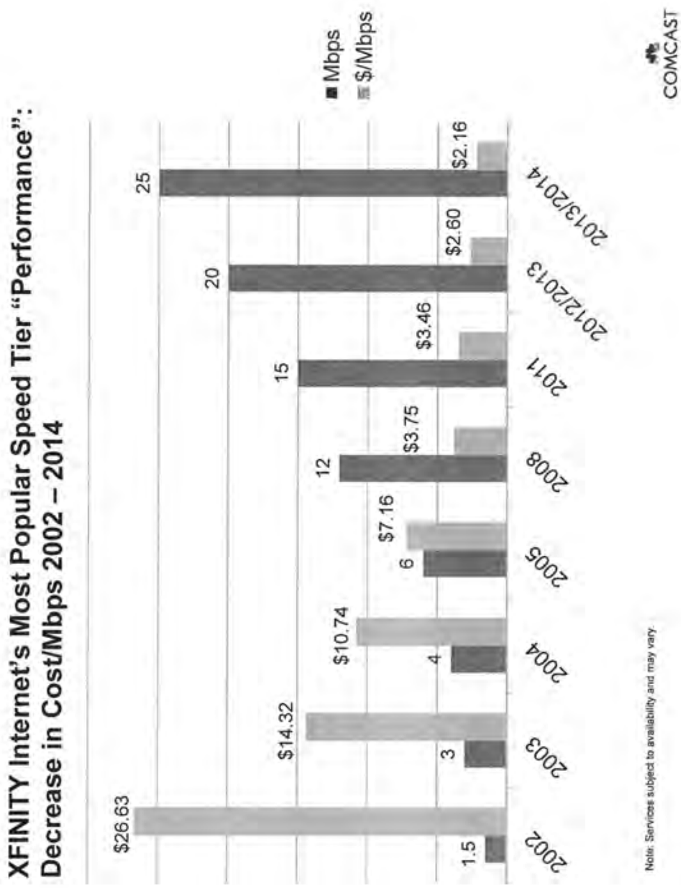

XFINITY Internet's Most Popular Speed Tier “Performance”:
Decrease in Cost/Mbps 2002 – 2014
$26.63
1.5
2002
$14.32
3
2003
$10.74
4
2004
$7.16
6
2005
12
$3.75
2008
15
$3.46
2011
20
$2.60
2012/2013
25
$2.16
2013/2014
Mbps
$/Mbps
Note: Services subject to availability and may vary
COMCAST

EXHIBIT 3

COMCAST

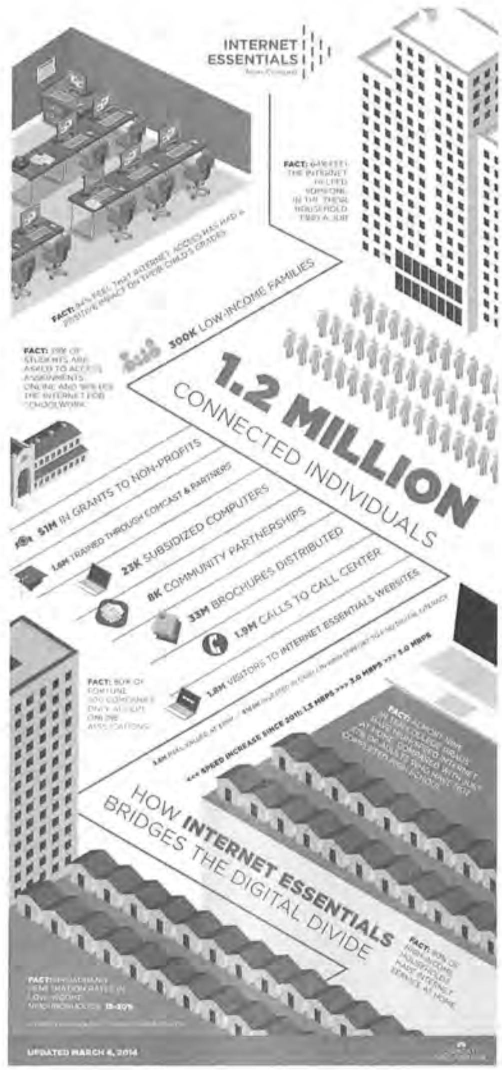

INTERNET ESSENTIALS
300K LOW-INCOME FAMILIES
1.2 MILLION
CONNECTED INDIVIDUALS
$1M IN GRANTS TO NON-PROFITS
23K SUBSIDIZED COMPUTERS
8K COMMUNITY PARTNERSHIPS
33M BROCHURES DISTRIBUTED
1.9M CALLS TO CALL CENTER
1.8M VISITORS TO INTERNET ESSENTIALS WEBSITES
HOW INTERNET ESSENTIALS BRIDGES THE DIGITAL DIVIDE
UPDATED MARCH 6, 2014

EXHIBIT 4

COMCAST

COMCAST

David L. Cohen
Executive Vice President

MEMORANDUM

FROM: David L. Cohen

RE: Comcast/Time Warner Cable Announcement

DATE: February 13, 2014

This morning, Comcast and Time Warner Cable announced a transaction that will combine the cable assets of Time Warner Cable with those of Comcast. This is a friendly transaction, forged in a dynamic and robustly competitive landscape. The transaction is strongly pro-competitive and is firmly in the public interest. The details of the transaction are summarized in the accompanying press release and fact sheet.

As a company that is focused on driving innovation and responding to an intensely competitive environment with superior value and service, Comcast is excited to have the opportunity to manage these assets and bring the benefits of Comcast's industry-leading technology, user experience, and broadband service to millions of additional customers. It was just these exciting possibilities that led to the discussions between Time Warner Cable and Comcast and to the suggestion by many of our shareholders that we pursue a transaction to create this new company with such great promise for our customers and shareholders.

With this acquisition, Comcast intends to build on our extraordinarily successful acquisition of NBCUniversal, and our unparalleled record of keeping our promises to bring new benefits to consumers in prior acquisitions.

While we believe that this transaction is, and will be determined to be, pro-competitive, pro-consumer, and strongly in the public interest when we make our case and seek approval from federal regulators, we recognize that certain competitive concerns might be raised about consolidation of these assets under one roof.

But we strongly believe that these competitive concerns are already addressed, not only by the highly competitive marketplace in which the new company will vigorously compete for subscribers, but also by existing rules and regulations, as well as the binding conditions and requirements already in place as a result of the approval of the Comcast/NBCUniversal transaction. Several of these conditions will *automatically* extend to the acquired systems upon the approval and consummation of this transaction, and they ensure substantial protections and benefits, including:

- Broadcast stations in the acquired markets will have greater protections in their retransmission consent negotiations with the acquired systems. Among other things, NBC affiliate market integrity in these markets would be protected, and Comcast's negotiations with broadcast stations would be without influence by NBCUniversal's retransmission consent or affiliate negotiations.

- PEG channels would be protected from migration to digital in the acquired systems that are not yet all-digital (unless otherwise agreed by the LFA), and would be protected from material degradation.

- The FCC's Open Internet protections will be extended to millions of additional broadband customers, irrespective of whether the FCC re-establishes such protections for other industry participants. Thus, unlike all other broadband subscribers in the country, the new company's broadband customers will enjoy the enforceable protections of the no blocking and non-discrimination rules that were put in place by the FCC, notwithstanding the action by the DC Circuit Court of Appeals vacating those rules.

- Affordable standalone broadband service will be made available and marketed in the acquired systems.

- The acquired systems' broadband service will be upgraded to meet minimum speeds in all DOCSIS 3.0 markets.

- The acquired programming networks from Time Warner Cable that Comcast will control post-closing – though modest – will be subject to the Comcast/NBCUniversal program access framework. As a result, MVPDs would have the right to include these programming networks in an arbitration demand in appropriate circumstances, and the acquired RSNs would be subject to standalone arbitration as an alternative remedy to the FCC's program access rules.

- OVDs could demand (and if necessary, arbitrate over) these newly acquired networks if the OVDs meet the relevant criteria. In addition, the acquired systems would be subject to prohibitions against practices that unduly influence or unfairly limit the provision of the acquired programming to OVDs.

- Finally, the FCC would have significant data at its disposal as to these and other requirements as a result of the company's required Annual Compliance Reporting.

The inherent benefits of this combination, together with these and other automatic protections and guarantees, should be more than sufficient to allay any concerns that this transaction is not in the public interest. Yet Comcast is prepared to do more. Below, we outline a few of the key undertakings we intend to include and expand upon in our public interest filing with the Federal Communications Commission and with the relevant antitrust agency as appropriate. We look forward to the opportunity to make our case to the agencies in detail in the near future.

1. Comcast is prepared to divest systems totaling approximately 3 million subscribers, such that Comcast's managed systems will serve residential subscribers at a level below the FCC's vacated horizontal ownership limit of 30 percent of all national multichannel video programming subscribers. In a far less competitive market than today, the Court

of Appeals twice did not accept 30 percent as a reasonable limit on a single cable company's size. In today's market, with national telephone and satellite competitors growing substantially, with Google having launched its 1 GB Google Fiber offering in a number of markets across the country, and consumers having more choice of pay TV providers than ever before, Comcast believes that there can be no justification for denying the company the additional scale that will help it compete more effectively.

2. Comcast is prepared to extend certain commitments it made in the NBCUniversal transaction to the acquired systems, including:

   - Extending Comcast's commitment to making available diverse, local news, and children's programming on various platforms in the cable systems we are acquiring from Time Warner Cable; and
   - Extending to the acquired systems Comcast's guaranteed carriage of non-commercial educational stations that have must-carry rights and have relinquished their broadcast spectrum.

3. Comcast is also prepared to build upon its very successful program for broadband adoption, by extending our industry-leading broadband adoption and digital literacy programs to low-income subscribers in the acquired systems.

4. And Comcast is prepared to extend its best-in-class diversity program to the acquired Time Warner Cable systems, covering diversity in employment, supplier diversity, programming diversity, and community investment diversity.

We are glad to have the opportunity to share our news with you, and we invite your questions or comments.

Important Information For Investors And Shareholders

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. In connection with the proposed transaction between Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("Time Warner Cable"), Comcast and Time Warner Cable will file relevant materials with the Securities and Exchange Commission (the "SEC"), including a Comcast registration statement on Form S-4 that will include a joint proxy statement of Comcast and Time Warner Cable that also constitutes a prospectus of Comcast, and a definitive joint proxy statement/prospectus will be mailed to shareholders of Comcast and Time Warner Cable. INVESTORS AND SECURITY HOLDERS OF COMCAST AND TIME WARNER CABLE ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders will be able to obtain free copies of the registration statement and the joint proxy statement/prospectus (when available) and other documents filed with the SEC by Comcast or Time Warner Cable through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by Comcast will be available free of charge on Comcast's website at http://cmcsa.com or by contacting Comcast's Investor Relations Department at 866-281-2100. Copies of the documents filed with the SEC by Time Warner Cable will be available free of charge on Time Warner Cable's website at http://ir.timewarnercable.com or by contacting Time Warner Cable's Investor Relations Department at 877-446-3689.

Comcast, Time Warner Cable, their respective directors and certain of their respective executive officers may be considered participants in the solicitation of proxies in connection with the proposed transaction. Information about the directors and executive officers of Time Warner Cable is set forth in its Annual Report on Form 10-K for the year ended December 31, 2012, which was filed with the SEC on February 15, 2013, its proxy statement for its 2013 annual meeting of stockholders, which was filed with the SEC on April 4, 2013, and its Current Reports on Form 8-K filed with the SEC on April 30, 2013, July 29, 2013 and December 6, 2013. Information about the directors and executive officers of Comcast is set forth in its Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 12, 2014, its proxy statement for its 2013 annual meeting of stockholders, which was filed with the SEC on April 5, 2013, and its Current Reports on Form 8-K filed with the SEC on July 24, 2013 and August 16, 2013. These documents can be obtained free of charge from the sources indicated above. Additional information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the joint proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

Cautionary Statement Regarding Forward-Looking Statements

Certain statements in this communication regarding the proposed acquisition of Time Warner Cable by Comcast, including any statements regarding the expected timetable for completing the transaction, benefits and synergies of the transaction, future opportunities for the combined company and products, and any other statements regarding Comcast's and Time Warner Cable's future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not historical facts are "forward-looking" statements made within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements are often, but not always, made through the use of words or phrases such as "may", "believe," "anticipate," "could", "should," "intend," "plan," "will," "expect(s)," "estimate(s)," "project(s)," "forecast(s)", "positioned," "strategy," "outlook" and similar expressions. All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed in the statements. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are the following: the timing to consummate the proposed transaction; the risk that a condition to closing of the proposed transaction may not be satisfied; the risk that a regulatory approval that may be required for the proposed transaction is not obtained or is obtained subject to conditions that are not anticipated; Comcast's ability to achieve the synergies and value creation contemplated by the proposed transaction; Comcast's ability to promptly, efficiently and effectively integrate Time Warner Cable's operations into those of Comcast; and the diversion of management time on transaction-related issues. Additional information concerning these and other factors can be found in Comcast's and Time Warner Cable's respective filings with the SEC, including Comcast's and Time Warner Cable's most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Comcast and Time Warner Cable assume no obligation to update any forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

EXHIBIT 5

COMCAST

COMCAST

INVESTING IN THE CUSTOMER EXPERIENCE – INNOVATING TO DRIVE CHANGE – GENERATING MEASURABLY IMPROVED RESULTS

Improving the customer experience is a top priority at Comcast. We are investing billions of dollars in our network infrastructure and are developing innovative products and features to make it easier and more convenient for our customers to interact with us. While our satisfaction results are beginning to rise, we know we still have work to do and are laser-focused on continuing to improve our customers' experiences in a number of ways.

INVESTING IN THE CUSTOMER EXPERIENCE

- We are investing billions to transform our end-to-end customer experience through an advanced broadband network and state-of-the-art care and tech diagnostic tools for our technicians and customer account executives, self-service options for customers and innovation in our back office systems.
- We want to make it easier for customers to do business with us – from developing innovative products and features to making sure we get it right for customers the first time and offering them more self-service options.
- We are trying to be as innovative with the customer experience as we have been with our products.

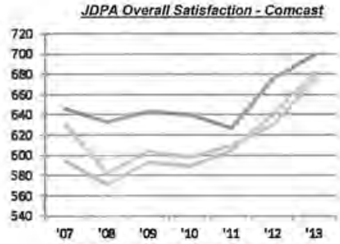
INNOVATING TO DRIVE CHANGE

- We are using innovative technologies to deliver on our commitment to respect our customers' time and give them more choice and control:
  - Offering shorter appointment windows (1-2 hour windows) plus evening and weekend appointments
  - Getting it right the first time:
    - Repeat visits for installations and/or service appointments are down about 20% since 2010
    - Our on-time performance within scheduled appointment windows is 97%
  - Providing more self-installation options, so customers can install/activate services on their schedules:
    - 42% of installs in 2013 were self-installations compared to 30% in 2012
  - Providing more self-service choices, including access to the same service diagnostic tools our agents use – more than one-third of customers manage their accounts online with My Account:
    - This is a 42% increase over the prior year
    - Created a My Account mobile app for smartphones

GENERATING MEASURABLY IMPROVED RESULTS

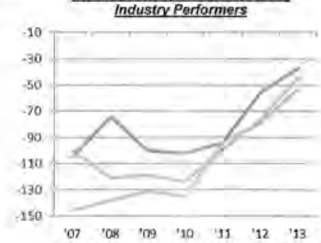
- Comcast's investment in customer care improvements and its use of innovative technologies are driving measurably improved satisfaction results among our customers. Our progress has been recognized by external objective parties, such as J.D. Power and Associates.
  - The annual J.D. Power Customer Satisfaction survey is widely recognized as the premier measure of consumer perception.
  - Since 2010, Comcast has improved its J.D. Powers Overall Satisfaction by nearly 100 points as a video provider, and close to 80 points in High Speed Data – more than any other provider in our industry during the same period. Over the past two years, we've have improved in our ranking for High Speed Data among industry top performers.

JDPA Overall Satisfaction - Comcast



- *Since 2010, Comcast has **improved in J.D. Powers Overall Satisfaction** +92pts (Video) and +77pts (HSD), **more than any other provider in the industry during the same period.***
- *For the last two years, Comcast's Video and HSD performance improvements have **outpaced the industry average.***

Closing the Gap to the Top JDPA Industry Performers



- *Since 2010, Comcast has **reduced our performance gap to Top Providers** by 80pts (Video), 77pts (HSD), **more than any other provider during the same period.***
- *Comcast's recent improvements ('12 v '13) in HSD **have improved our ranking by +3 places** (8 of 15).*

Video — Voice — Internet

Important Information For Investors And Shareholders

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. In connection with the proposed transaction between Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("Time Warner Cable"), on March 20, 2014, Comcast filed with the Securities and Exchange Commission (the "SEC") a registration statement on Form S-4 containing a preliminary joint proxy statement of Comcast and Time Warner Cable that also constitutes a preliminary prospectus of Comcast. The registration statement has not yet become effective. After the registration statement is declared effective by the SEC, a definitive joint proxy statement/prospectus will be mailed to shareholders of Comcast and Time Warner Cable. INVESTORS AND SECURITY HOLDERS OF COMCAST AND TIME WARNER CABLE ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders may obtain free copies of the registration statement and the joint proxy statement/prospectus and other documents filed with the SEC by Comcast or Time Warner Cable through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by Comcast are available free of charge on Comcast's website at http://cmcsa.com or by contacting Comcast's Investor Relations Department at 866-281-2100. Copies of the documents filed with the SEC by Time Warner Cable will be available free of charge on Time Warner Cable's website at http://ir.timewarnercable.com or by contacting Time Warner Cable's Investor Relations Department at 877-446-3689.

Comcast, Time Warner Cable, their respective directors and certain of their respective executive officers may be considered participants in the solicitation of proxies in connection with the proposed transaction. Information about the directors and executive officers of Time Warner Cable is set forth in its Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 18, 2014, its proxy statement for its 2013 annual meeting of stockholders, which was filed with the SEC on April 4, 2013, and its Current Reports on Form 8-K filed with the SEC on April 30, 2013, July 29, 2013 and December 6, 2013. Information about the directors and executive officers of Comcast is set forth in its Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 12, 2014, its proxy statement for its 2013 annual meeting of stockholders, which was filed with the SEC on April 5, 2013, and its Current Reports on Form 8-K filed with the SEC on July 24, 2013, August 16, 2013 and February 14, 2014. These documents can be obtained free of charge from the sources indicated above. Additional information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, are contained in the preliminary joint proxy statement/prospectus filed with the SEC and will be contained in the definitive joint proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

Cautionary Statement Regarding Forward-Looking Statements

Certain statements in this communication regarding the proposed acquisition of Time Warner Cable by Comcast, including any statements regarding the expected timetable for completing the transaction, benefits and synergies of the transaction, future opportunities for the combined company and products, and any other statements regarding Comcast's and Time Warner Cable's future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not historical facts are "forward-looking" statements made within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements are often, but not always, made through the use of words or phrases such as "may", "believe," "anticipate," "could", "should," "intend," "plan," "will," "expect(s)," "estimate(s)," "project(s)," "forecast(s)", "positioned," "strategy," "outlook" and similar expressions. All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed in the statements. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are the following: the timing to consummate the proposed transaction; the risk that a condition to closing of the proposed transaction may not be satisfied; the risk that a regulatory approval that may be required for the proposed transaction is not obtained or is obtained subject to conditions that are not anticipated; Comcast's ability to achieve the synergies and value creation contemplated by the proposed transaction; Comcast's ability to promptly, efficiently and effectively integrate Time Warner Cable's operations into those of Comcast; and the diversion of management time on transaction-related issues. Additional information concerning these and other factors can be found in Comcast's and Time Warner Cable's respective filings with the SEC, including Comcast's and Time Warner Cable's most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Comcast and Time Warner Cable assume no obligation to update any forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

EXHIBIT 6

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PROMISES MADE, PROMISES KEPT

Comcast's Track Record in the NBCUniversal, Adelphia, and AT&T Broadband Transactions

NBCUNIVERSAL (2011)

1. Increased Investment in Programming

PROMISE MADE

Comcast has a strong track record of investing in programming and will bring that approach to the new NBCUniversal. The combined entity will have more ways to distribute sports programming than Comcast or NBCUniversal alone, plus an increased ability to compete more effectively for sports rights with other networks, such as ESPN/ABC, expanding the availability of sports programming for consumers.

PROMISE KEPT

- Comcast pledged to make focused investments to ensure that the NBC Television Network remains vibrant and competitive, and the Company has been true to its word. Since 2011, Comcast has invested billions of dollars in programming for the NBC Television Network and gave it the necessary infusion of creative energy and organizational support to "go big" and reclaim its leadership among the broadcast networks. As a result of Comcast's investments, NBC is experiencing a turnaround after being mired in last place among the four major broadcast outlets for several years.
  - NBC is winning the 2013-14 primetime season in adults 18-49, adults 25-54, and other key demos, and ranked No. 1 among ABC, CBS, NBC, and Fox for the first time in 10 years this late in the season (since the 2003-04 season). The network is up 21 percent versus one year ago, with its highest rating 27 weeks into the season, in six years. *The Hollywood Reporter* (Mar. 19, 2014), http://bit.ly/O5cy76. For the first time in at least a decade, NBC is on track to hit the ratings "grand slam" by winning the adults 18-49 demo in the key programming blocks of morning news, evening news, primetime, and late night.
  - NBC's TODAY continues to gain momentum and deliver substantial ratings growth. The show was the No. 1 morning show for the 2014 February sweeps in the key adult 25-54 demo, dramatically tightening the overall morning race with ABC's "Good Morning America." The win marks TODAY's best February sweeps demo results in two years, and its best February sweeps total viewer delivery in four years. *NBCUniversal Press Release* (Mar. 6, 2014), http://bit.ly/1jw58Ea.
  - "NBC Nightly News with Brian Williams" continues its reign as America's most-watched network evening newscast. As of March 2014, "Nightly News" is currently posting its biggest audience (9.512 million) since the 2005-06 season and its largest advantage over ABC "World News" (+1.203 million) since the 2000-01 season. *Comcast Press Release* (Mar. 4, 2014), http://bit.ly/1lgPh0I.
  - In primetime, NBC's coverage of the 2014 Sochi Winter Olympics has led the network to its most dominant in-season week in the history of Nielsen's current People Meter sample, which dates back to September 1987. *TV by the Numbers* (Feb. 19, 2014), http://bit.ly/1gJFE8M. "NBC retained its gold-medal ratings status one night after the Sochi Games thanks to strong returns for the 'The Voice' and 'The Blacklist.' . . . The January 27,

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2014 episode [of the "Blacklist"] set an all-time U.S. television record, growing by 6.67 million viewers from same-night to L+7 (10.17 million to 16.84 million)." *Variety* (Feb. 25, 2014), http://bit.ly/1lBfQh5.

NBC's revamped late night lineup is an unqualified hit. During its first full week, "The Tonight Show starring Jimmy Fallon" averaged 8.490 million viewers overall, making it the most-watched week of "The Tonight Show" in 20 years, *Comcast Voices* (Feb. 24, 2014), http://bit.ly/1psXwUN, and the show "continues to lead the late-night pack by a considerable margin." *The Wall Street Journal* (Mar. 13, 2014), http://on.wsj.com/1fV3zvU. During March 2014, both "Tonight" and "Late Night with Seth Meyers" beat their respective ABC and CBS time-period competition in every key ratings category—adults, men and women 18-34, 18-49 and 25-54, plus total viewers. *Comcast Voices* (Mar. 13, 2014), http://bit.ly/1guYHDF.

- Comcast is infusing Telemundo with hundreds of millions of dollars in investments, plus the resources that the network requires to succeed in the Hispanic marketplace. "NBCUniversal's willingness to invest in making Telemundo more competitive in its battle against Univision and other outlets vying for Hispanic audiences has been a spark for the domestic Spanish-language marketplace." *Variety* (Jul. 30, 2013), http://bit.ly/1qxet3J.
  - Telemundo won the rights to World Cup and FIFA events from 2015 through 2022 in a deal worth more than $600 million, *The Hollywood Reporter* (Oct. 21, 2011), http://bit.ly/O3b7Xn. The network also debuted a new $10 million studio as part of its run-up to FIFA coverage. *Miami Today News* (Aug. 13, 2013), http://bit.ly/OST5qY.
  - Telemundo added more than 800 hours of original content, increasing the network's original programming slate by nearly 40 percent during the 2012-13 season, *Deadline.com* (May 14, 2012), http://bit.ly/1fVFjd9. Original content increased to over 1,000 hours of new content for the 2013-14 season, including five primetime telenovelas, two daytime series, and a musical-competition show coproduced with Ryan Seacrest Productions.
  - Telemundo Studios, the biggest producer of Spanish-language original content in the country, continues to expand a production operation that now delivers more than 750 hours of telenovela programming a year through its Miami studios. The Company also launched FLUENCY, a new Los Angeles based multi-platform production studio, to develop and produce premium content for multicultural audiences, especially U.S. Hispanics, in both Spanish and English. *Variety* (May 9, 2013), http://bit.ly/1iBflkA.
  - These investments in original content are driving Telemundo's growth. In 2013, Telemundo ranked as the fastest growing Spanish-language network year over year in primetime among total viewers and adults 18-49. *Telemundo Press Release* (Aug. 28, 2013), http://bit.ly/1p7UHbB.
  - The season finale of "La Voz Kids" on July 28, 2013 drew over 2.6 million total viewers and 1.34 million adults 18-49, making it Telemundo's highest-rated broadcast in the network's history of regular programming in the Sunday 8-11pm time period. During the finale's 10pm hour, Telemundo was the No.1 broadcast network among adults 18-49 and adults 18-34. *Telemundo Press Release* (Jul. 29, 2013), http://bit.ly/1mxtH8h.
- Comcast also preserved and enhanced NBCUniversal's marquee sports programming.
  - Comcast's $4.38 billion bid won the U.S. broadcast rights for the 2014 Sochi Winter Olympics and 2016 Rio de Janeiro Summer Games and the following two Olympics, beating out ESPN/ABC and News Corp.'s Fox, which had also bid for the rights package. "People at

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NBC must be very happy,' said Wunderlich Securities analyst Matthew Harrigan. 'This shows that Comcast is committed to realizing value from the NBC network and stations long-term.'" *The Hollywood Reporter* (Jun. 7, 2011), http://bit.ly/1i15gw6.

NBCUniversal agreed to pay $950 million per year to extend its NFL rights package through the 2022-23 season, plus the 2015, 2018, and 2021 Super Bowl games. *The Wall Street Journal* (Dec. 15, 2011), http://on.wsj.com/1dLJQoh. The new agreement includes many enhancements that broaden the exposure of NFL content on NBC, and across other NBCUniversal platforms. NBC will broadcast 19 regular-season games including 17 regular-season "Sunday Night Football" games, each season's opening NFL Kickoff Thursday night primetime game and the new Thanksgiving night game, and two playoff games (one wild card game and one Divisional game). *NBCSports.com* (Dec. 15, 2011), http://bit.ly/1iBEKZ3. The deal allowed NBC to retain the rights to "Sunday Night Football," the No. 1 show in primetime for the past six fall TV seasons. *Comcast Voices* (Jan. 2, 2014), http://bit.ly/1jCejDa.

The networks of NBCUniversal will continue to be the home of the best NHL games. "In their first duel since Comcast and NBCUniversal joined forces, NBC has iced ESPN out of the NHL rights package, signing a deal that sources say will span a decade. While terms of the new 10-year pact weren't immediately available, the bidding is believed to have reached nearly three times the value of the current [NBC Sports] contract ($75 million per year)." *AdWeek* (Apr. 11, 2012), http://bit.ly/PkY2d0. NBC's broadcast of key matchups has been a ratings success. *Comcast Voices* (Mar. 3, 2014), http://bit.ly/1eFSOS3.

2. Increased Investment in NBC News

PROMISE MADE

Comcast has made clear that it is committed to investing in and strengthening the venerable NBC News group.

PROMISE KEPT

- Under Comcast's stewardship, NBC News continues to preside over America's No. 1-rated newscast, "NBC Nightly News with Brian Williams," and the longest-running television series in American history, "Meet the Press."
- To enhance collaboration between its news brands, NBCUniversal combined its broadcast and cable news operations, putting NBC News, MSNBC, CNBC, and The Weather Channel under the corporate umbrella of the NBCUniversal News Group. This unified structure has increased the collaboration between teams. For example, NBC News and Telemundo officials now share logistical help, resources and planning. Telemundo reporters are starting to appear more frequently on NBC and MSNBC, and the same occurs on Telemundo for NBC's journalists who can speak Spanish. *NPR.org* (Aug. 14, 2012), http://n.pr/NM4fg8.
- The continuously growing online presence of NBC News, NBC News Digital, includes NBCNews.com, EducationNation.com, TODAY.com, NightlyNews.com, social media, and all of the network's digital initiatives. NBCUniversal News Group has also been expanding its digital presence and investing in digital properties that will attract a new generation of viewers.

Comcast purchased Microsoft's 50 percent stake in MSNBC.com for $300 million and renamed the news site NBCNews.com. *The Hollywood Reporter* (Jul. 15, 2012), http://bit.ly/Q99IzR. "This is much more than a makeover. We're changing the way we tell stories," added NBC News Digital VP of News Gregory Gittrich in a statement to the press. "This is a full relaunch, from the back-end technology to the unique user experience and design—all fueled by a totally new content strategy. Our goal is to focus on original journalism, take advantage of the full extent of NBC News resources, and invest in coverage." *The Wrap* (Feb. 5, 2014), http://bit.ly/1iYSQWH.

The new NBCNews.com also features a new vertical focused on original reporting and analysis relevant to the Latino community (www.nbcnews.com/news/latino), and will launch an additional vertical dedicated to serving the Asian Pacific Islander community. By integrating these verticals into the main site, that coverage will benefit from greater exposure to the broader NBCNews.com audience and the more significant promotion of the NBCNews.com site.

The NBCUniversal News Group formed a strategic investment and content partnership with Revere Digital, the new technology-focused media company launched by highly regarded technology and digital media journalists Kara Swisher and Walt Mossberg, formerly of AllThingsD.com. Swisher and Mossberg's new company will manage a digital media and technology news, reviews and analysis web site called "Re/code" along with a global conference business. With this partnership, the NBCUniversal News Group will expand its Silicon Valley presence and technology coverage by incorporating Revere's breaking news and analysis stories across NBCUniversal News Group's multiple media platforms. *CNBC.com* (Jan. 2, 2014), http://cnb.cx/Q8YjQF. NBCUniversal News Group and NowThis News will collaborate to create original, short-form videos to be distributed across mobile and social platforms using content from TODAY, MSNBC, NBC News, and CNBC. The NBCUniversal News Group made multi-million dollar equity investments in both businesses.

3. Willingness to Experiment with New Products and Services

☐ **PROMISE MADE**

By combining NBCUniversal's programming with Comcast's multiple distribution platforms, the transaction will increase Comcast's and NBCUniversal's flexibility to experiment with and develop new ways to make programming available to consumers. As a result of the transaction, consumers will get more choice and more control over their viewing experience, and they will get it sooner rather than later.

PROMISE KEPT

- Comcast's X1 platform is giving the Company the flexibility to rapidly innovate and offer new features and services to our customers. For example, Comcast worked directly with NBC Sports to build an HTML5 web app that brought the NBC Sports Live Extra app, and 1000+ hours of live Olympic event coverage, to TV for the first time. *Comcast Voices* (Feb. 19, 2014), http://bit.ly/Q8FbIQ.
- Comcast and NBCUniversal are leading the industry's deployment of TV Everywhere.
  - "NBCUniversal now leads the industry in rolling out TV Everywhere, a benefit that has extended not only to Comcast, but to several other MVPDs." *IHS Technology* (Oct. 18,

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2013), http://bit.ly/1cQanL2. Fifteen of NBC Universal's 18 channels now have a TV Everywhere application, and five of those offer live streaming.

The Olympic Games have been a critical driver of TV Everywhere, helping to propel awareness and usage. NBC Sports delivered a massive 10.8 million hours of online video as part of its production of the 2014 Winter Olympic Games in Sochi, Russia. More than 8.5 million hours of video was consumed through "TV Everywhere" authenticated live streams on NBCOlympics.com and the NBC Sports Live Extra app. In an unprecedented effort, 225 multichannel distributors offered verification for their customers, with more than 4.8M devices successfully verified. NBCOlympics.com and the NBC Sports Live Extra app saw 24.6M video viewers (160 percent higher than the 2010 Vancouver Winter Games and 8 percent higher than the 2012 London Summer Games). And the February 21, 2014 verified live stream of the Olympic men's ice hockey semifinal between the United States and Canada generated more than 2.1 million unique users (2.12 million)—believed to be the largest "TV Everywhere" verified streaming audience in U.S. history, and ranking No.1 in unique users for any NBC Sports Digital stream, topping NBC's non-authenticated Super Bowl XLVI in February 2012. *NBC Sports Group Press Release* (Mar. 6, 2014), http://bit.ly/1kxP8ID.

Comcast launched the Xfinity TV Go app, which enables customers to watch more than 50 television channels over the Internet on their Apple and Android-powered mobile devices, plus the ability to stream more than 25,000 VOD choices and download thousands of hit movies and TV shows to watch offline later. Participating networks include A&E, BBC World News, Bravo, beIN SPORT, beIN SPORT en Español, Big Ten Network, CNBC, CNN, Cooking Channel, Disney Channel, Disney Junior, Disney XD, DIY Network, E!, ESPN, ESPN2, ESPN3, ESPN Deportes, ESPNEWS, ESPNU, Food Network, FOX Business Channel, FOX News Channel, FOX Sports 1, FX, FXX, Golf Channel, HGTV, HISTORY, HLN, MSNBC, mun2, National Geographic Channel, Nat Geo WILD, NBCSN, Oxygen, Sprout, STARZ, Syfy, TBS, TNT, Travel Channel, truTV, USA Network, and all seven Pac-12 Networks. *Comcast Press Release* (Mar. 19, 2014), http://bit.ly/1rojBrg.

- Comcast launched the Xfinity TV store—offering subscribers select TV shows and movies for purchase several weeks ahead of DVD release—marking the Company's foray into the electronic sell-through ("EST") market to compete with iTunes, Amazon.com, Walmart's Vudu, and others. Subscribers who purchase the TV shows and movies can watch the programming on TV and through mobile devices. "In a recent conference call with analysts, Lionsgate CEO Jon Feltheimer noted that less than three months after Comcast began selling movies, it already controls 15 percent of the [EST]/Digital HD market—a testament to Comcast's aggressiveness and willingness to try new things. 'Comcast's recent entry into the EST business is already proving to be a catalyst for accelerated [digital] growth,' Feltheimer said." *Home Media Magazine* (Feb. 14, 2014), http://bit.ly/1fp9ddM.
- Comcast also launched new services that demonstrate its leadership in social television.
  - "Second-screen TV viewing companion app Zeebox is going live in the U.S. with big production and commercial support from NBCUniversal and parent Comcast that the trio say will elevate the new-wave multitasking practice to the mainstream. Siblings Comcast Cable and NBCU, which are 'lead partners,' have each invested an undisclosed sum for a minority equity stake, while NBCU will also produce in-app components to enhance 307 of its shows using Zeebox . . . ." *PaidContent.org* (Sep. 27, 2012), http://bit.ly/1itmpgV.

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Comcast and Twitter partnered to create a new feature called "See It" that gives millions of Xfinity TV customers the ability to instantly access TV shows, movies, and sports directly from a Tweet. "See It" debuted in November 2013 with shows from NBCUniversal's networks, and will soon reach millions of users through additional video distributors, television networks, and an expanded roster of popular shows from partners like ABC Entertainment Group, A+E Networks Group, AMC Networks Inc., Cablevision's Optimum TV, Charter Communications, Crown Media Family Networks, Discovery Communications, Fox Networks Group and Time Warner Cable. *Comcast Press Release* (Dec. 11, 2013), https://see.it/site/press. *Variety* noted that the "See It" button should be the "game-changer pay TV desperately needs" and that "TV Everywhere may finally live up to its name," thanks to "See It." *Variety* (Nov. 24, 2013), http://bit.ly/1hieQa6.

4. Advertising Efficiencies

☐ **PROMISE MADE**

The NBCUniversal transaction will allow the companies to offer complementary advertising opportunities and/or volume discounts, which are pro-competitive, and to share advertising resources. The transaction will also speed the deployment of advanced advertising services.

☑ **PROMISE KEPT**

- The Company launched "NBCU+ Powered by Comcast," a platform designed to sell targeted ads to VOD users while offering advertisers insights culled from anonymized subscriber set-top box data. The product will allow marketers to target ads by household in VOD for NBCUniversal's national broadcast and cable inventory. Previously, the only addressable-enabled inventory available on Comcast VOD was the Comcast-controlled time on cable networks. The goal is to give national advertisers additional audience data—beyond age and gender—to help them decide what brands to promote on which shows. *Comcast Press Release* (Jan. 30, 2014), http://bit.ly/1oQn3a7. "'No other media company today can do this,' said NBCUniversal Ad Sales President Linda Yaccarino." *Deadline.com* (Jan. 30, 2014), http://bit.ly/1jz3tQ1.
- Telemundo Media launched Telemundo+, an advertising collaboration between Telemundo and Comcast Spotlight—the advertising sales division of Comcast—to build an unprecedented advertising platform that enables leading marketers to geo-target relevant Hispanic households across multiple screens with English, Spanish, or bilingual customized messages on general market cable networks. *The New York Times* (Sep. 30, 2012), http://nyti.ms/1iVMqaD.
- Twitter, Comcast, and NBCUniversal also created an advertising partnership between NBCUniversal and Twitter through its Amplify program that will embed sponsored videos in tweets. *Daily Finance* (Oct. 9, 2013), http://aol.it/1dKaAD0.
- The Company established advertising sales partnerships between its owned stations and NBCUniversal regional sports networks ("RSNs"). For example, the NBC Owned Television Stations' sales organization acts as a paid representative in the national spot market for Comcast SportsNet New England, Philadelphia, Mid-Atlantic, Houston, Northwest, and SNY

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5. Talent Sharing and Cross-Promotion

PROMISE MADE

The transaction will lead to synergies from the sharing of resources (including talent) in sports, local news, and entertainment programming. Sharing of resources would enable the combined company to reduce costs, expand output, and improve the quality of programming. The transaction also will give Comcast and NBCUniversal the incentive and ability to promote networks and shows on other networks either in the form of short advertisements or within programming itself, which increases consumers' awareness.

PROMISE KEPT

- NBCUniversal-owned television stations in select markets are benefiting from the resources and specialized coverage provided by Comcast SportsNet regional networks. Comcast SportsNet Bay Area, which has the area's largest sports news team, provides live daily sports news segments for NBC Bay Area's 6pm and 11pm newscasts. *The Hollywood Reporter* (Apr. 20, 2012), http://bit.ly/1jyykui. A similar arrangement is in place between Comcast SportsNet Philadelphia and NBC Philadelphia. The collaboration will align Comcast SportsNet Philadelphia's dedicated all-sports staff, which produces over 1,600 hours of award-winning sports news and analysis annually with NBC Philadelphia's unparalleled local newsgathering, weather, and traffic expertise. *CSNPhilly.com* (Nov. 18, 2013), http://bit.ly/1jyzo19.
- "Noticiero Telemundo" anchorman José Díaz-Balart has filled in as a daytime anchor on MSNBC. This makes Díaz-Balart the first journalist on U.S. television to anchor both an English and a Spanish-language newscast on two networks for a week straight. *MediaBistro.com* (Jun. 11, 2011), http://bit.ly/1mwKkB8. Díaz-Balart also appeared with NBC's Brian Williams during a Republican primary debate. *NPR.org* (Aug. 14, 2012), http://n.pr/NM4fg8.
- The Company has engaged in valuable cross-promotion across its various entertainment properties. "Project Symphony" is a strategic initiative to identify creative, technological, and strategic opportunities between Comcast and NBCUniversal's portfolio of entertainment platforms —a unique competitive advantage that yields significant ratings and box-office gains. *Variety* (Oct. 16, 2013), http://bit.ly/1dku3vW. For example, NBC took advantage of the Symphony program to promote its fall series across the portfolio and Comcast platforms, including "The Voice" and "The Blacklist," which claimed the No.1 and No. 2 spots among primetime viewership. Universal Pictures' "Despicable Me 2" also was supported by the Symphony program across NBCUniversal and Comcast content and platforms. Additionally, the Sochi Olympics were promoted across NBCUniversal's entire portfolio, as well as Comcast platforms. Other Symphony projects include, among others, the rebranding of Versus as NBC Sports Network (now NBCSN), *Adweek* (Aug. 2, 2011), http://bit.ly/NM1lmh, co-branding golf tournaments broadcast on NBC under the "Golf Channel" banner, and pairing Telemundo and Fandango to launch a movie site specifically geared toward Hispanic movie fans. *Multichannel News* (Feb. 25, 2013), http://bit.ly/1gw2v6w.

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6. Unaffiliated and Independent Programming

PROMISE MADE

The proposed transaction will not diminish Comcast's reliance on unaffiliated content.

Comcast will launch 10 independently owned or operated networks within eight years, eight of which are to be minority-owned or -controlled.

PROMISE KEPT

- Comcast continues to rely on other content providers to provide the vast majority of its video content. At the close of the NBCUniversal transaction, nearly six out of seven channels Comcast carries were unaffiliated with Comcast. Today, that number has increased to nearly seven out of eight networks.
- Comcast is proud of its relationships with independent programmers. The Company carries more than 160 channels that have no affiliation with major programmers, including many niche, minority, and international channels.
- Within the first three years, consistent with the schedule to which it committed, Comcast launched five of the 10 independent networks that it committed to in the NBCUniversal transaction: BBC World News in 2011; ASPIRE and Baby First Americas in 2012; and REVOLT and El Rey in 2013. The latter four networks also satisfy the first half of Comcast's voluntary commitment to launch independent networks with Hispanic American or African American ownership or management.
- Comcast has pledged to add five more independent channels in the coming years, including four more with Hispanic American or African American ownership.

7. Programming Deals with Online Video Distributors and MVPDs

PROMISE MADE

Continue to provide programming to online video distributors ("OVDs") and multichannel video programming distributors ("MVPDs").

PROMISE KEPT

- Agreements with OVDs have become a regular part of the Company's program licensing business. Since the closing of the transaction, NBCUniversal has entered into or renewed numerous agreements with several OVDs, including deals with Amazon, Apple, Barnes & Noble, Best Buy, Google, Hulu, Microsoft, Netflix, Samsung, Sony, and Vudu, among others.
- NBCUniversal has also entered into various agreements with MVPDs that include access to linear channels across multiple platforms without resort to arbitration.
- The Company believes that its approach to online video distribution positions it as the most "online friendly" programmer and MVPD in the industry.

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8. Telemundo VOD and Multicast

PROMISE MADE

Comcast will use its Video on Demand ("VOD") and online platforms to feature Telemundo and mun2 programming. Comcast will launch a new multicast channel on its Telemundo Station Group stations by January 28, 2012, and make this programming available to Telemundo affiliates.

PROMISE KEPT

- The Company has exceeded the three-year commitment to increase the number of Telemundo and mun2 programming choices on its central VOD storage facilities from 35 to 300. As of the end of January 2014, 335 Telemundo and mun2 VOD programming choices were available.
- In January 2012, Telemundo launched Exitos TV, a new network on Telemundo's multicast spectrum, across the 15 stations that then composed the Telemundo Station Group. As required, Exitos TV has been made available to the Telemundo-affiliated broadcast stations not owned by NBCUniversal.
- In addition, NBCUniversal created the Hispanic Enterprises and Content unit, which is charged with expanding its reach and relevance to Hispanic audiences across its news and entertainment platforms.

9. News, Public Affairs, and Other Local Interest Programming

PROMISE MADE

Preserve and enrich the output of local news, local public affairs, and other public interest programming through the use of certain windows on the NBCUniversal-owned stations, time slots on the cable channels, and Comcast VOD and online platforms.

Establish cooperative arrangements with locally focused non-profit news organizations.

PROMISE KEPT

- "When Comcast Corp. took over management of NBCUniversal in 2011, it made a commitment to significantly upgrade NBC's local news-gathering operations, which had been scaled back during the previous ownership during an advertising slump brought on by the Great Recession." *Los Angeles Times* (Feb. 7, 2014), http://lat.ms/1dn9BdU. Comcast has delivered on that promise by investing over $100 million in personnel, newsgathering capabilities, and capital improvements in the NBC Owned Television Stations and the Telemundo Station Group.
- Comcast's investments have helped the combined 27 local broadcast stations of the NBC Owned Television Stations division and the Telemundo Station Group to significantly over-deliver on their commitment to locally produce an additional 1,000 hours of local news and information programming over and above the amount aired in the year preceding the closing of the transaction.
  - During 2013, the 10 NBC Owned Television Stations produced and aired approximately 2,500 hours of regularly scheduled local news programming over and above the amount

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aired in the year preceding the closing of the Transaction, surpassing the requirement to add 1,000 hours of new, local news programming by approximately 1,500 hours.

- At the Telemundo Station Group, the stations aired approximately 2,300 hours of regularly scheduled local news programming over and above the amount aired in the year preceding the closing of the Transaction, not including the news from the recently acquired stations in Philadelphia, PA and McAllen, TX. Telemundo's total exceeds the requirement in this condition by approximately 1,300 hours.

- Key investments in newsgathering capabilities and capital improvements at the owned television stations include:
  - The expansion of local news resulted in the hiring of more than 130 people across all 10 stations, including reporters, producers, and photographers. The NBC Owned Television Stations also established investigative and/or consumer units in all markets, added or upgraded dozens of vehicles for live news capability, purchased new cameras, built new sets and studios, added helicopter coverage, and restored promotions departments at all 10 stations. *Deadline.com* (Oct. 31, 2011), http://bit.ly/PuAT7S.
  - Similarly, the Telemundo Stations Group invested millions of dollars in capital improvements, including the expansion of local news, newsgathering equipment, transmission upgrades and technology, and distribution platforms. *The Hollywood Reporter* (Aug. 8, 2011), http://bit.ly/1hyy8Zt. A second round of investments was used to reinforce the stations' technological backbone and optimize distribution and signal quality across all markets. *NBCUniversal Press Release* (May 9, 2012), http://bit.ly/1pAitNH.
  - NBC4 Southern California (KNBC) inaugurated a two-building, 150,000-square-foot complex that eventually will be home to more than 600 workers. In addition to the staff of KNBC, the complex along Lankershim Boulevard will serve as the main West Coast bureau of NBC News, MSNBC, CNBC, and Telemundo News. In spring 2014, staff members of sister station Telemundo Los Angeles (KVEA) will join KNBC's operations in the eastern building of the complex. KNBC and KVEA reporters and editors will share a newsroom but the two stations will have separate studios. *Los Angeles Times* (Feb. 7, 2014), http://lat.ms/1dn9BdU.
  - The construction of a new state-of-the-art broadcasting and multimedia news facility shared by NBC 5 Dallas-Fort Worth (KXAS) and Telemundo Dallas (KXTX). *NBCDFW.com* (Oct. 1, 2013), http://bit.ly/N7EKFS.
  - Telemundo Philadelphia (WWSI), one of two new stations added to the Telemundo Station Group during 2013, launched its first-ever news department by hiring staff for its two new, Spanish-language newscasts. *Philly.com* (Jan. 14, 2014), http://bit.ly/1j3uGKx. Telemundo Philadelphia will soon share a new state-of-the-art studio with sister station NBC Philadelphia (WCAU) at the Comcast Innovation and Technology Center to be built in Center City Philadelphia. *Comcast Press Release* (Jan. 15, 2014), http://bit.ly/1m46K9Q.
  - Additional investment in the stations' news coverage includes NBC Washington's (WRC) opening of news bureaus in Northern Virginia and Prince George's County, Maryland to expand local coverage in those areas. Five stations—NBC4 Southern California (KNBC), NBC4 New York (WNBC), NBC 5 Chicago (WMAQ), NBC10 Philadelphia (WCAU), and NBC 5 Dallas-Fort Worth—have their own news helicopters instead of sharing them with competitors. NBC 4 New York (WNBC) debuted a new studio at Rockefeller Center for its

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news broadcasts, while NBC 5 Chicago (WMAQ) and NBC 6 South Florida (WTVJ) remodeled their news studios. In addition, the control rooms were upgraded at the Telemundo Station Group stations serving the Bay Area (KSTS), Chicago (WSNS), Houston (KTMD), and Puerto Rico (WKAQ).

- Comcast invested more than $27 million for the purchase of two Telemundo broadcast stations: Telemundo Philadelphia (WWSI), *TVNewsCheck.com* (Jul. 2, 2013), http://bit.ly/1fut8lo, and Telemundo 40 (KTLM) in Rio Grande City, TX. *TVNewsCheck.com* (Jan. 2, 2014), http://bit.ly/1j0AofA. The Company upgraded WWSI's transmitter and antenna, and hired staff for two daily news broadcasts, the station's first-ever. *Broadcasting & Cable* (Sep. 11, 2013), http://bit.ly/1iijMho.
- The NBC Owned Television Stations enhanced their investigative resources by entering into cooperative agreements with locally focused, non-profit news organizations. As a result, five of the 10 stations in the NBCUniversal Owned Television Stations division maintain arrangements to cooperate on story developments, sharing news footage and other content resources, providing financial and in-kind support, sharing technical facilities and personnel, cross-promoting, and cross-linking/embedding of websites. These collaborations have resulted in over 40 investigations since the launch of the partnerships, and have generated dozens of on-air and online news reports for the stations, as well as on the partners' radio stations and websites. Beyond the reciprocal investigative and content production support, NBCUniversal has also provided financial assistance to its news partners.
- Comcast launched new local and public interest content on its VOD and online platforms, including public interest programming as part of its celebration of Black History Month, Asian Pacific American Heritage Month, LGBT Pride Month, Native American Heritage Month, and Hispanic Heritage Month, much of which is also available online at XfinityTV.com. In 2013, Comcast also launched the award-winning HisDreamOurStories.com in celebration of the 50th anniversary of the March on Washington.

10. VOD Choices

☐ **PROMISE MADE**

Maintain robust VOD offerings for our customers at no additional cost.

PROMISE KEPT

- Comcast has met—and exceeded—the three-year requirement to increase the number of free VOD programming choices from the 15,000 average monthly choices available before the closing of the NBCUniversal Transaction to 20,000 choices. During 2013, the total number of VOD choices available at no additional charge to Comcast subscribers averaged 38,991 a month. This includes an average of 739 VOD broadcast content choices a month (or a cumulative total of about 9,000 choices), a 162 percent increase over the 282 VOD broadcast content choices a month (or a cumulative total of about 3,387 choices) available during the year preceding the close of the NBCUniversal transaction (2010). And Comcast's VOD service continues to be the only VOD service that offers programming from all four major broadcast networks as soon as the day after it airs.

- In addition, Comcast's Watchathon™ weeklong event lets Xfinity TV customers get a free pass to 5,000+ episodes from more than 130 series from 48 premium, cable and broadcast networks. *Comcast Press Release* (Mar. 20, 2014), http://bit.ly/1gw9Z9U.

11. Journalistic Independence

☐ **PROMISE MADE**

Maintain NBCUniversal's policy of journalistic independence.

☑ **PROMISE KEPT**

- NBCUniversal's policy of journalistic independence remains in effect. Comcast has likewise adopted a policy to ensure the journalistic independence of the news programming organizations of all NBCUniversal networks and stations.

12. Children's Programming

☐ **PROMISE MADE**

Add an additional 1,500 VOD programming choices for children and families within three years. Comcast will pursue additional opportunities to feature children's content on all available platforms.

Provide additional educational and instructional ("E/I") programming on the NBCUniversal-owned television stations.

☑ **PROMISE KEPT**

- Comcast met and exceeded the three-year milestone to add an additional 1,500 VOD choices appealing to children and families. Total children's VOD programming choices during 2013 averaged 6,871 per month. This represents 4,093 more children's VOD choices than the 2,778 average monthly choices available during the year preceding the closing of the NBCUniversal transaction (2010). In addition, Comcast has provided its authenticated subscribers with access to most of these additional VOD programs through XfinityTV.com to the extent it had the rights to do so.
- Comcast also launched its Xfinity TV "Summer of Kids" event to spotlight its substantial library of family-friendly VOD content, along with more than 1,000 downloadable children's assets. *Comcast Press Release* (Jul. 1, 2013), http://bit.ly/1cT0HVz.
- The NBCUniversal Cable Entertainment Group increased its stake to full ownership of Sprout, deepening the Company's commitment to building an overall kids and family entertainment strategy. *Comcast Press Release* (Nov. 13, 2013), http://bit.ly/ORuSSc. Soon thereafter, Sprout launched Sprout NOW, giving subscribers unprecedented access to its content anywhere, anytime, on any device. Now, preschoolers and their families will be able to access all of their favorite Sprout series, including original programming via www.Sproutonline.com/now and through the Sprout NOW mobile app. Sprout NOW offers Sprout's live linear stream of programming as well as full episodes on demand and more. *Fierce Cable* (Feb. 26, 2014), http://bit.ly/1gVRjvm.

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- All 10 stations in the NBC Owned Television Stations division are airing an additional (fourth) hour of children's E/I programming every week on their qualifying multicast channels. The Telemundo Station Group is also airing an additional hour of E/I programming every week on each station's primary channel, and now airs two hours of E/I programming on its primary channel on Saturday and Sunday morning, for a total of four hours per week.

13. Rating Icons and Parental Controls

☐ **PROMISE MADE**

Provide clear and understandable on-screen TV ratings information for all original entertainment programming on its broadcast and cable networks.

Improve set-top-box parental controls and parental dashboards.

In an effort to constantly improve the tools and information available to parents, Comcast will expand its growing partnership with Common Sense Media, a highly respected organization offering enhanced information to help guide family viewing decisions.

☑ **PROMISE KEPT**

- In early 2011, the NBC Network launched improved TV ratings icons that are 50 percent larger than the previous icons, use a high-contrast background-to-foreground color combination, and are displayed on screen for 15 seconds. Also in early 2011, consistent with the cable industry's best practices, all NBCUniversal networks deployed the improved television ratings icons. All of the programming provided by the NBCUniversal networks to NBC.com and other NBCUniversal websites also includes online program ratings information.
- Comcast has enhanced the functionality of the parental controls on its set-top boxes and introduced whitelisting capabilities to its parental control dashboard.
- Comcast also launched a parental controls microsite (http://xfinity.comcast.net/parents/) to help parents manage what their kids are watching on TV, online, and on mobile devices.
- During 2013, Comcast and NBCUniversal aired over $45 million worth of PSAs on parental controls, including over $7.87 million worth of spots in support of an industry-wide campaign to remind parents of where to find and how to use TV and film rating systems, and parental control blocking technology. *Fierce Cable* (Feb. 27, 2013), http://bit.ly/1pyFi4n.
- Common Sense Media content—including thousands of review videos, tip videos, ratings, and recommendations—is integrated into Comcast's VOD service and promoted on XfinityTV.com. Comcast also expanded its partnership with CSM to integrate the organization's TV and movie ratings into the "Kids" section of XfinityTV.com. As Comcast CEO Brian Roberts demonstrated on stage at 2013 The Cable Show, CSM ratings are fully integrated into Comcast's next-generation X2 platform, providing clear, practical information for parents at the point of decision. This platform will allow Xfinity TV customers to filter kids content by age, making it even easier for parents to discover movies and TV shows for their families. It also will provide CSM's ratings across platforms, so parents will have access to the information when watching video on the TV, PC, tablet, or smartphone.

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14. Public Service Announcements

☐ **PROMISE MADE**

Provide $15 million worth of public service announcements ("PSAs") per year on topics such as digital literacy, parental controls, nutritional guidelines, and childhood obesity.

☑ **PROMISE KEPT**

- Since 2011, the Company has aired over $100 million worth of PSAs, nearly double the amount required. In 2013, Comcast's qualifying networks (*i.e.*, networks that have a higher concentration than the median cable network of adults 25-54 with children under 18 in the household) aired PSAs with a value of over $61 million, four times what was required by the condition.
- The childhood obesity PSAs aired at least once during each hour of NBC's "core" E/I programming, plus an average of two times a day on Sprout.
- In addition, in 2013, Comcast-NBCUniversal's networks ran close to $13 million worth of PSAs in support of Common Sense Media.

15. Community Programming

☐ **PROMISE MADE**

Develop a five-community pilot program to host PEG and other local content on VOD and online.

Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e., until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

☑ **PROMISE KEPT**

- Comcast conducted VOD and online PEG trials in five pilot communities from February 2011 to January 2014, which helped to ensure that the Company's launch of each platform had broad support from the local content creators. The VOD component of the pilot program consisted of dedicated content "folders" accessible to Comcast VOD customers in each of the pilot communities, while the online pilot program consisted of custom-built websites that were branded with the name and theme chosen by each pilot community. The websites serve as portals for the communities, traditional PEG programmers, and other partners to create and manage virtual "channels" where they can post video content, along with other local interest information. The results showed strong support among content providers and consumers for the pilot platforms, particularly the websites.
- Comcast has not migrated any PEG channels to digital delivery on any system that has not converted to all-digital distribution, and has not implemented changes in the method of delivery of PEG channels that resulted in a material degradation of signal quality or impairment of viewer reception.

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16. Standalone Broadband

☐ **PROMISE MADE**

Provide consumers with the ability to obtain speed- and price-competitive standalone broadband access option.

☑ **PROMISE KEPT**

- Comcast offers its "Performance Starter" tier, a 6 Mbps downstream / 1 Mbps upstream speed standalone broadband service, priced at $49.95 per month.
- Comcast has exceeded the requirement to offer a broadband tier of at least 12 Mbps downstream speed in all Comcast DOCSIS 3.0 markets. Customers in Comcast's top 30 markets have access to at least three higher speed tiers, including a "Performance" tier offering at least 25 Mbps downstream / 5 Mbps upstream and an "Extreme" tier featuring speeds of 105 Mbps down / 20 Mbps up.

17. Broadband Deployment

☐ **PROMISE MADE**

Expand access to broadband services.

☑ **PROMISE KEPT**

- Comcast surpassed the three-year milestones of (i) expanding its broadband network by at least 1,500 miles per year for three years, and (ii) extending its broadband plant to approximately 400,000 additional homes. Since 2011, Comcast has extended its broadband network by approximately 6,300 miles and passed over 715,000 additional homes.
- In addition, Comcast extended its broadband infrastructure to 33 rural communities in 2011, exceeding its commitment to extend the network to six rural communities.
- Finally, Comcast added courtesy broadband and video accounts to over 650 schools, libraries, and other community institutions in underserved areas, exceeding the commitment to add 600 such accounts.

18. Internet Essentials™

☐ **PROMISE MADE**

Launch a broadband adoption program to help bridge the digital divide.

☑ **PROMISE KEPT**

- *Internet Essentials* by Comcast is the nation's largest and most comprehensive broadband adoption program. It provides low-cost broadband service for $9.95 a month plus tax, the option to purchase an Internet-ready computer for under $150, and multiple options to access free digital literacy training in print, online, and in-person.

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- In just two-and-a-half years, more than 1.2 million Americans, or 300,000 families, have been connected to the power of the Internet at home.
- Comcast has made a serious and sustained effort to get the word out on *Internet Essentials* by:
  - Distributing over 33 million brochures to school districts and community partners for free (available in 14 different languages).
  - Broadcasting more than 3.6 million public service announcements with a combined value of nearly $48 million.
  - Forging more than 8,000 partnerships with community-based organizations, government agencies, and elected officials at all levels of government.
- Other significant milestones include:
  - Offering *Internet Essentials* in more than 30,000 schools and 4,000 school districts in 39 states and the District of Columbia to spread the word and help bring more families online.
  - Investing more than $165 million in cash and in-kind support to help fund digital literacy initiatives nationally, reaching more than 1.6 million people through Comcast's non-profit partners.
  - Fielding 1.9 million phone calls to the *Internet Essentials* call center.
  - Welcoming 1.8 million visitors to the *Internet Essentials* websites, which supply information in both English and Spanish, and the Online Learning Center.
  - Providing *Internet Essentials* customers with more than 23,000 subsidized computers at less than $150 each.
- While Comcast's original commitment was unprecedented, it has greatly enhanced the program, taking these voluntary steps:
  - Extending the program indefinitely—beyond Comcast's initial three-year commitment. *Comcast Press Release* (Mar. 4, 2014), http://bit.ly/1gtR8aU.
  - Expanding the eligibility criteria for *Internet Essentials* twice, first by extending eligibility to families with children eligible to receive reduced price school lunches, and then by including parochial, private, cyberschool, and homeschooled students. As a result, nearly 2.6 million families nationwide are now eligible for *Internet Essentials*.
  - Increasing the broadband speeds for *Internet Essentials* customers twice in less than two years; *Internet Essentials* now offers up to 5 Mbps downstream, which is triple the speed offered at the beginning of the program.
  - Expanding an instant approval process for families whose students attend schools with 70 percent or more National School Lunch Program participation (previously, the threshold was 80 percent), which enhanced participation rates.
  - Creating an online application tool on both the English and Spanish-language *Internet Essentials* websites to make it easier and faster for a family to apply for *Internet Essentials*.

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Enabling Comcast's community partners to help connect low-income families to the Internet by purchasing Opportunity Cards that can be used toward the cost of paying for *Internet Essentials* service.

- Launching an enhanced version of its online Learning Center to provide families with enhanced and dynamic content, including new interactive content in Spanish.

- Comcast established a multi-year, multi-million dollar partnership with Khan Academy that will combine the free, world-class educational content of Khan Academy's award-winning website with the transformative potential of *Internet Essentials*. The commitment includes hundreds of thousands of PSAs, significant digital promotion in both English and Spanish, and multiple joint promotion opportunities around the country over the next few years. *Comcast Press Release* (Dec. 16, 2013), http://bit.ly/1ews82l.
- In addition, Comcast recently made grants totaling more than $1 million to communities across the country to create "*Internet Essentials* Learning Zones." The grants are part of Comcast's multifaceted Gold Medal Recognition Program for communities that have done the most to help close the digital divide. Learning Zones will bring together the non-profit community, schools, and Comcast to create a continuum of connectivity during the day, after school, and at home. As part of these efforts, Comcast offered an opportunity for all eligible families in these communities to receive free *Internet Essentials* service for six months if they registered with the program during a three-week period in March. More than 4,300 new families signed up for the program under this promotional offer.

19. Diversity Initiatives in the Memoranda of Understanding (MOU): Governance

☐ **PROMISE MADE**

Comcast and NBCUniversal will establish four external Diversity Advisory Councils with representative leaders from minority organizations, including African Americans, Latinos, and Asian Pacific Islanders. These four councils will work closely with each company's internal Diversity Council, providing advice on diversity issues, and collectively will comprise a new Diversity Joint Council. Both companies will measure and report on their corporate diversity initiatives through the Joint Council, which will meet at least twice annually, including one meeting each year with Brian L. Roberts, Comcast's Chairman and CEO.

☑ **PROMISE KEPT**

- Comcast and NBCUniversal established an external Joint Diversity Council to advise the Company regarding diversity and inclusion efforts. It consists of four, nine-member Diversity Advisory Councils representing the interests of African Americans, Asian Americans, Hispanics, and Women, respectively. The Joint Council also has At-Large Members representing Native Americans, people with disabilities, veterans, and the lesbian/gay/bisexual/transgender ("LGBT") community.
- The Joint Council participates in formal meetings attended by Comcast and NBCUniversal leadership, and regularly interacts with the Company's Internal Diversity Councils and corporate-level Diversity and Inclusion Groups to share information and consult about ideas for achieving diversity and inclusion goals. Brian L. Roberts, Comcast's Chairman and Chief Executive Officer, attends one formal Joint Council meeting each year, during which he holds individual meetings with each Diversity Advisory Council and the At-Large Members.

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- Comcast and NBCUniversal's Diversity Councils are ranked 3rd among the 2013 Top 25 Diversity Councils by the Association of ERGs and Councils (formerly the Association of Diversity Councils), moving up from 5th place in 2012 and marking their 5th consecutive year on the Top 25 list.

20. MOU Diversity Initiatives: Workforce

PROMISE MADE

Comcast and NBCUniversal commit that they will increase minority representation at all levels of their respective organizations. To bolster diversity in the leadership ranks, Comcast will require a diverse pool of candidates for all hires at the vice president level and above, including at least one person of color on every slate for all such hires, and NBCUniversal will focus on hiring opportunities for diverse senior level executives in development, production, casting, marketing, legal/business affairs, and distribution. The Company will also continue to support and will expand their active workplace diversity programs, including training on diversity issues, and continue to develop career-path programs, including mentoring programs.

PROMISE KEPT

- Over the past three years, there has been a meaningful increase in diversity at the Company's vice president level and above (VP+). Between year-end 2010 and year-end 2013, the number of people of color at the VP+ level increased by 111 (or 32 percent), which drove a corresponding increase in their proportional representation—as of year-end 2013, people of color comprised 18 percent of the Company's total VP+ population. During the same time, the number of women at the Company's VP+ level increased by 157 (or 21 percent), which also drove an increase in their proportional representation—as of year-end 2013, women represented 36 percent of the VP+ population. The Company's performance was recognized when Comcast tied for first place among Women in Cable Telecommunications' (WICT) 2013 Best Operators for Women in Cable and NBCUniversal earned first place among WICT's 2013 Best Programmers for Women in Cable.
- Comcast and NBCUniversal have deployed a multifaceted approach to recruitment, leadership training programs, and innovative engagement initiatives, all aimed at attracting and developing a diverse talent pipeline:
  - Leadership, mentoring, and sponsorship programs: the Company offers more than 100 internal and external programs, including Comcast's Executive Leadership Career Advancement Program (ELCAP), Comcast Women in Leadership at Wharton, the TEAM NBCUniversal mentoring program, and the Executive Leadership Forum (ELF);
  - Employee resource groups representing numerous employee populations;
  - Diverse slate requirements for Vice President-level and above positions;
  - Internship and scholarship programs including Emma Bowen Foundation internships; and
- A veterans hiring initiative. Comcast is a leader in supporting and honoring the serving military and in hiring the nation's veterans. In March 2013, the Company announced that it had hired 1,000 veterans since January 2012, achieving its veteran hiring commitment to the U.S. Chamber of Commerce Foundation's "Hiring Our Heroes" initiative almost two years ahead of schedule. To celebrate the achievement, the Company doubled its pledge by committing to hire an additional

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1,000 U.S. veterans by 2015. On November 7, 2013, the Company announced that it had achieved the 2,000 veterans mark, again beating its commitment two years ahead of schedule. The Company has been recognized for its workplace achievements, including, among others:

- *DiversityInc* named Comcast among the "Top 50 Companies for Diversity." *Comcast Voices* (Apr. 24, 2013), http://bit.ly/1s8wGFE.
- As mentioned above, Comcast tied for first place among Women in Cable Telecommunications' (WICT) 2013 Best Operators for Women in Cable, and NBCUniversal earned first place among WICT's 2013 Best Programmers for Women in Cable. *Comcast Voices* (Oct. 17, 2013), http://bit.ly/1mvwU8x.
- Comcast received a score of 85 on the Hispanic Association of Corporate Responsibility's (HACR) 2013 Corporate Inclusion Index. http://bit.ly/1iBqodx.
- *Equal Opportunity* magazine ranked Comcast No. 22 among its 2014 "Top 50 Employers". http://www.eop.com/awards-CD.php.
- *Careers & the Disabled* magazine ranked Comcast among its "Top 50 Employers" for 2013 and 2014. http://www.eop.com/awards-EO.php.
- Comcast Corporation was honored with the New York Urban League's 2013 "Champions of Diversity" Award.
- For the second year in a row, Comcast-NBCUniversal earned a 100 percent score on the Human Rights Campaign's (HRC) 2014 Corporate Equality Index, and is recognized among HRC's "Best Places to Work" list. *Comcast Voices* (Dec. 9, 2013), http://bit.ly/1i2oX3C.
- Comcast ranked ninth among HispanicBusiness.com's 2013 Best Companies for Diversity. http://bit.ly/QG5mQS.
- The National Association for Multi-ethnicity in Communications (NAMIC) honored Comcast and NBCUniversal with its "2013 Industry Diversity Champion Award." Comcast and NBCUniversal were each named a 2013 Top Company for People of Color by NAMIC.
- The National Hispanic Media Coalition (NHMC) honored Comcast for its Outstanding Diversity Practices during NHMC's 17th Annual Impact Awards Gala.
- LATINO Magazine recognized Comcast as one of the Top 15 companies actively encouraging Latinos to enter STEM careers. http://bit.ly/1InxvX0.
- LATINO Magazine recognized Comcast-NBCUniversal among its first-ever LATINO 100, a listing of the top 100 companies providing the most opportunities for Latinos.

Comcast has been recognized as a 2012 G.I. Jobs Top 100 Military Friendly Employer and a 2013 US Veterans Magazine Top 100 Best of the Best Veteran Friendly company, as well as a recipient of the 2012 US Chamber of Commerce Foundation's Lee Anderson Award for Comcast's commitment to veteran employment and support as key partners in their national "Hiring our Heroes" initiative.

Universal Orlando won a 2012 Exceptional Employer Award from the State of Florida's Agency for Persons with Disabilities.

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- The Legal Department of Comcast Cable Communications has been selected to receive the Minority Corporate Counsel Association's 2013 Employer of Choice Award for the Mid-Atlantic Region.
- Comcast Corporation received the Hall of Fame award among extra-large companies in the Philadelphia Business Journal's list of "Best Places to Work."
- The National Business Group on Health honored Comcast as the Special Recognition Winner for Best Family Engagement in the Best Employers for Healthy Lifestyles 2013 Awards.

21. MOU Diversity Initiatives: Procurement

PROMISE MADE

Establish a supplier diversity program that creates sustainable relationships with, and economic opportunities for, diverse suppliers.

PROMISE KEPT

- Over the course of three years, Comcast has spent almost $3.2 billion with diverse Tier I (prime) suppliers, including $1.3 billion in 2013 alone. Since the Company formally launched its Tier II program in 2012, prime suppliers have reported over $325 million in diverse Tier II subcontracting, including $186 million in 2013 alone.
- Other supplier diversity initiatives undertaken by Comcast and NBCUniversal include:
  - Partnering with diverse chambers of commerce and business organizations at the national and regional level;
  - Attending supplier diversity events, including supplier fairs, conferences, and capacity-building events, and business opportunity fairs, panels, and awards ceremonies;
  - Pursuing diversity objectives in its purchase of professional services, including banking and advertising services. For example, in April 2011, Comcast added The Williams Capital Group, L.P. (Williams Capital), a minority-owned bank, as one of its four placement agencies in its $2.25 billion commercial paper program, an ongoing effort whereby Comcast routinely sells short-term promissory notes to mutual funds and other investors for working capital financing. As of November 2012, Williams Capital had issued $1.2 billion of commercial paper for Comcast. In the advertising space, minority-owned Burrell Communications and Grupo Gallegos serve as Comcast's agency of record for African American and Hispanic creative, respectively.
  - Expanding efforts to track diverse Tier II spending by its prime suppliers and actively encouraging joint ventures, partnerships, and subcontracting between diverse suppliers as methods to create additional business opportunities for diverse vendors.
- Comcast has been recognized for its procurement-related achievements. In 2013 alone:
  - For the eighth consecutive year, DiversityBusiness.com recognized Comcast among its Top 50 Organizations for Multicultural Business.

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- *Black EOE Journal* named Comcast among the "Top Diversity Employers" and "Top Supplier Diversity Programs."
- *Hispanic Network Magazine* named Comcast and NBCUniversal among its "Best of the Best" in "Top Diversity Employers" and "Top Supplier Diversity Programs."
- *Professional Woman's Magazine* recognized Comcast-NBCUniversal among its Best of the Best lists for "Top Diversity Employers for Women" and "Top Supplier Diversity Programs for Women."
- *U.S. Veterans Magazine* named Comcast-NBCUniversal among its Best of the Best lists for "Top Veteran-Friendly Companies" and "Top Supplier Diversity Programs."
- For the sixth consecutive year, Comcast was named among the 10 Best U.S. Corporations for Veteran-Owned Businesses by the National Veteran-Owned Business Association.
- Comcast was named one the Best Companies for Asian Americans and Pacific Islanders by Asian Enterprise magazine, which recognized Comcast's "unwavering and continued commitment to the small business community" and "invaluable contribution to the Asian American and Pacific Islander community."
- Black Enterprise Magazine ranked Comcast Corporation among its annual list of 40 Best Companies for Diversity, recognizing Comcast and NBCUniversal's Supplier Diversity Program, among other key strengths.
- NBCUniversal was named Corporation of the Year by the Greater Los Angeles African American Chamber of Commerce.
- For the second consecutive year, NBCUniversal was named to the U.S. Hispanic Chamber of Commerce Million Dollar Club.
- The PA-NJ-DE Minority Supplier Development Council (MSDC) recognized Comcast as National Corporation of the Year.
- The Rocky Mountain Minority Supplier Development Council named Comcast Corporation of the Year.

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22. MOU Diversity Initiatives: Programming

PROMISE MADE

Strengthen and enrich the offering of diverse programming choices, expand the distribution of diverse networks to millions of homes, and feature hundreds of VOD and online choices geared toward African American, Asian American, and Hispanic audiences.

NBCUniversal will expand its diversity-focused pipeline programs in programming development and management.

PROMISE KEPT

- As mentioned above, Comcast has launched four of eight independent networks with Hispanic American or African American ownership: ASPIRE and Baby First Americas in 2012, and REVOLT and El Rey in 2013.
- Comcast has expanded the distribution of diverse African American, Asian American, and Hispanic content:
  - Comcast expanded distribution of The Africa Channel in the Detroit, Chicago, and Washington, D.C. markets. Comcast also launched The Africa Channel in its Northern Santa Barbara County, Savannah, Charleston, and South Florida markets, growing the network's audience by more than two million homes.
  - Comcast expanded carriage of TV One on its Xfinity TV lineup, making it available to over 600,000 additional customers in the Chicago and Miami markets.
  - Comcast announced a significant new carriage agreement with Mnet, the only 24/7 English-language nationwide television network in the U.S. targeting Asian Americans and fans of Asian pop culture, and subsequently extended carriage of Mnet to millions of additional Comcast subscribers in the San Francisco, Chicago, Sacramento, Boston, Washington, D.C., and Philadelphia DMAs in 2012. Comcast also launched MYX TV, a channel made for and by Asian Americans, in Seattle and western Washington.
  - Comcast extended distribution of seven Hispanic programming services (Azteca America, Galavisión, HITN, LATV, nuvoTV (formerly SITV), Telefutura, and Univision) by more than 14 million subscribers. With this accomplishment, Comcast exceeded by more than 40 percent its commitment to expand carriage of three Hispanic networks by 10 million subscribers.
  - Comcast fulfilled its commitment to launch a package of 40 to 60 Spanish-language channels in all major Hispanic markets, including Northern California, Houston, South Florida, Chicago, Boston, Philadelphia, Washington, D.C., Denver, Salt Lake City, and Atlanta.
- Comcast has also has expanded the quality and quantity of diverse programming available through its VOD and online platforms —increasing the number of diverse VOD hours by more than 270 percent and the number of diverse online hours by nearly 170 percent over the past three years. These results are driven by the launch of new diverse-oriented VOD services, including Black Cinema On Demand, Hispanic Cinema On Demand, and Cinema Asian America, and by the launch of first-of-their-kind microsites for entertainment and news for diverse audiences, such as Celebrate

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Black TV, Xfinity Latino, Xfinity Asia, Xfinity TV LGBT, and people with disabilities. Each microsite features audience-specific news, blogs, and Xfinity TV programming—including award-winning movies, TV shows, celebrity interviews, behind-the-scenes footage and entertainment news featuring entertainers, artists, and historical figures. The microsites complement the comprehensive content offerings available through Comcast's Xfinity VOD platform, where customers can access a special Multicultural folder for a wide array of culturally relevant content.

- The Company sponsored on-air and multimedia coverage of the ALMA Awards in 2011, 2012, 2013, and in the upcoming 2014 ceremony, and sponsored on-air and multi-media coverage of the NAACP Image Awards in 2012 and 2013.

- Comcast's diversity record has been made stronger by the NBCUniversal properties. "MSNBC is one such example. Over the past few years, the network has maintained a first-place standing in the cable news industry among both 25- to 54-year-old African-American viewers and total viewers. In fact, it grew its African-American audience by a remarkable 60 percent in 2012. Last year marked the fourth consecutive one in which MSNBC held the top spot with this segment. In addition, the network noted in its February 2014 ratings release that, according to Nielsen, it was 'also the most diverse cable news network.' The following figures were given to back that up: in weekday prime-time (Monday-Friday, 8pm-11pm), MSNBC ranked number one in African-American, Hispanic, and Asian 25-to-54 audiences for the month. In full day (Monday-Sunday, 6am-2am), MSNBC ranked number one among African-Americans and Hispanic 25-to-54 audiences." *PR Week* (Mar. 28, 2014), http://bit.ly/1jEd9eM. MSNBC's commitment to diversity is not only evident through its on-air hosts, contributors, guests, and newsroom staff, but also in its daily story selection and specials produced by the network.

- NBCUniversal and the U.S. Olympic Committee partnered to acquire the TV rights to the 2014 and 2016 Paralympic Games. NBC and NBCSN televised a combined 50 hours of coverage for the 2014 Paralympic Games from Sochi, which ran March 7-16, 2014. *NBC Sports Group Press Release* (Feb. 19, 2014), http://bit.ly/P1uh09. Paralympic programming was also featured on the Xfinity Accessibility microsite. NBC and NBCSN will again combine for 66 hours in September 2016 for the Paralympic Games from Rio de Janeiro, an increase from the 60.5 hours NBC Sports Group covered during the 2012 summer games.

- The Company's celebration of each diversity heritage month goes far beyond the special programming that is featured on its VOD and online platforms. The NBCUniversal-owned television stations also contribute programming time and special events. For example, in honor of Hispanic Heritage Month 2013 (September 15th through October 15th), the NBC-owned stations in New York, Los Angeles, Chicago, Philadelphia, Dallas-Fort Worth, Connecticut, and Miami broadcasted public service announcements, specials, news features and coverage of Hispanic heritage celebrations.

- NBCUniversal has long been a leader in offering diversity development programs to improve the interest and presence of diverse writers, directors, journalists, and on-screen personalities. Under Comcast's leadership, NBCUniversal has added even more signature programs. Highlights include:

    - Universal Pictures Emerging Writers Fellowship is designed to identify and cultivate new and unique voices with a passion for storytelling in the context of film. Emerging writers who are chosen to participate in the program will work within the studio to hone their skills and gain access and exposure to Universal executives, producers, and other key industry professionals. http://bit.ly/1quBeNm.

    - The Writers on the Verge program focuses on grooming diverse writers not just for NBCUniversal but for the entire television industry. More than 50 percent of Writers on the

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Verge alumni are currently staffed on television shows across the industry landscape (alumni write for NBC shows such as "The Blacklist," "Dracula," "Chicago Fire," and "Chicago P.D."). Alumni write for USA Network series "Burn Notice & Suits" and for the Universal Television production "Brooklyn Nine Nine." http://bit.ly/PsPXCP.

- The Diverse Staff Writer Initiative gives writers from diverse backgrounds an entrée into the writers' room. The program encompasses NBC's late-night programs, in addition to prime-time scripted programs from NBC, USA and SyFy. Participants are selected and hired by the showrunners/producers of each show, with the guidance of the network and studios. The program has launched the careers of many talented writers in the past 13 years, including Mindy Kaling ("The Office," "The Mindy Project") and Donald Glover (writer on "30 Rock," and later talent on "Community"). http://bit.ly/1q8Jbz0.
- The Late Night Writers Workshop is designed for up-and-coming sketch and comedy writers to learn about NBCUniversal's late night line-up, gain insight into the dynamics of a late night writers' room, and provide insights on securing a staff writer position. http://bit.ly/1q1q5ci.
- The Casting Apprentice Program is rotational program designed for individuals with diverse backgrounds who aspire to join a casting office.
- The Director Fellowship Program (http://nbcudirectingfellowship.com/) gives well-established directors from the worlds of music video, commercials, and theater a chance to shadow directors of episodic television, and learn the craft. In the last two years the program has seen three directors have their first episodic directing assignments on "Parenthood," "Grimm," and "Community" through the program.
- The NBC News Associates Program is dedicated to identifying outstanding aspiring journalists. In 2011, this program was extended to the newsrooms of NBC Owned Television Stations and CNBC. In keeping with NBCUniversal's strong commitment to develop a diverse editorial staff across NBC News assets, the News Associates program is designed to attract candidates of diverse racial, ethnic, economic and geographical backgrounds, as well as candidates with disabilities. http://bit.ly/OilZzW.
- The Reporter Training Program is aimed at developing talented young on-air journalists from diverse backgrounds. Participants, who are selected annually, must hold a bachelor's degree in journalism, communications, or a related field and have a minimum of one to two years of experience in the news room or on-air reporting television news. *MediaBistro.com* (Sep. 19, 2011), http://bit.ly/1efMOMe.
- The News Summer Fellowship Program gives paid internships to nominees from the National Association of Black Journalists (NABJ), National Association of Hispanic Journalists (NAHJ), and Asian American Journalists Association (AAJA). Participants are college sophomores or above who are members of NABJ, NAHJ, or AAJA.

- The awards and recognitions bestowed on the Company demonstrate its commitment to diversity in front of and behind the camera. Highlights include:
  - Comcast Corporation received a 2014 Multicultural TV Front Runner Award for its commitment and efforts in support of the various multicultural communities it serves.
  - The National Hispanic Media Coalition (NHMC) honored Comcast for its Outstanding Diversity Practices during NHMC's 17th Annual Impact Awards Gala.

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The National Association for Multi-ethnicity in Communications' (NAMIC) 2013 Excellence in Multicultural Marketing Award (EMMA) winners included Comcast, which led the Cable Distributors division with five first-place wins, Telemundo Media (including mun2), which garnered three first-place wins, and International Media Distribution, which earned two first-place awards. Comcast's multicultural microsites were honored with six first-place honors at the 2013 EMMAs (Excellence in Multicultural Marketing Awards). *NAMIC Press Release* (Sep. 16, 2013), http://prn.to/1iFkPK4.

- NAMIC awarded Comcast its 19th Annual Vision Award for its original, multi-platform television programming that depicts the lives, spirit, and contributions of people of color and best reflects the diversity of the global viewing audience.
- Comcast-NBCUniversal productions were nominated for several 2014 NAACP Image Awards, including Andre Braugher for Outstanding Actor in a Comedy Series ("Brooklyn Nine-Nine," a Universal Television production for FOX); Mindy Kaling for Outstanding Actress in a Comedy Series ("The Mindy Project," a Universal Television production for FOX); Tracy Morgan for Outstanding Supporting Actor in a Comedy Series ("30 Rock"); and Rashida Jones for Outstanding Supporting Actress in a Comedy Series ("Parks and Recreation"). The syndicated Universal Television production "Steve Harvey" won the award for Outstanding Talk Series.
- NBC News receives consistently leading marks from the National Association of Black Journalists annual survey of diversity in front of and behind the camera.
- Focus Features' "Dallas Buyers Club" earned Best Actor and Best Supporting Actor honors at the 86th Annual Academy Awards and the 2014 Golden Globes. The film tells the true story of AIDS patient Ron Woodroof, who partners with a transgender woman to sell unapproved medication to HIV-positive patients.
- The Gay, Lesbian & Straight Education Network (GLSEN) honored USA Network's Characters Unite campaign with its "Inspiration Award."
- Sixteen Comcast-NBCUniversal productions were nominated for GLAAD Media Awards in 2014, including:
  - "Dallas Buyers Club" (Focus Features) – Outstanding Wide Release;
  - "There's the Door" Necessary Roughness (USA Network) – Outstanding Individual Episode;
  - "Days of Our Lives (NBC) – Outstanding Daily Drama;
  - "Gay Rights at Work" MSNBC Live (MSNBC) – Outstanding TV Journalism Segment;
  - "Pride & Prejudice" Melissa Harris-Perry (MSNBC) – Outstanding TV Journalism Segment;
  - "Scouts Dishonor" The Last Word with Lawrence O'Donnell (MSNBC) – Outstanding TV Journalism Segment;
  - "Wild Blue Yonder: Scott Hines" The Rachel Maddow Show (MSNBC) – Outstanding TV Journalism Segment;

- "Entregando a mi nieta" Caso Cerrado (Telemundo) – Outstanding Daytime Talk Show Episode [Spanish Language];
- "Exclusivas Declaraciones" Al Rojo Vivo (Telemundo) – Outstanding Daytime Talk Show Episode [Spanish Language];
- "Matrimonios del mismo sexo: Entrevista con Daniel Zayala y Yohandel Ruiz" Un Nuevo Día (Telemundo) – Outstanding Daytime Talk Show Episode [Spanish Language];
- "Decisión Histórica" Noticiero Telemundo – Outstanding TV Journalism Segment [Spanish Language];
- "Hasta que la corte nos una" Noticias Telemundo Miami – Outstanding Local TV Journalism [Spanish Language];
- "Natalia: rompiendo barreras" Noticiero Telemundo Arizona – Outstanding Local TV Journalism [Spanish Language]; and
- "Brooklyn Nine-Nine" (Universal Television for FOX) – Outstanding Comedy Series.

In 2013, NBCUniversal productions received three awards and eighteen GLAAD Media Award nominations. The winning entries were "Smash" (NBC) - Outstanding Drama Series; "The New Normal" (NBC) - Outstanding Comedy Series; and "Being Transgender in America" by Melissa Harris-Perry (MSNBC) – Outstanding TV Journalism / News Magazine.

23. MOU Diversity Initiatives: Community Investment

☐ **PROMISE MADE**

Comcast will increase its community investment spend on minority-led and minority-serving institutions by 10 percent per year for each of the next three years.

☑ **PROMISE KEPT**

- Comcast and NBCUniversal have increased year-over-year support of community-based philanthropic organizations helping underserved and diverse communities. Since 2001, Comcast's overall giving has exceeded $3.2 billion in cash and in-kind contributions supporting local non-profit organizations and other charitable partners across the country, $415 million of which was given in 2013 alone.
- In 2010, Comcast and NBCUniversal committed to increase aggregate cash support to minority-led and minority-serving ("MLMS") organizations by ten percent per year in 2011, 2012, and 2013. The Company significantly exceeded this commitment, increasing its spending by more than 100 percent, for a total MLMS spend of more than $30.7 million since the closing of the NBCUniversal transaction.
- Comcast achieved this unprecedented level of support for MLMS institutions, in part, through the extensive activities and programs of the Comcast Foundation, led by the corporate team, but extended throughout Comcast's footprint by the cable divisions. This included extensive outreach to and work with the Company's community partners, as well as the important work of the following signature programs:

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- Comcast undertakes the largest single-day corporate volunteer effort in the nation—Comcast Cares Day. In 2013, more than 85,000 volunteers participated at over 750 project sites, contributing their time and energy to clean up parks, make over schools, and landscape playgrounds. Comcast Cares Day was one of the reasons that Comcast was ranked among "The Civic 50" by the National Conference on Citizenship, Points of Light Foundation, and Bloomberg News.
- Now in its 13th year, the Comcast Leaders and Achievers® Scholarship Program recognizes high school seniors for their community service, academic achievement and leadership skills. Funded through the Comcast Foundation, the program recognizes high school seniors from Comcast communities for their commitment to community service, academics and demonstrated leadership. To acknowledge these accomplishments, Leaders and Achievers are awarded one-time scholarships, with a base award of $1,000. Since 2001, Comcast has awarded close to $20 million in scholarships to nearly 20,000 students. More than 950 scholarships awarded last year benefitted students from diverse backgrounds.
- The Comcast Digital Connectors program trains youth from primarily diverse, low-income backgrounds in Internet and computer skills. Teens meet weekly after school, have the option to earn a Cisco IT Essentials certification of completion and receive a complimentary laptop upon graduation from the program. Comcast Digital Connectors is also a community service program, as participants volunteer at senior centers, churches, local schools and other community organizations, spreading digital literacy in their community. Since the program began, more than 2,000 Digital Connectors have participated, volunteering more than 100,000 hours to bridge the digital divide in their communities. Through training and service, Comcast Digital Connectors is preparing today's youth for the jobs of tomorrow.
- Each year, Comcast and NBCUniversal employees rally around our communities by supporting United Way. Through an annual employee giving campaign, company employees pledged nearly $6.4 million to United Way during the 2013 campaign. Not only did the Company employees break the company record for dollars pledged, with year-over-year, double-digit growth, the campaign also had record-breaking employee participation. Combined with matching Comcast Foundation grants, the campaign will provide almost $8 million next year to local United Ways and affiliate organizations across the country—taking us beyond $50 million in total historic support to United Way. *Comcast Voices* (Nov. 25, 2013), http://bit.ly/1m4QoWd.

- Comcast and NBCUniversal also increased support for organizations offering fellowship, internship, and scholarship programs that support diverse beneficiaries. Substantial support was also given to promote the good work of its diverse partners through PSAs and other media placements, both locally and nationally.
- Comcast and NBCUniversal have been recognized for community investment-related achievements, including in 2013 and 2014:
  - United Way Worldwide recognized Comcast Corporation with two 2013 Summit Awards for volunteer and philanthropic engagement.
  - The Congressional Black Caucus Foundation, Inc. (CBCF) recognizes Comcast as a Distinguished Corporation for its tremendous work in promoting digital literacy.

  Comcast was recognized among "The Civic 50" and was named the third best in the communications industry for 2013. *Comcast Voices* (Dec. 5, 2013), http://bit.ly/1grtHmU.

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- Comcast and the City of Chicago were awarded the U.S. Conference of Mayors Outstanding Award for Public/Private Partnerships for the collaborative efforts to close the digital divide via Comcast's *Internet Essentials* program.
- The United States Hispanic Chamber of Commerce and the National Urban League, among others, applauded the indefinite extension of the *Internet Essentials* program. "We look forward to working with Comcast NBCUniversal to help leverage the Internet Essentials program to drive job growth, create more opportunities for minority-owned businesses and improve education outcomes in underserved areas." *National Urban League Press Release* (Mar. 4, 2014), http://bit.ly/1myWuJE.
- Comcast was presented with the "Bridging the Gap" Award during The Foundation for Florida Virtual School's second annual Opening Doors to the World Awards Celebration in Orlando. The "Bridging the Gap" Award was in recognition of Comcast's *Internet Essentials* Program that connects low-income families to the internet. The Foundation for Florida Virtual School presents this award to an organization that demonstrates a resourceful approach to education by connecting communities through innovation and technology.
- Comcast-NBCUniversal was honored among United States Hispanic Chamber of Commerce's Million Dollar Club ($100M-$250M category), which recognizes corporations and procurement executives who actively demonstrate an unwavering commitment to Hispanic Business Enterprises through their work with Hispanic suppliers.
- During its 2013 Corporate Philanthropy Summit, the Philadelphia Business Journal presented Comcast Corporation with the "Top Community Impact Award" and the "Top In-Kind Donor Award" in the extra-large company category. Comcast was also ranked as the fifth largest corporate charitable giver in the Philadelphia region.
- Comcast received a Beacon Award® from the Association of Cable Communicators for its *Internet Essentials* Ambassadors Program.

24. MOU Diversity Initiatives: Catalyst Fund

☐ **PROMISE MADE**

Establish a $20 million venture capital fund to expand opportunities for businesses with minority ownership in new media content and applications.

☑ **PROMISE KEPT**

- In 2011, Comcast Ventures established a $20 million venture capital "Catalyst Fund" (originally named "Opportunity Fund") for investments in early-stage ventures led by diverse entrepreneurs with innovative technology ideas and solutions that fit within its investment focus. The Fund's goal is to create the most diverse and valuable early stage portfolio in the venture industry.
- The Catalyst Fund's first investment was in the startup accelerator DreamIt Ventures, which operates DreamIt Access, a concentrated effort to increase the number of high-value, minority-led tech startups. During this three-month program, participating startup companies receive seed funding and access to DreamIt Ventures' benefits and services, including business talent, legal and accounting services, mentoring, office space, guidance from leading business visionaries, and contacts to reach the next level of development. In addition, DreamIt Access offers mentors, special

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events, and advisors with a particular interest in increasing the number of successful minority-led startups.

- Through its DreamIt Access partnership, the Catalyst Fund has sponsored 20 minority-led startups since 2011, 16 of which are still operating. The majority of these companies are focused on web and mobile technologies. In January 2014, Comcast Ventures announced its commitment to support the DreamIt Access track for two more years, with the ability to support up to 20 minority-led companies over the course of four cycles.
- In addition, the Catalyst Fund has made direct investments in seven minority-led startups:
  - ElectNext, a political data analysis firm (Philadelphia Fall 2011 DreamIt participant) (August 2012)
  - Quad Learning, an online two-year honors program for community and junior college students to enhance their college transfer options (January 2013)
  - Reactor, Inc., a speech enabled news assistant for mobile devices firm (New York Summer 2012 DreamIt participant) (March 2013)
  - Loverly, an online wedding discovery and inspiration site (May 2013)
  - Viridis Learning, an educational and technology company combining workforce education and human capital solutions for the middle-class workforce (June 2013)
  - Maker's Row, an online marketplace for connecting designers with American-based factories (July 2013)
  - Mercaris, a market data service and online trading platform for organic, non-GMO, and certified agricultural commodities (October 2013)

COMCAST

ADELPHIA (2006)

1. System Upgrades

☐ **PROMISE MADE**

Comcast will spend $150 million to upgrade Adelphia systems.

☑ **PROMISE KEPT**

- Comcast significantly exceeded our promised investment. Between August 2006 and March 2008, Comcast spent over $660 million to upgrade systems acquired from Adelphia.

2. New Products and Services

☐ **PROMISE MADE**

Comcast will put its technological leadership to work in Adelphia's systems, which should dramatically advance the roll-out of new services.

Comcast will significantly accelerate the roll-out of competitive voice services in Adelphia's franchise areas.

☑ **PROMISE KEPT**

- Despite the poor conditions of many of the cable systems Comcast acquired from Adelphia, Comcast was able to deploy digital cable, HDTV channels, and High-Speed Internet in all the acquired systems. Comcast also launched VOD service, which Adelphia did not offer.
- The FCC also cited the deployment of VoIP as a potential benefit of Comcast's acquisition of the Adelphia systems. Despite the technical hurdles, Comcast launched VoIP services to most homes in the former Adelphia footprint —Adelphia did not offer voice services and had canceled plans to launch its own VoIP service.

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AT&T BROADBAND (2002)

1. System Upgrades

PROMISE MADE

When the AT&T Broadband systems joined Comcast in 2002, perhaps the greatest concern expressed by local communities had to do with system upgrades that were either behind schedule or incomplete. Without these needed upgrades—and the expanded system bandwidth—many communities simply could not receive such advanced broadband offerings as digital cable, HDTV, VOD, and High-Speed Internet. As a result, Comcast made a commitment to bring the former AT&T Broadband technical system up to the level of Comcast's standards as quickly as feasible. This meant an up-front commitment by Comcast of significant capital and manpower to complete the rebuilds that were either behind schedule or stopped.

PROMISE KEPT

- Through 2006, Comcast had spent nearly $8 billion in capital improvements. Much of that expenditure was devoted to former AT&T Broadband systems. In addition, Comcast exceeded its already aggressive construction plans by over 15 percent. Comcast met or exceeded every upgrade target that it had established, and ended 2004 with virtually all of its cable systems fully upgraded with two-way capability. Specifically:
  - Comcast accelerated AT&T's five-year upgrade plan to a two-year plan, and system upgrades moved forward, generally ahead of Comcast's two-year schedule. In 2003, $1.3 billion was spent on upgrades alone. By the year's end, 53,000 plant miles were constructed—an industry record. The vast majority of these miles were in former AT&T Broadband systems.
  - In San Francisco, CA, Comcast invested $600 million to rebuild and upgrade the technical capacity of the former AT&T Broadband systems in the San Francisco Bay area. Prior to the acquisition, the systems had essentially no upgraded plant. Post-transaction, Comcast installed more than 11,000 miles of fiber-optic plant throughout the Bay area, allowing for introduction of HDTV, VOD, and DVR services and increases in High-Speed Internet speeds.
  - In Jacksonville, FL, the company faced a formidable task of rehabilitating a system with a stalled rebuild and virtually no senior management structure. Comcast quickly addressed these challenges. It installed a veteran management team, invested substantial resources to upgrade the system, and completed the long-promised upgrade ahead of plan.
  - In November 2004, Comcast completed a $450 million upgrade of its broadband network in Chicago. This effort included upgrading and constructing more than 10,000 miles of broadband networks.
- In recognition of these and other achievements, Comcast was named Operator of the Year by Multichannel News in 2003. *Multichannel News* (Sep. 29, 2003) (noting that, with respect to the upgrade of the former AT&T systems, Comcast "outperformed even its own stated expectations"), http://bit.ly/1l0rqC6.

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2. New Products and Services

☐ **PROMISE MADE**

The investment in upgrading the technical capacity of the systems acquired from AT&T Broadband will allow Comcast to offer its subscribers both advanced broadband products and an even wider range of diversified programming services.

☑ **PROMISE KEPT**

- Upgraded AT&T Broadband systems received Comcast's most advanced video and broadband services available at that time, including Digital Cable, VOD, HDTV channels, digital video recorders (DVRs), High-Speed Internet, and Comcast Digital Voice (VoIP).
- Comcast also expanded programming offerings of special interest to an even wider group of audiences. Hispanic programming tiers were made available to Comcast Digital Cable customers.
- As a result of its "massive upgrade project" and the resulting "[b]reakthrough advances in its digital video and high-speed data platforms, and effective leadership regarding the future of technology for itself and the industry at large," Comcast was named Operator of the Year by Communications Technology Magazine in 2004. *Communications Technology* (Jun. 1, 2004), http://bit.ly/1eOxlxn. Similarly, in recognition of its "uncommon mastery of technology, innovation, globalism, networked communication, and strategic vision," Comcast was named to Wired magazine's Wired 40 list in 2004. *See Wired* (June 2004), http://wrd.cm/1j0XfXd.

3. Reduced Debt, Strong Balance Sheet

☐ **PROMISE MADE**

The sheer scale of the Comcast-AT&T Broadband transaction generated some tough questions about the financial viability of the proposed new company. Comcast guaranteed early on, however, that the new company would be financially secure enough to fulfill the commitments we made.

☑ **PROMISE KEPT**

- Comcast was able to meet or exceed financial expectations, even while expending significant resources to complete the upgrading of the former AT&T Broadband systems. In addition, basic subscriber loss stopped, reflecting an especially critical benefit generated by our initiatives targeted at improving service and delivering products with special value to our customers. In the year prior to the merger, AT&T Broadband lost 500,000 subscribers; we turned that negative trend around in only one year.
- From the outset, many concerns were raised about Comcast's ability to operate at an optimal level while taking on the significant amount of debt the company was assuming in conjunction with the AT&T Broadband merger. Our commitment, however, was to diligently de-leverage the company, in much the same way that Comcast has done with all of our previous acquisitions, and Comcast accomplished that goal in less than twelve months.

EXHIBIT 7

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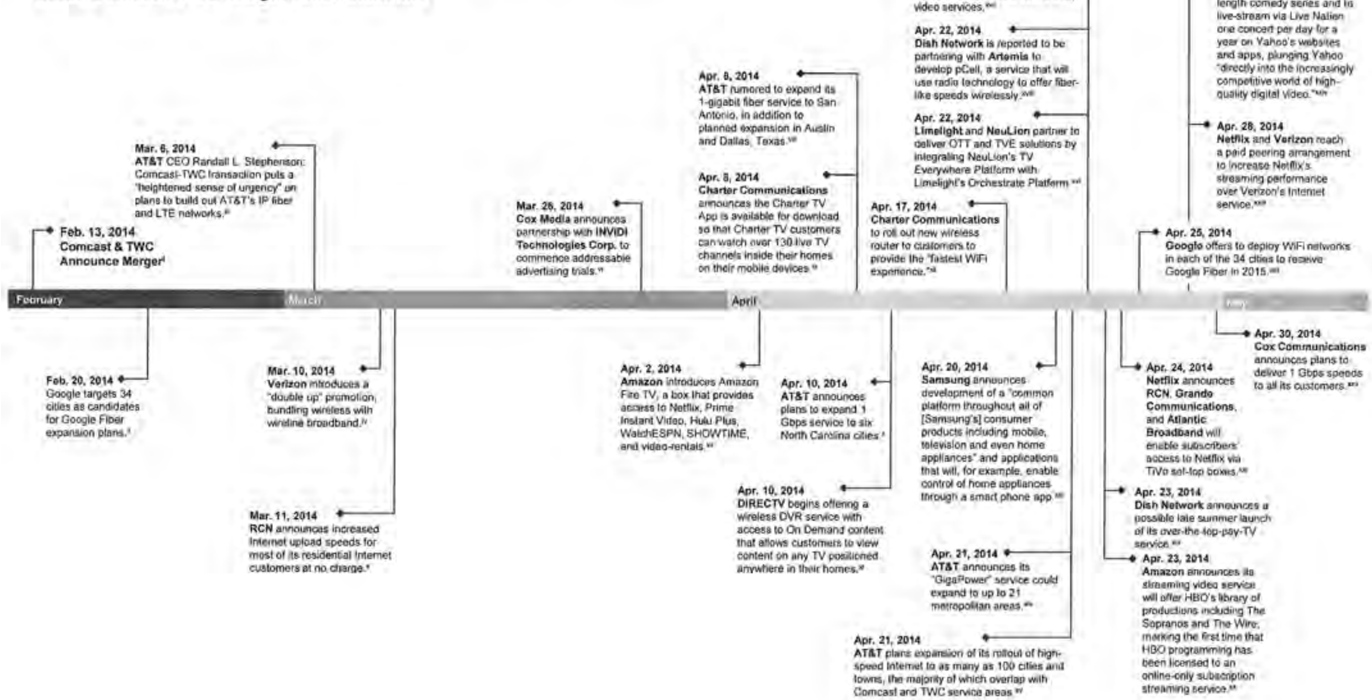
Timeline of Technology and Communications Investment and Innovation Since Comcast-TWC Merger Announcement



Timeline of Technology and Communications Investment and Innovation Since Comcast-TWC Merger Announcement

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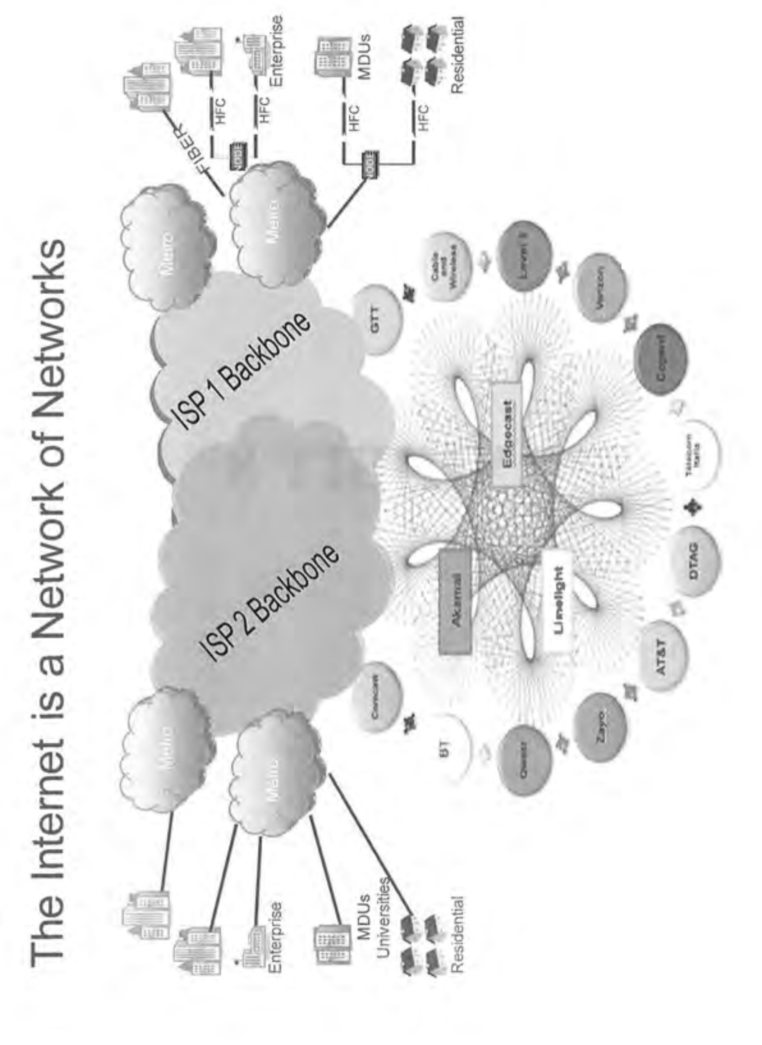
xxiv Vindu Goel & Bill Carter, *Yahoo to Offer TV-Style Comedy Series on the Web*, N.Y. Times, Apr. 28, 2014, *available at* http://www.nytimes.com/2014/04/29/technology/yahoo-to-offer-two-tv-length-comedy-series-on-web.html?hpw&rref=television&_r=0.

xxv Jeff Baumgartner, Cable Show: Cox to Offer 1-Gig to All, Multichannel News, Apr. 30, 2014, http://www.multichannel.com/news/technology/cox-offer-1-gig-all/374284.

EXHIBIT 8

COMCAST


The Internet is a Network of Networks
ISP 1 Backbone
ISP 2 Backbone
Metro
Metro
Metro
Metro
FIBER
HFC
HFC
HFC
HFC
Enterprise
MDUs
Residential
Enterprise
MDUs
Universities
Residential
GTT
Comcast
Akamai
Edgecast
Limelight
Level 3
Verizon
Cogent
DTAG
AT&T
Zayo
Qwest
BT

Material submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Regulatory Reform, Commercial and Antitrust Law

May 6, 2014

The Honorable Spencer Bachus
United States House Committee on the Judiciary
2246 Rayburn House Office Building,
Washington, D.C. 20515

The Honorable Hank Johnson
United States House Committee on the Judiciary
2240 Rayburn Office Building,
Washington, D.C. 20515

Dear Representatives Bachus and Johnson:

In anticipation of your upcoming hearing entitled Oversight Hearing on "Competition in the Video and Broadband Markets: the Proposed Merger of Comcast and Time Warner Cable", we write to you today to highlight a few key points that are of great importance to this potential merger and its effect on programming choices and media access for the African-American community, as well as other racial and ethnic minority communities and viewers throughout our Nation. We shared a similar letter with our views prior to the recent Senate Judiciary hearing on the merger.

An active, robust and diverse media sector, both in terms of ownership and content, is essential for the success of a modern democratic society. Our nation's media systems, from broadcast television and radio, to cable television, should be fully representative of the communities that they serve. Less than ten years ago, there were 21 full-power commercial television stations licensed to African-American controlled companies in the United States, and even though 21 stations is woefully short of parity, today there are only four. Unfortunately, to make matters even more deeply concerning, there are no present indicators that this dismal decline in diverse media ownership is likely to be reversed in the foreseeable future. One of the glimmers of hope that can be found is in minority-owned cable networks, like TV One, which provides daily news and quality original programming, from the African-American point of view, as well as shows like the prestigious NAACP Image Awards. Authentic and positive representation of African-American culture, history and diversity are greatly welcomed and sorely needed.

But, even a network like TV One, which is respected by the communities it serves, is not available to all viewers because of the tier on which the programming is placed by some cable operators. Often, networks like TV One are relegated to one of the more expensive tiers thus making programming for and about the African-American community more costly for a group of consumers who are often economically disadvantaged and yet rely more heavily on cable products for their information, news and entertainment.

The way the public views certain issues about our communities, our Nation, and our world is directly related to the manner in which these subjects are covered by available media. We need the voices of and platforms for racial and ethnic minorities, including African-Americans that have scale, to achieve the goal of diverse, fair, balanced and comprehensive coverage. This means that the interest of a racially and ethnically diverse public is best addressed when our nation's media systems are representative of, accessible to, and affordable by the communities that they serve.

Thank you for the opportunity to share our views with you during this crucial hearings process. If you have any questions on this matter you can reach Hilary O. Shelton, Director of the NAACP Washington Bureau and Senior Vice President for Policy and Advocacy at (202) 463-2940 or Jim Winston, NABOB Executive Director and General Counsel.

Sincerely,

Hilary O. Shelton
Director
NAACP Washington Bureau and
Senior Vice President for Policy and Advocacy

James L. Winston
NABOB Executive Director and
General Counsel

Cc: Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
U.S, House of Representatives

Material submitted by the Honorable Spencer Bachus, a Representative in Congress from the State of Alabama, and Chairman, Subcommittee on Regulatory Reform, Commercial and Antitrust Law

National FFA Center
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Indianapolis, IN 46268-0960
Phone: 317-802-6060
Fax: 317-802-6061

*The FFA Mission: FFA makes a positive difference in the lives of students by developing their potential for **premier leadership, personal growth and career success** through agricultural education.*

NATIONAL FFA ORGANIZATION

April 11, 2014

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

My name is Dwight Armstrong, and I serve as chief executive officer for the National FFA Organization and the National FFA Foundation. I would like to provide comment pertinent to the Judiciary Committee's public hearing on the proposed merger between Comcast Corporation and Time Warner Cable Inc., particularly the importance of rural programming to the industry of agriculture and to rural and urban communities.

As you may know, the FFA (formerly Future Farmers of America) is an organization of students in public schools preparing for careers in the science, business and technology of agriculture. FFA is one of three vital components of a total agricultural science education system that helps develop students' potential for leadership, personal growth and career success in the food, fiber and natural resources systems of agriculture. Approximately 580,000 FFA members study in 7,500 school-based chapters in 50 states, Puerto Rico and the Virgin Islands. The organization and foundation operate as separate 501(c)(3) nonprofit organizations, and FFA operates under a charter received from the U.S. Congress in 1950.

While fewer Americans today are engaged in on-farm production, the industry of agriculture is one of our nation's largest, most productive economic sectors. The diversity of careers and opportunities in the field cannot be overstated. To attract a talented and well-prepared workforce, it is essential that American agriculture reach rural, suburban and urban audiences. It is equally important that the issues vital to rural communities are shared and explored with urban audiences as well. To this end, television, radio and online programming that deliver that messaging is essential to the national interest.

For the millions of Americans that have been engaged in the FFA and agricultural education, and the many millions more in communities we serve, a major communication outlet for the past 25 years has been RFD-TV, based in Omaha, Nebraska. Since its inception, RFD-TV has been an important partner for FFA and agricultural education, providing an indispensable channel of communication and making available extensive broadcast production support. RFD-TV airs our educational programming at no cost to the organization. Through their creative and philanthropic efforts, FFA has been able to telecast hundreds of hours of live and taped portions of our past three national FFA conventions held annually in the fall. These conventions, the largest annual student gatherings in the country, are attended by 63,000 individuals each year. Thanks to RFD-TV's coverage, we are able to share the important educational and motivational content with millions of current and former members, educators, supporters and the general public.

In addition to the national FFA conventions, RFD-TV has made it possible for FFA to develop a monthly, hour-long program titled "FFA Today" which shares important information about the work of agricultural education, the achievements of our members and the diverse career opportunities in the industry. This program has been an outstanding success and is highly valued by our FFA-related audiences and the general public. Promoting agriculture, raising awareness of agricultural science education and developing grassroots support for our teachers and school programs are direct results of the support FFA has received—at no cost—through the generous support of RFD-TV.

Ensuring this programming is available to urban audiences through cable television distribution is of paramount importance to American agriculture and to FFA. Today, FFA has chapters and school programs in 15 of the 20 largest U.S. cities, including New York, Chicago, Houston, Philadelphia and Los Angeles. Urban students must understand the issues and opportunities within the industry of agriculture. If programming such as RFD-TV is blocked from urban markets, it would do significant harm to agriculture and to the nation's rural communities.

More than a broadcast outlet, RFD-TV has been a generous and indispensable partner in support of FFA chapters and their communities. When the southern coastal states were ravaged by hurricanes beginning with Katrina, RFD-TV played a pivotal role in helping FFA with "Seeds of Hope," a campaign to raise funds and rebuild agricultural education programs devastated in Texas, Louisiana, Mississippi, Alabama and Florida. In addition to airing our public service announcements, RFD-TV's management contributed significant funding through the National FFA Foundation, and additional funds were contributed from the RFD-TV viewing audience. We deeply appreciate the support FFA has received from RFD-TV President Patrick Gottsch, his organization and the network's viewers.

In another example, to help FFA reach hard-pressed Native American communities, RFD-TV provided resources to bring Native American students to the national FFA convention and Washington, D.C., to ignite a spark of leadership and career development. Such efforts are part and parcel of RFD-TV's commitment to providing opportunities for the next generation of leaders for agriculture and American communities.

Agricultural education and FFA are playing a vital role for our nation, not just in developing tomorrow's agricultural workforce, but in cultivating the leadership abilities of local citizens who will contribute to the social, economic and civic well-being of the nation's communities. RFD-TV's help in communicating with our constituencies will be increasingly important in the future. To be sure, our broadcasting efforts would not be possible today without the committed support we receive from RFD-TV. To date, no other broadcasting or publishing entity—either agricultural or general media—has offered this unqualified support to the National FFA Organization. We are grateful for their efforts.

For these reasons, we respectfully request Congress do all it can to ensure outlets such as RFD-TV have access to urban media markets. Their work in connecting city and country is particularly important as the nation considers the challenge of providing food, fiber and natural resources for a global population forecast to grow to 10 billion by 2050. It will require that agriculture have access to the best talent of all of our nation's youth to secure the innovation and collaboration needed to avoid a humanitarian disaster. Your decisions regarding access to broadcast markets have very real and far-reaching consequences.

On behalf of agricultural educators across the nation, I want to thank the Judiciary Committee for its diligence in safeguarding the public's interest as it considers the merger between Comcast Corporation and Time Warner Cable Inc. We urge you to ensure that channels such as RFD-TV may continue serving American public education and local communities by making available important programming such as ours that benefits agriculture and education. That is an investment in the future we can all support.

Thank you for this opportunity to add comment. If the National FFA Organization can be of further assistance, please let me know.

W. Dwight Armstrong

W. Dwight Armstrong, Ph.D.
Chief Executive Officer
National FFA Organization
National FFA Foundation

Virginia FFA
Association & Foundation
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(540) 231-3824 fax

The Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

As state executive secretary of the Virginia FFA Association, it is my privilege to provide comment regarding the Judiciary Committee's hearing on the proposed merger between Comcast Corporation and Time Warner Cable.

The Virginia FFA Association represents 32,200 students and 308 teachers engaged in agricultural education in programs throughout the Commonwealth. I'm sure you share our pride in knowing that this year's National FFA Organization President, Brian Walsh, is a native Virginian and an exceptional servant leader from your Congressional District. These FFA members and students are truly the future of American agriculture, and they represent every facet of the industry, from farm to table. As such, they are keenly interested in ensuring all our citizens—rural, urban and suburban—receive important information about the issues that impact agriculture and rural communities.

Television has been an indispensable medium to bring that information to consumers, parents and young people in urban areas. Not only do many of our students come from towns and cities, agriculture must be able to attract the best and brightest from every corner of our state. For many years, our key partner in reaching those audiences has been RFD-TV. The live broadcast of the annual National FFA Convention has brought FFA and agricultural education into homes throughout our state. Messages of the diversity of agriculture, the diverse career opportunities, and the growth and achievement of FFA members are critical themes carried by RFD-TV. Their philanthropic support makes regular programming about FFA possible through radio, television and online media.

Our great concern with the proposed merger is that programming about agriculture and rural American may not be carried by the new entity unless steps are taken to ensure continuity. RFD-TV's coverage of FFA, a source of great support of FFA for a quarter of a century, is essential to ensure the voices of those who produce, process and deliver food and fiber continue to reach the American public. We urge you to ensure this merger does not lessen the reach of networks such as RFD-TV which serve this important segment of the American economy. Virginia agriculture is strong today, but we must advocate tirelessly to ensure important issues are understood and kept in the public eye. We respectfully request Congress exercise great care in preventing erosion of the public's access to the marketplace of information.

In 1926, the Future Farmers of Virginia offered up the blueprint for what became the Future Farmers of America, now known as the National FFA Organization. From the time of George Washington to today, we are proud of the contributions Virginians have made to the science, business and technology of agriculture. We look to you and the Judiciary Committee for leadership that will safeguard the Nation's competitive edge in agriculture and ensure all our citizens have access to quality information regarding our most vital industry.

Thank you for receiving our comments on the proposed merger between Comcast Corporation and Time Warner Cable. We wish you and the committee the greatest success in your deliberations. Please let me know if we may be of further service.

Sincerely,

G. Andrew Seibel, Ed.S.
Virginia FFA
State Executive Sectary

FARM BUREAU GEORGIA

Georgia Farm Bureau Federation
P.O. BOX 7068 • MACON, GEORGIA 31209-7068
478-474-8411

www.gfb.org

May 5, 2014

Rural Media Group
Attn: Patrick Gottsch
9500 West Dodge Road Suite 101
Omaha, NE 68114

Patrick,

On behalf of the Georgia Farm Monitor, we would like to provide a few comments concerning our relationship with RFD-TV and the proposed merger between Comcast Corporation and Time Warner Cable Inc. Our TV program is now celebrating 48 years on the air with Georgia's TV broadcast stations and has been airing with RFD-TV since 2000. Since 1966, we have produced and aired 2,490 half-hour programs with no re-runs. Every week we continue that tradition as our staff travels the state and visits other parts of the nation to cover stories of interest to farmers and consumers. We believe television reaches both agriculture and non-agriculture audiences. For us, it is important being on a network that covers all of rural America and is an honor to be a part of RFD-TV.

We made the commitment and investment in 1966 to use television as a medium to help educate and influence agriculture in our state. Our guiding purpose, since the beginning, is to provide viewers in rural communities and in urban areas the importance of agriculture and provide all viewers an educational access means to acquire more information. The Georgia Farm Monitor was created by Farm Bureau to fill a need for information to our farmers and also to tell the farmer's story to consumers, and the general public. Each week we receive comments, emails, tweets and calls from all parts of the country that see our broadcast and take the time to engage and learn more about our industry. Many times it is from viewers who are several generations removed from farming.

We cover a range of topics from consumer education to agriculture news, research, food safety, production practices, preparing meals, conservation, highlighting youth programs from FFA and 4H and all commodities grown in Georgia. Our intent is to show viewers how agriculture has become more efficient, how technology is being integrated throughout the industry, and how the American farmer grows safer, better tasting food on less land with fewer inputs and fewer people.

In regards to the Comcast and Time Warner merger, it would greatly impact agriculture if programs like ours and networks like RFD-TV, could have the opportunity to connect the city with the country. To have a cable distribution to 34 million households with 22 of the top 24 markets would have the importance similar to the 1893 Mail Communication Act. We appreciate all RFD-TV and their continued efforts in promoting agriculture as well as provide an opportunity to raise awareness throughout. If anyone with the Georgia Farm Monitor can be of further assistance, please let us know.

Sincerely,

Andy Lucas,
Executive Producer &
Director of Public Relations

FARM MONITOR GEORGIA

1620 BASS ROAD • MACON, GEORGIA 31210
Affiliated with American Farm Bureau Federation

SDPB
South Dakota
Public Broadcasting

555 N. Dakota Street • P.O. Box 5000 • Vermillion, SD 57069-5000
(605) 677-5861 or (800) 456-0766 FAX (605) 677-5010
www.SDPB.org

May 5th, 2014

To whom it may concern

South Dakota Public Broadcasting, a program producer, rural state broadcaster, and content partner with RFD TV, urges strong consideration of the information and testimony submitted by RFD TV to this hearing.

In the tradition of advocating access and technology to underserved and less populated areas of the nation, we hope the FCC and Congress will recognize "underserved" as a two-way street and give the same consideration to programming. The rural voice to all areas of the nation is a valuable consideration.

Public communications systems are precious channels of information, and while served by the best interests of commercial support, it is fully appropriate for managing agencies to regulate and hold system operators to standard of balance and inclusion.

Thank you for your considerations,

Larry Rohrer
Director for Programming Content
SD Public Broadcasting

OUT ON THE LAND

Larry D. Butler, LLC
(dba Out On The Land)
113 North Star Crossing Lane
Weatherford, TX 76088
817-504-1604 larrybutlertx@yahoo.com

May 2, 2014

Mr. Patrick Gotsch, President
Rural Media Group, Inc.

Dear Mr. Gotsch,

As the owner, executive producer, and host of OUT ON THE LAND, a weekly half-hour television program broadcast on the stations of Rural Media Group, Inc. I offer these comments relative to the merger of Comcast Corporation and Time Warner Cable.

It is my understanding this merger could place the Rural Media Group programming in approximately 33 million additional households with 22 million of these being in urban areas. This presents an excellent opportunity to provide television programs that could foster better understanding of rural America and agriculture in urban America. Rural America provides many products and services that are enjoyed by both urban and rural citizens.

Prior to creating the OUT ON THE LAND television series, I served in numerous capacities during my 32 year career with the United States Department of Agriculture's Natural Resources Conservation Service. I worked in rural areas, in metropolitan areas and had responsibilities throughout the country in every state. My career began in 1974 at the lowest professional level and retired in 2007 from the Senior Executive Service, serving at the pleasure of the Secretary of Agriculture. I understand rural America, much of urban America, agriculture, and conservation of our natural resources. Unfortunately, most of the citizens of urban America and many in small town America do not understand much about agricultural production and its impacts on the natural resources of our country.

Urban citizens, as well as most others, want to know more about the environment and conservation of natural resources. OUT ON THE LAND is the only weekly television series with the core objectives of showcasing the stewards of the land and its resources, highlighting the conservation applied on working agricultural lands, and providing information on the benefits of goods and services provided to all Americans.

The agencies within USDA strive to keep the urban public aware and informed in a manner which maintains public support for agricultural programs. Rural Media Group and programs such as OUT ON THE LAND on RFD-TV provides a service to these agencies by helping get the word out to the public. The merger can facilitate this in an additional 22 million urban households.

Most people's initial thoughts of agriculture are food production. OUT ON THE LAND strives to continue to inform and educate its viewers about adequate and safe food and fiber production; however, these are only part of what the stewardship of agricultural lands provides. We all benefit from clean and abundant water, healthy soils, clean air, healthy wildlife habitat and populations, recreational opportunities, and other important resources and ecological services provided.

Upon the merger of Comcast Corporation and Time Warner Cable, it only makes sense that Rural Media Group and RFD-TV will provide these types of programs to more households, both rural and urban. This is an excellent opportunity to advance the communication about the conservation of natural resources and the benefits that agricultural producers provide to all our citizens.

Thank you for the opportunity to express my thoughts on this subject.

Respectfully submitted,

Larry D Butler

Larry D. Butler
Creator, Executive Producer, & Host
OUT ON THE LAND

Maravilla Productions

EQUESTRIAN NATION

Informative and Entertaining Television for ALL Horse Lovers

PO Box 696 Murrieta, California 92564 – 743 Gold Hill Place Ste 294 Woodland Park, Colorado 80863
951-445-4003 Email: info@equestriannation.tv Website: www.EquestrianNation.tv

May 5, 2014

The Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

As a television producer/director of some thirty years, and an RFD-TV program provider for the past eight years, I am grateful for this opportunity to submit a different perspective to the Judiciary Committee's evaluation of the proposed merger between Comcast Corporation and Time Warner Cable.

We are hopeful that your deliberations will be mindful of protecting the unique and distinctive programming such as that provided by RFD-TV. One would ask: how many news channels, reality channels, shopping networks do we need? RFD-TV is one-of-a-kind, and recognizes the importance of making quality programming about agriculture, rural lifestyles, and the great American horse industry available to viewers in urban markets. They appreciate the value of farmers and ranchers in our culture and in our economy, and provide a video platform for it. I am a Colorado native, and last year Comcast made a decision that adversely affected thousands of lives in my home state and neighboring New Mexico. They cancelled RFD-TV in Colorado and New Mexico, and offered, instead, as a new "choice", the Aljazeera channel! I have to wonder about the 'wisdom' of that decision. In these states, where horses "won the west", there are generations of horse people who, because of this, lost a direct line to what they regard as their passion. Comcast totally disregarded a solid market niche and the people's prevailing interest.

In many ways, RFD-TV calls to that passion. It is a sounding board for those millions of Americans who make their living working the land, growing the crops, living the rural lifestyle. It is a clarion voice to those who embrace the beauty of nature and the symbiotic relationship of human and animal, working together. RFD-TV brings the embodiment of what built this great country and represents values too often lost in the noise and clutter of what passes for entertainment. RFD-TV speaks to the heart of America, and that heart should not be dismissed.

My company, Maravilla Productions, produces *Equestrian Nation*, a magazine-style presentation of many informative and entertaining facets of the horse industry. We profile personalities who have made great contributions to the science and techniques of breeding, raising, and training horses; we interview cowboys and equestrian riders, jockeys and barrel racers, and a wide array of people whose love for horses directs their lives. As we write this letter, we are completing a three-part series that has been two years in the making....about an Amish family whose lives and livelihood depend on horses. The series speaks to all horse lovers and portrays the beauty of the relationship between horse and human.

There are 4.6 million people involved in the horse industry, and thousands more who identify and admire their lifestyle. The economic impact of these groups cannot be denied. For the past decade RFD-TV has assembled a collection of equine-related shows like no other network has ever done. Without RFD-TV, horse-lovers across this great country will have nowhere to go. Finally, I would submit that thousands of young people in all cities are engaged in vigorous horse pursuits. Just as athletics can keep many a young person on the straight and narrow through the perilous teenage years, so horsemanship provides a focus that is wholesome, disciplined, and worthwhile. RFD-TV promotes just such involvement, and moment-by-moment reminds us that we have a deeper, richer side that is rooted in all that this channel represents.

As deliberations go forward, we respectfully ask that the Judiciary Committee consider encouraging these cable companies to make room for the RFD-TV choice for all viewers.

Thank you for this opportunity to speak on this very important subject.

Sincerely,

Dan Weyand, President
Maravilla Productions
Executive Producer *Equestrian Nation*

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Patrick Gottsch
Chairman & Founder
Rural Media Group, Inc.
9500 West Dodge Road, Suite 101
Omaha, NE 68114

May 2, 2014

Dear Patrick,

On behalf of ***America's Heartland,*** I am writing to thank you for all of the efforts by RFD-TV, Rural TV, Rural Radio, and FamilyNet to reach television and radio audiences across rural America. We're also grateful for your continuing efforts to help share the importance of U.S. agriculture with both urban and rural audiences throughout the nation.

In recent years, there's been a growing disconnect between consumers and the hard-working men and women who produce food, fuel, and fiber for the nation and the world. This has led to increased misinformation and misperception among non-farm audiences.

By providing a nationwide venue for ***America's Heartland*** and other ag-focused programs, you're providing an essential tool to correct those misperceptions. RFD-TV is also helping millions of viewers understand that farmers and ranchers share their values around food safety, animal welfare, and environmental stewardship.

It's estimated that our global population will grow to nearly 9 billion people by the year 2050. American agriculture will become even more crucial in feeding and clothing people across the U.S. and around the world. Sharing positive stories about our farmers and ranchers will help ensure the future success of this most important industry.

We believe it's vital that your channels be available on cable and satellite broadcast systems throughout the country. Here at ***America's Heartland,*** we stand ready to do whatever we can to help ensure the broadest possible audience. Please feel free to share this letter and our sentiments with our representatives in Congress, the FCC, and others.

Thanks again and best wishes,

Michael Sanford
America's Heartland
(916) 641-3546
msanford@kvie.org

DOWN UNDER HORSEMANSHIP

The Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

Allow me to introduce myself I am Clinton Anderson, owner of Downunder Horsemanship. Let me share my story as a small business owner with you. The journey from being an unknown horse trainer in Australia to one of the most renowned clinicians in the world was not easy. But my dedication to becoming the best horseman I could and my desire to help people have better relationships with their horses has never wavered. Today, thanks to my Downunder Horsemanship Method I have helped thousands of horses and riders, and I am committed more than ever to inspiring the dreams of horsemen. This is my story-—a clinician, trainer, competitor and small business owner.

Along that journey I established a relationship with RFD-TV and Patrick Gottsch. Why? I knew there were folks out there who needed help with their horses so by developing a program specific to these needs was my goal. RFD-TV provided me with a way that I could reach the American rural, suburban and urban audiences. That partnership was established well over 12 years ago and has been very successful for both of us. Horses are more than just a hobby they are a way of life to many people. Those people deserve the type of programming that supports their passion. They deserve to have continued access via outlets such as RFD-TV to the urban media markets. RFD-TV gives that to them by delivering quality programming on a variety of topics directly to them no matter where they live.

As a small business owner I realize the value of being able to reach the devoted Americans who rely on RFD-TV for quality information. I respectfully request Congress do all it can to ensure outlets such as RFD-TV continue to have access to provide programming to the urban media markets. Your decisions regarding access to broadcast markets have very real and far-reaching consequences.

Thank you for the opportunity to send my comments on the proposed merger between Comcast Corporation and Time Warner Cable.

Respectfully,

Clinton Anderson, owner

Downunder Horsemanship

Clinton Anderson   NO WORRIES   Clinton Anderson

2285 N US Hwy 377 Stephenville, TX [illegible] • 888-AUSSIE2 (888-287-7432) • Local and International 254-552-1000 • FAX 254-865-5432
www.downunderhorsemanship.com

BUFFETT FARMS NEBRASKA

May 6, 2014

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

I would like to comment on the Judiciary Committee's hearing on the proposed merger between Comcast Corporation and Time Warner Cable Inc.

As you know, agriculture has been an integral part of our nation's history as we have grown into the world's leading producer of food. As a farmer, I believe it is critically important that information about rural issues, especially agriculture, be readily accessible to both rural and urban communities throughout the country.

I write to you as I sit in my tractor cab in Nebraska planting this year's soybean crop. This time of the year always reminds me of how thankful I am to be connected to our agricultural heritage. However, it also reminds me that much of our society has lost touch with this heritage, as well as the great work American farmers are doing all over the country.

For over 25 years, RFD-TV has served as a leader in providing access to information in support of our nation's rural and farming communities. It has been a significant media outlet, ensuring that rural and urban populations remain educated on farm and food issues. As do I, RFD-TV believes that it is important to remember our country's agricultural history, and, equally important, to know where our food comes from. As a result, I hope any analysis of the proposed merger will take into account any potential effects on media outlets such as RFD-TV.

I would like to further add that our family's private philanthropic foundation has partnered with RFD-TV on numerous occasions, primarily to raise awareness of hunger and food insecurity in rural America. For example, through our Invest an Acre program (www.InvestAnAcre.com), we have engaged thousands of farmers and ranchers across the U.S. in the fight against hunger in their local communities. With RFD-TV's support, we have provided millions of meals to hungry individuals in every Congressional district and nearly every county in the country.

Ultimately, we know that it is critically important for Americans, both rural and urban, to remain engaged in our nation's agricultural legacy. I believe strongly that everyone needs to know their local farmer a little better, and I have produced a brief, three minute video describing the work we do at Buffett Farms. I respectfully submit this video, located at the following link:

http://www.BuffettFarmsNebraska.com

Thank you for this opportunity to add comment. Please do not hesitate to contact me if I may be of any further assistance.

Respectfully,

Howard W Buffett

Howard Warren Buffett
President and Co-Owner
Buffett Farms Nebraska LLC

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Ag PhD
47506 252nd St
Baltic SD 57003
Ph. 605-529-5413

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515
Dear Chairman Goodlatte:

We would like to provide comment pertinent to the Judiciary Committee's public hearing on the proposed merger between Comcast Corporation and Time Warner Cable Inc., particularly the importance of rural programming to the industry of agriculture and to rural and urban communities.

We are agri-businessmen and farmers in Eastern South Dakota raising corn, soybeans, and wheat. For the last 16 years, we have been sharing the information we have learned about production agriculture through a television program called Ag PhD. When the RFD-TV network began, we were one of the first programs they added and we have been a nationwide program ever since. At first, we were amazed at how hungry urban and rural people across the United States were for information about production agriculture, specifically how to raise bigger crops to feed our growing world and to make family farms more sustainable. We've had farmers from across the country visit our farm to learn more about crop production, including our summer field day which has grown to be the single largest private farm field day in the country with 7000 farmers from 26 states attending last year's event alone.

We are not completely opposed to the Comcast and Time Warner merger, but we are deeply concerned about the potential challenge it could present to the availability of rural programming across our country and especially to the 33 million homes serviced by the proposed new company. If the new company created by this merger decided not to carry RFD-TV, for example, a huge share of rural and urban households would not have access to the only channel dedicated to rural programming. The demand for this type of content is clear as the RFD-TV network has become the #1 cable channel for people over 50 years old. That fact alone should ensure the access Americans have to rural programming, but that has not been the case in the past. A good example of this is how Comcast arbitrarily dropped the RFD-TV channel last summer in Colorado and New Mexico against the wishes of the governor of New Mexico and Comcast subscribers. In fact, the programming that filled that spot has gotten lower ratings than RFD-TV had been getting.

On behalf of American farmers and agricultural educators across the nation, I want to thank the Judiciary Committee for its diligence in safeguarding the public's interest as it considers the merger between Comcast Corporation and Time Warner Cable Inc. We urge you to ensure that channels such as RFD-TV may continue to make available important agricultural and rural programming that benefits agriculture and connects rural and urban citizens. That is an investment in the future we can all support.
Thank you for this opportunity to add comment. If we can be of any further assistance, please let us know.

Darren and Brian Hefty
Darren R. Hefty Brian D. Hefty
Farmers and Hosts of Ag PhD TV

May 6, 2014

The Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

First, we would like to thank and commend you for giving representatives of our network, RFD-TV, the opportunity to testify during these important hearings regarding the merger of Comcast and Time Warner.

We are the producers of the television show "NRHA Inside Reining," now in its eighth season.

Reining is sometimes referred to as "Western Dressage." It is the only Western equestrian sport sanctioned for international competition and the only Western discipline included in the World Equestrian Games.

As such, members of the National Reining Horse Association hail from countries around the globe. But reining is a sport that originated here in America, a refinement of the natural moves of a Western cow horse. It retains many of the values of hard work and fair play still to be found among this country's farmers and ranchers.

That's because 70% of our members own a farm or ranch, with 20% of those being worth over $1 million. These reining facilities support the economy of America's smaller communities, which is of vital interest to anyone in this country who eats food or consumes energy, since that is where our food and energy are produced.

Tens of billions of dollars are pumped into the US economy each year by the equestrian industry, which also provides hundreds of thousands of jobs that cannot be outsourced or shipped overseas. The average NRHA member owns seven horses and cares for their every need, from feed to health care, year-round. That feed is raised in the US. Hay is grown here. Trucks and trailers are built here, too. Fencing, barn materials, and heavy equipment are all bought here and most of it is manufactured here, because people in the Western equestrian industry tend to value American made products.

Conversely, reining horses bred and trained here in America are exported by the thousands each year to countries around the world. Equestrian products made in the USA – like saddles, bits, leg protection, and nutritional supplements - are sold worldwide. Beyond that, thousands of reining fans from around the world travel – with their horses in many cases – to reining's premier events here in the US.

It is important to note, however, that our target television audience is not located exclusively in rural areas. Most of our non-professional riders are professionals in some field other than agriculture and, consequently, reside in urban areas. Half of our 22,000 members have a bachelors degree, 17% have a graduate or professional degree, and more than half of our members have an annual household income in excess of $100,000. Many of our major events are held in large cities like Los Angeles, Houston, Scottsdale, Lexington, and Oklahoma City, so continuing to have access to America's major urban media markets is critical to the NRHA and other Western equestrian associations.

Since the Rural Purge of 1971, Western and rural television programming that once served to underscore critical American values like self-reliance, loyalty, and determination, have been largely supplanted by violent, urban, crime dramas and mindless, titillating, sitcoms. RFD-TV offers a meaningful programming alternative to all Americans, even as it provides an irreplaceable outreach platform for those of us in the western equestrian industry.

We hope that as you deliberate this important issue for all Americans, you will keep in mind – regardless of the outcome of this potential merger – the importance of maintaining a place for RFD-TV, and others offering similar programming, on broadcast, cable, and satellite television systems.

In the same way that the US Congress once took the steps necessary to assure that citizens of rural America would have equal access to electricity and phone service, we would hope Congress will do whatever is required to guarantee those of us who live in rural areas today or engage in equestrian businesses and past-times will continue to have access to the airwaves – and to the cable, digital, or satellite systems that may ultimately replace direct broadcast.

Again, thank you for the opportunity to offer our comments on this vital issue. If you should need further information about the Inside Reining TV show, the National Reining Horse Association, or the reining industry, please let us know.

Sincerely,

Jenifer Reynolds
Sandbur Productions LLC
Producers of NRHA Inside Reining
15520 E. Hefner Rd. Jones, OK
405-399-3122 Office
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Material submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

Anant Raut
1208 N. Danville St.
Arlington, VA 22201
May 19, 2014

Hon. Spencer Bachus, Chairman
Hon. Hank Johnson, Jr., Ranking Member
Judiciary Committee of the U.S. House of Representatives
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
2138 Rayburn House Office Building
Washington, D.C. 20515

Re: Submission for the record on "Competition in the Video and Broadband Markets: the Proposed Merger of Comcast and Time Warner Cable"

Dear Chairman Bachus and Ranking Member Johnson:

My name is Anant Raut, and I have over 12 years of experience as a practicing antitrust attorney, having served previously as an attorney the Federal Trade Commission, in private practice, as Counsel to the antitrust subcommittee of the House Judiciary Committee (110th and 111th Congresses), and as counsel to various public interest groups. I am a Vice Chair of the ABA's Section on Antitrust Law, and a member of the Board of Advisors to the American Antitrust Institute as well as Loyola University's (Chicago) Institute for Consumer Antitrust Studies. I submit this letter today solely in my individual capacity, and not on behalf of any institution, nor am I being remunerated in any way for this submission.

Two weeks ago, I had the pleasure of attending your subcommittee's hearing on the Comcast-Time Warner Cable merger as a guest of one of your witnesses, Allen Grunes. The hearing was terrific – your staff did a tremendous job ensuring that it was well-balanced, and delved into all of the issues that this merger raises. But there is one argument that has been made repeatedly by proponents of the mergers, and left largely unchallenged, that I would like to take two minutes to disabuse you of: the false argument that customers can easily switch to other cable carriers.

Monopsony power, argue critics of the merger, is a serious problem with this merger, as the combined Comcast-Time Warner Cable will have considerably more leverage to drive harder bargains with broadcast and cable channels (channels that compete for ad dollars with NBCUniversal, wholly-owned by Comcast). Not a problem, respond supporters of the merger. If Comcast-TWC dropped a popular network, those viewers would switch to a rival that carried the network. The market acts as its own check and balance.

Hon. Spencer Bachus
Hon. Hank Johnson, Jr.
May 19, 2014
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For the sake of argument, let's go ahead and suppose that we're talking about markets where consumers have the luxury of multiple cable operators of comparable quality and price (ignoring for the moment a 2011 FCC survey[1] that found that 61.5% of customers only have one main choice of provider). Even in competitive markets, it is generally not financially feasible for customers to switch cable operators mid-contract.

Typical cable contracts run for 1-2 years. They come with a steep fee if the customer elects to discontinue service before the term of the contract is up. So, right off the bat, if a Comcast customer really liked Nickelodeon, and suddenly lost Nickelodeon, the question is not whether that customer could find another cable operator that carries Nickelodeon; the question is whether Nickelodeon is worth the additional $250 it would cost to watch Nickelodeon again. For all but the highest-earning families, that answer is no.

Next, consider the fact that most cable providers try to offer their customers "triple play" packages, bundling cable, Internet, and phone service (triple play revenues are expected to account for 70% of the subscription revenue of telephone and cable operators by the year 2018[2]). So in many cases, it's not just a question of finding a competing cable operator that offers the dropped channel, but also the aggravation of replacing phone and Internet service (if the customer cancels the entire package), or piecing together services from multiple providers (without the benefit of bundled pricing). While still paying the $250 breakup fee.

Customers lucky enough to be nearing the end of their contract when a favorite channel gets dropped have the luxury of shopping around. But in all other circumstances, it is unrealistic to pretend that the average customer is so price-insensitive that s/he can hopscotch around among cable operators.

Now, it is fair to counter that the "lock-in" effect existed before this merger. But this only furthers my point – while the bargaining power *increases* on the side of a merged Comcast-Time Warner Cable, absolutely nothing else changes on the side of the content companies to act as a counterbalance.

In other markets, the ability to switch among competitors is frictionless (e.g., search engines, where using a competing search engine is simply a matter of typing a new URL into one's browser). But any economic argument that doesn't acknowledge the switching costs in choosing a cable operator is simply not grounded in reality.

[1] Jonnelle Marte, "Ten Things Cable-TV Companies Won't Say," WALL STREET JOURNAL (Dec. 2, 2012).
[2] "Triple-Play Revenues to Reach $144 Billion," www.fiercetelecom.com (Nov. 26, 2013).

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Hon. Hank Johnson, Jr.
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Very truly yours,

Anant Raut

Cc: Hon. Bob Goodlatte, Chairman, Judiciary Committee
Hon. John Conyers, Jr., Ranking Member, Judiciary Committee

Letter from the Writers Guild of America, West (WGAW)

WGAW WRITERS GUILD OF AMERICA, WEST

May 8, 2014

The Honorable Robert Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2426 Rayburn Building
Washington, D.C. 20515

The Honorable Spencer Bachus
Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
2246 Rayburn Building
Washington, DC 20515

Dear Chairman Goodlatte and Honorable Committee Members;

The Writers Guild of America, West (WGAW) respectfully submits this letter in connection with the May 8 Hearing on the proposed Comcast – Time Warner Cable (TWC) merger. WGAW represents more than 8,000 professional writers working in film, television and new media. Almost all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East. Increasingly, the original video programming available online through services such as Netflix, Amazon, Hulu and Crackle is also written by Guild members.

We thank you for convening this hearing to examine the implications of the proposed merger. WGAW members are concerned about this merger because the content they create, for television networks and online providers, must go through Comcast and Time Warner Cable to reach a significant portion of consumers. The WGAW opposes the merger because the combined size of Comcast-TWC in both the cable and broadband Internet markets, even after subscriber divestitures, will allow the company to limit competition and choice, harming both content creators and consumers. As such, approval of this merger would run contrary to the goals of antitrust law and the FCC's public interest standard.

The FCC has already found, in the Comcast-NBCU merger, that the company has "the incentive and ability to hinder the development of rival online video offerings and inhibit potential competition from emerging online video distributors that could challenge Comcast's cable television business."[1] Allowing Comcast to extend its control over an additional 8 million subscribers increases its ability to harm competition, and Comcast's record of violating merger conditions reveals the inadequacy of conditions as a protective measure or compromise. The only appropriate response to this merger is denial rather than a panoply of conditions that we can only hope will ameliorate the harms.

The proposed merger is unprecedented in size and scope. Comcast, the largest MVPD and Internet service provider (ISP), also owns two broadcast networks, local broadcast stations, many of the most watched cable networks and television and film production entities. Time Warner Cable is the fourth largest MVPD and ISP. While Comcast and Time Warner Cable do not currently compete head to head for consumers, they are two of the largest distributors of content as multichannel video programming distributors (MVPDs) and Internet service providers (ISPs). Of key concern to writers is how the combined entity may use its enhanced buyer power and bottleneck power to harm both traditional television programmers and new online video providers.

With almost 30% of MVPD subscribers after proposed divestitures, the merged entity's power as a buyer of content will be significantly enhanced. Comcast-TWC will be able to use this increased bargaining power to force television networks to agree to below market rates, harming investment in programming. Comcast-TWC has already said it expects to save $1.5 billion in operating efficiencies in the first three years, including savings on programming costs "as more favorable rates and terms in some of Comcast's programming agreements supersede some of TWC's existing contracts."[2]

We are concerned about the enhanced buyer power enabled by the merger because affiliate fees paid by Comcast, Time Warner Cable and other MVPDs to television networks have helped to fuel the growth of original dramatic programming across basic cable. At least two dozen cable networks are now developing and airing original comedies and dramas, providing additional content choices to consumers. The merger threatens competition in upstream content markets because, with the ability to blackout programming to one-third of households, programmers will have no choice but to submit to Comcast-TWC demands. As such, Comcast-TWC's monopsony power will diminish opportunities for content creators and ultimately result in fewer content choices for consumers.

While enhanced buyer power is sometimes viewed favorably because it can result in lower prices to consumers, Comcast Executive Vice President David Cohen has already stated that the company is "not promising that customer bills are going to go down or even increase less rapidly."[3] The enhanced buyer power can also harm competing MVPDs because programmers may attempt to raise prices to rivals to make up for revenue lost from Comcast-TWC.

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[1] Federal Communications Commission, Memorandum Opinion and Order, *In the Matter of Applications of Comcast Corporation, General Electric and NBCUniversal, Inc., For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, released January 20, 2011.
[2] *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Declaration of Michael J. Angelakis ¶ 7.
[3] Jon Brodkin, "Comcast: No promise that prices 'will go down or even increase less rapidly'," *Ars Technica*, February 13, 2014.

Comcast-TWC's control over the broadband Internet market is also a key concern for writers. Both consumers and content creators are just now beginning to benefit from innovative online video services. 2013 marked the debut of original television-length programming from outside the television ecosystem as Netflix and Amazon began offering original drama and comedy series directly to consumers. Press reports indicate Xbox, Yahoo! and Playstation will be the next online providers to offer such programming.[4] These providers are new buyers of content and are moving into direct competition with traditional television networks.

These services have emerged outside of the cable bundle only because of the development of the Internet as a video distribution platform. But a merged Comcast-TWC will control as much as 40% of the broadband Internet market, giving it significant market power over content providers trying to reach consumers. Comcast has already shown a willingness to use its bottleneck power to extract tolls from edge providers like Netflix. Netflix Vice President Christopher Libertelli recently wrote in a letter to Senator Franken,

> "Comcast is already dominant enough to be able to capture unprecedented fees from transit providers and services such as Netflix. The combined company would possess even more anti-competitive leverage to charge arbitrary interconnection tolls for access to their customers."[5]

Comcast has the incentive to limit the growth of online video providers because they compete with its cable television offerings and its own NBC Universal content. As demonstrated by its treatment of Netflix, the company's size has given it the ability to harm competition by raising the cost of access. It is evident that the Net Neutrality condition of the Comcast-NBCU merger cannot sufficiently protect online video providers from Comcast's anti-competitive behavior. Allowing Comcast to increases its control over the broadband Internet market will only exacerbate this problem.

Contrary to Comcast-TWC claims, competition is not robust. While the companies' merger application names a host of companies including Amazon, Apple and Netflix as competitors, none provide consumers with a true alternative to the services offered by Comcast or TWC. Most consumers only have a choice between a cable operator and two satellite providers for MVPD service. While AT&T and Verizon have entered the MVPD market, they only offer services to about 40% of the country and Verizon has stopped expanding its service to new markets.[6,7] In addition, online video services are not substitutes for an MVPD service. Services such as Netflix or Amazon Prime Video are akin to an individual television network like HBO. They offer only a limited menu of programming that does not include must-have content such as news or live

[4] Nellie Andreeva, "XBox Develops Pro Skater Comedy Series," *Deadline Hollywood*, December 6, 2013; Marc Graser, "Microsoft to Launch First Original Shows on Xbox in Early 2014," *Variety*, December 13, 2013; Nellie Andreeva, "Xbox Developing 1990s Music Series Based on Rapper Nas' Life," *Deadline Hollywood*, February 11, 2014; Bryan Bishop, "Sony's first original TV series for Playstation will be 'Powers,'" *The Verge*, March 19, 2014; Mike Shields, "First Netflix and Amazon. Now Yahoo to Get Into TV Programming Game," *The Wall Street Journal*, April 5, 2014.

[5] Christopher Libertelli, Vice President, Global Public Policy, Netflix, Inc., "Letter to Senator Al Franken," April 23, 2014.

[6] SNL Kagan, "Media Trends," 2013 Edition, p. 212.

[7] Steve Donohue, "Verizon pressured to expand FiOS in New Jersey," *Fierce Cable*, October 4, 2013.

sporting events. Perhaps most critically, online video providers also rely on ISPs like Comcast and Time Warner Cable to reach consumers.

Broadband Internet is even less competitive, with almost one in three Americans having only a single option for Internet service fast enough to stream videos.[8] While Comcast may point to Google's entry into the broadband market as evidence of competition, it is worth noting that even if Google were to expand into all of the 34 cities it recently expressed interest in, its fiber network would only pass a total of about 3.9 million households out of 119 million occupied U.S. households in 2013.[9] DSL Internet service also cannot be considered a reasonable substitute because the technology is unable to provide the speeds necessary for video streaming. Similarly, wireless Internet is also not a suitable alternative because data plans for wireless service make video streaming cost prohibitive. For instance, an AT&T subscriber would need 10 GB of data a month to watch just an hour of HD video a day.[10] This costs $60 a month under the Mobile Share Plan.[11] The average American watches almost 5 hours of television a day, or 150 hours a month and would need 45GB of data to substitute all of his or her television consumption with video on a wireless network, at a cost of $335 per month. Verizon estimates an hour of HD streaming per day to require a 30GB plan, costing $185 per month.[12,13]

Allowing Comcast and Time Warner Cable to merge may also foreclose future competition between the two cable providers. Satellite provider, Dish, recently reached an agreement to offer Disney channels in a virtual cable package, delivered over the Internet.[14] While cable providers have historically stayed within their geographic footprint, it is conceivable that as the market changes, MVPDs could be incentivized to offer services out of their footprint. However, allowing Comcast and Time Warner Cable to merge now will eliminate this possibility.

Comcast and Time Warner Cable have offered a host of conditions to make this merger more palatable. But, Comcast has a questionable track record of following merger conditions. The company has already been fined $800,000 by the FCC for failure to adequately market is standalone Internet service, a condition of the Comcast-NBCU merger. We have also witnessed Comcast fight enforcement of merger conditions. A Comcast-NBCU merger condition requires that if Comcast groups any news and/or business channels in a "news neighborhood," it must group all independent news and business news channels in that neighborhood.[15] Comcast failed

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[8] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2012,* December 2013, p 9.
[9] Kamran Asaf, "Google targeting over 3 million households with its planned fiber expansion," *SNL Kagan*, March 4, 2014.
[10] AT&T, Data Calculator, http://www.att.com/att/datacalculator/index.html#fbid=mDr3ZnVdLNo, Accessed May 5, 2014.
[11] AT&T, AT&T Mobile Share for Data-Devices Only, https://www.att.com/shop/wireless/data-plans.html#fbid=J j0aMoai_u?tab2, Accessed May 5, 2014.
[12] Verizon Wireless, Data Calculator, http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp?popup=true, Accessed May 5, 2014.
[13] Verizon Wireless, The MORE Everything Plan, http://www.verizonwireless.com/wcms/consumer/shop/shop-data-plans/more-everything-plan.html?s tnt=55694:2:0, Access May 5, 2014.
[14] Todd Spangler, "Disney Deal Gives Dish the Rights for a Virtual-MSO Foray," *Variety,* March 12, 2014,
[15] Federal Communications Commission, Memorandum Opinion and Order, *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, at Appendix A, Conditions, § III.2. Released January 20, 2011.

to place Bloomberg TV, an unaffiliated business news channel, in a news neighborhood, thereby discriminating against the unaffiliated network in favor of its affiliate news networks such as CNBC.[16] It took more than two years for the FCC to issue a decision ordering Comcast to relocate Bloomberg TV to a news neighborhood.[17] And the FCC has not yet responded to the complaint, raised by WGAW and Public Knowledge, that Comcast has violated its much-touted condition of commitment to Net Neutrality by exempting its online video service, Xfinity Streampix, from its own data caps when watched on an Xbox.[18]

Comcast's behavior clearly demonstrates that the company will treat its own content preferentially, disadvantage competitors and fight enforcement. Our antitrust laws exist to promote free and fair competition in the marketplace. It is undeniable that this merger will harm competition in upstream content markets and disadvantage competing MVPDs even though Comcast and TWC do not compete directly for the same customers. We urge you to convey these concerns to the FCC and the Department of Justice.

Sincerely,

David J. Young

David J. Young
Executive Director

[16] FCC Public Notice DA 11-1077, released June 20, 2011.
[17] Memorandum Opinion and Order, *In the Matter of Bloomberg L.P. v. Comcast Cable Communications, L.L.C.*, MB Docket No. 11-104, ¶ 40. Released September 26, 2013.
[18] Letter, filed by Writers Guild of America, West Inc., 8/13/12, Re: *Applications of Comcast Corporation, General Electric Company and NBCUniversal Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56.

Response to Questions for the Record from David L. Cohen, Executive Vice President, Comcast Corporation

Questions for the Record from

Chairman Bachus

for the Hearing on "Competition in the Video and Broadband Markets: the Proposed Merger of Comcast and Time Warner Cable"

May 8, 2014

<u>Questions for Mr. Cohen</u>

1. **Why does Comcast charge some parties for interconnection agreements and offer others transit without compensation? What is the threshold for switching from a non-paid interconnection relationship into one that requires compensation?**

   Response: Comcast has over 8,000 so-called "transit" or paid, commercial connections, including dozens with content delivery networks ("CDNs"), Internet service providers ("ISPs"), and large content or "edge" providers, among others. Comcast also has peering relationships, which are "settlement-free," meaning that traffic is exchanged without actual cash payment (as opposed to "in-kind" trade). Comcast's settlement-free interconnection policy ("SFI Policy") is consistent with industry standards and available at <u>www.comcast.com/peering</u>. The SFI Policy states that "[t]he network cost burden for carrying traffic between networks shall be similar to justify [settlement-free interconnection]." The relevant factors describe what is considered fair trade of infrastructure and include criteria around traffic volumes, geographically diverse interconnection points, backbone size, and relative traffic balance.

   Generally speaking, settlement-free peering is more common when the traffic in each direction is roughly commensurate, or the exchange of network facilities and services each network performs for the other is roughly equal. This is because there is an exchange of roughly mutual value, which makes it unnecessary for money to change hands. Paid "transit" relationships (including "on-net" transit that is sometimes also called "paid peering") are more common when there is a significant traffic or network imbalance.

2. **There have been concerns that Comcast may prefer the distribution of its owned content to that of its competitors. How would you respond to those concerns, and what remedies exist to the extent that parties feel that Comcast is engaging in this type of anticompetitive behavior?**

   Response: These concerns are unfounded. Comcast makes carriage and distribution decisions based on legitimate and reasonable business considerations, and bargains fairly with all programmers. We carry – and will continue to carry – the programming that our subscribers want and value, regardless of whether we have any affiliation with a programmer. Comcast does not have an ownership interest in the overwhelming majority of content that it distributes; in fact, *six of every seven* networks carried by Comcast are unaffiliated with the company. In total, Comcast carries over 160 independent networks, including many small, diverse, and international ones.[1] And recent program carriage rulings make clear that Comcast does not discriminate, and has not discriminated, against programmers on the basis of affiliation.

As I stated during the hearing, we often consider new programming that is of the same or similar genre as content already offered by networks that Comcast carries, spanning minority-themed programming, sports, news, political shows, general entertainment, etc. When deciding which channels to add to our cable lineup, or when making other carriage and distribution decisions for existing channels, we consider a wide mix of business factors (described in more detail in my response to Question 7). In each case, the bottom line is whether adding the new programming would make our lineup more attractive and more compelling – and thus help us to retain and even add viewers; we also weigh bandwidth constraints and other opportunity costs.

These are reasonable business considerations based on what we believe is best for our customers, and apply regardless of whether the content is affiliated with Comcast. They reflect the normal function of the marketplace and are entirely permissible under the FCC's rules. Moreover, in today's intensely competitive marketplace, Comcast has to offer the programming subscribers want and value, regardless of who produces it, or we will lose customers.

There is no reasonable basis to assume that the proposed transaction with Time Warner Cable ("TWC") would change our practices in this area. Comcast will acquire only very modest programming assets from TWC,[2] and the transaction will not change the concentration of national or local network programming owned by Comcast. There is no overlap between local programming networks owned and operated by Comcast and TWC, and Comcast already has an attributable interest in the two national networks in which TWC also has an attributable interest (namely, MLB Network and iN DEMAND). Comcast's recent sale of its interest in 17 A&E television networks to non-MVPDs has further reduced Comcast's ownership interests in national programming networks.[3] Consequently, the combined company's share of the national programming network segment will be *less than 12 percent* by revenue – far too low to raise any legitimate anti-competitive concerns. In addition, the FCC's well-established program carriage rules, as

[1] References to "independent" networks and programmers throughout these responses are based on the FCC's definition in the independent launch condition of the *NBCUniversal Order* (i.e., networks that are not owned by Comcast and not affiliated with either Comcast or a top 15 programming network owner, as measured by annual revenues).

[2] Specifically, one major league professional-sports English-language RSN, a handful of Spanish-language RSNs and local channels; various local news, sports, and life-style channels; and interests in two national cable networks, in which Comcast already has part ownership.

[3] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd. 10496, ¶ 39 (2013).

well as the prohibitions against discrimination in the *NBCUniversal Order*, will continue to apply post-transaction.

3. What is the Internet Essentials program and are any other cable providers offering this type of program?

Response: Comcast created the *Internet Essentials* program to meet the needs of a specific population – low-income families with school-age children who are not currently connected to broadband Internet at home. This is the population with the greatest need for Internet connectivity for educational purposes. *Internet Essentials* provides low-income households (those with a child living in them who is eligible to participate in the National School Lunch Program) with broadband service for $9.95 a month, along with the option to purchase an Internet-ready computer for under $150, and multiple options for accessing free digital literacy training in print, online, and in person.[4]

Comcast is fully committed to helping close the "digital divide" and has done more to do so and to encourage broadband adoption by low-income families than any other entity in the nation, private or governmental. Since Comcast launched *Internet Essentials* during the 2011 back-to-school season, more than 300,000 low-income families, or more than 1.2 million Americans, have been connected to the power of the Internet at home, most of them for the first time. We have also sold more than 23,000 low-cost, subsidized computers to program families.

Comcast's voluntary broadband adoption commitment under the *NBCUniversal Order* expires this summer, when the program completes three full years. But Comcast's commitment to this cause is stronger than ever. That is why Comcast announced in March 2014 that it will extend *Internet Essentials indefinitely*.[5]

When this transaction is approved, *Internet Essentials* will become available in all the communities in the retained TWC markets – including major new metropolitan areas such as Los Angeles, New York, and Dallas/Fort Worth, which collectively have over 500,000 eligible students from 250,000 families. This will significantly extend the program's reach.[6]

Helping low-income families successfully cross the digital divide requires ongoing outreach efforts. Twice annually, Comcast shares enrollment data by school district with

[4] *See Getting Started with the Internet*, Internet Essentials, http://learning.internetessentials.com/tour/getting-started-internet (last visited June 24, 2014).

[5] *See* Press Release, Comcast Corp., Comcast Extends National Broadband Adoption Program for Low-Income Families (Mar. 4, 2014), http://corporate.comcast.com/news-information/news-feed/internet-essentials-2014.

[6] Because Comcast will not control the cable systems in the markets being divested, we will no longer be able to support *Internet Essentials* in those communities, although SpinCo and/or Charter could choose to continue an equivalent program.

the districts themselves, as well as a host of community partners, in order to regularly reevaluate and refocus our outreach efforts and to increase enrollment. Some of our efforts within local communities to date have included:

- Distributing over 33 million brochures (available in 14 different languages, including Spanish) to school districts and community partners.
- Broadcasting more than 3.6 million public service announcements, with a combined value of nearly $48 million, in English and Spanish.
- Forging more than 8,000 partnerships with community-based organizations, government agencies, and elected officials at all levels of government.
- Offering *Internet Essentials* in more than 30,000 schools and 4,000 school districts in 39 states and the District of Columbia to spread the word and help bring more families online.
- Partnering with schools to notify families of *Internet Essentials* via online parent portals and with the distribution of students' report cards.
- Fielding 1.9 million phone calls to the *Internet Essentials* call center in English and Spanish.
- Creating an online application tool on both the English and Spanish-language *Internet Essentials* websites to make it easier and faster for families to apply. Over 24 percent of the total applications placed through the website were in Spanish.[7]
- Conducting on-site registration during *Internet Essentials* events all over the country.
- Updating the "transfer of service" process for *Internet Essentials* customers, which now allows customers to move their accounts to a new home address in a Comcast service area without having to reapply for the program.[8]

In addition, Comcast recently made grants totaling more than $1 million to 15 communities to create "*Internet Essentials* Learning Zones." The grants are part of Comcast's multi-faceted Gold Medal Recognition Program for communities that have done the most to help close the digital divide.[9] These *Internet Essentials* Learning Zones

[7] Our Spanish *Internet Essentials* website address is: http://www.internetbasico.com/.

[8] *See, e.g.*, Press Release, Comcast Corp., Comcast Extends National Broadband Adoption Program for Low-Income Families (Mar. 4, 2014), http://corporate.comcast.com/news-information/news-feed/internet-essentials-2014.

[9] The 15 Gold Medal recognized communities that will create *Internet Essentials* Learning Zones include: Adams County, Aurora, and Denver, Colorado; Atlanta, Georgia; Chicago and Cicero-Berwyn, Illinois; Collier,

will bring together the non-profit community, schools, and Comcast to create a continuum of connectivity during the day, after school, and at home. As part of these efforts, Comcast offered an opportunity for all eligible families in these communities to receive free *Internet Essentials* service for six months if they registered with the program during a three-week period in March.[10] More than 4,300 new low-income families have been connected to the Internet under this promotional offer.

Our constant goal is to increase participation in the program for the families and children it is designed to serve.[11]

Other cable operators recognize how connectivity can empower, educate and open new opportunities. For example, TWC has offered a Starter Internet program targeted to schools in several areas in its footprint, which provided eligible families a basic tier of broadband service for two years for $10 per month.[12] Ultimately, 486 schools participated in the pilot program, which ended in January 2013. TWC also has been actively engaged in a variety of other broadband adoption and digital literacy efforts through partnerships with non-profit and community organizations. In partnership with the nation's largest civil rights organizations, TWC carried $1 million worth of PSAs in key markets throughout 2012-2013 to promote the importance of broadband. The PSAs were carried in English, Spanish, and five other languages and were prepared by the Broadband Opportunity Coalition ("BBOC"). BBOC's members include: National Urban League, NAACP, National Council of La Raza, Asian American Justice Center, and LULAC. TWC has also partnered with the McCain Internet Empowerment Project, a non-profit initiative that brings broadband service and computer accessibility to senior citizens. TWC has provided computers and broadband connectivity at the Wilson Senior Center and eight other assisted-living facilities in the area to expand digital literacy among senior citizens. Similarly, other cable providers, such as Cox Communications, have partnered with Connect2Compete to offer low-cost Internet service and affordable computers. But no other cable company or telco has developed and aggressively marketed as comprehensive a program as *Internet Essentials*.

4. In your written testimony there is a discussion of Comcast's record of compliance with the NBC Order. Has Comcast been investigated or fined by either the FCC or

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Miami, and Palm Beach, Florida; Elk Grove and Fresno, California; Pasadena, Texas; Seattle and Tacoma, Washington; and St. Paul, Minnesota.

10 *Id.*

11 In March 2014, Comcast received the T. Howard Foundation's Innovative Program Award honoring the success of *Internet Essentials* in helping close the digital divide for low income families with children.

12 *See* Mike Robuck, *Time Warner Boots Up Wi-Fi Hotspots, Starter Internet Tier in K.C.*, CED, Nov. 30, 2012, *available at* http://www.cedmagazine.com/news/2012/11/time-warner-boots-up-wi-fi-hotspots-starter-internet-tier-in-kc.

DOJ under the NBC Order? If so, how many times and what is the total approximate amount of any fines?

Response: As noted in the Joint Written Statement, the conditions in the *NBCUniversal Order* cover 15 separate substantive and multi-faceted areas, amounting to a total of more than 150 separate specific requirements. Out of these, the FCC has only initiated one investigation. In 2012, the FCC investigated Comcast's compliance with the standalone broadband condition, including issues concerning rate cards reflecting the new tier and the clarity of language used on Comcast's website for the first few weeks after the new tier was implemented. Comcast had made a good faith effort to comply with the condition as it understood the requirement, but the FCC questioned whether the service should have been rolled out in a different way. Comcast promptly resolved the FCC's concern, and there was no finding of a violation. To avoid litigation and other costs to defend its view of what the condition required, Comcast agreed pay $800,000 and to extend the commitment to offer the standalone service at a specific price point for one extra year to make sure its customers received the full benefit of it.

Separately, a dispute arose between Comcast and Bloomberg TV over how to interpret the language of the "neighborhooding" condition. Both parties asked the FCC to clarify the requirement. Once the FCC did so, Comcast complied with it. Comcast remains Bloomberg TV's largest distributor, and the parties have a strong business relationship.

The FCC's Media Bureau also considered relevant contract provisions in certain NBCUniversal license agreements, as part of its review of a benchmark arbitration under the *NBCUniversal Order*. The Media Bureau agreed with NBCUniversal that each of these agreements precluded the licensing of certain content to an online video distributor ("OVD") for ad-supported exhibition.

5. **With respect to spot cable advertising, Comcast explained that neither its percentage of control of the Interconnects or of NCC Media, the national advertising cooperative, is relevant to the proposed transaction. Comcast compared the size of the macro television advertising market ($72 billion), which includes broadcast television advertising, with the spot cable advertising segment (about $5 billion), described the macro television advertising market as "intensely competitive," and concluded that spot cable advertising is "only seven percent" of the macro advertising market. Therefore, Comcast testified that the proposed transaction presents no "serious or cognizable antitrnst risks or harms" to the spot cable advertising market. Comcast also testified that, given the size of the macro television advertising market, advertisers have "massive other opportunities to be able to reach their eyeballs that they need to do."**

In contrast, Comcast's April 8, 2014 FCC Public Interest Statement at page 155 concludes that spot cable advertising is its own uniqne market. There, Comcast explains that it agrees with the FCC and DOJ, which "have found that local spot advertising on a cable system is not a close substitute for advertising on a local

broadcast station ... [and that] the degree of substitutability is constrained by the limited supply of cable spot advertising space in comparison to local broadcast advertising space." (Emphasis added.)

Does Comcast agree with the FCC and DOJ that the spot cable advertising market is a distinct product market, as Comcast states in its FCC Public Interest Statement? Or, does Comcast now disagree with the FCC and DOJ and, consistent with its oral testimony, assert that the macro television advertising market is the relevant market for antitrust analysis in the proposed transaction? If so, explain the reason for Comcast's change in position.

Response: As noted in the Public Interest Statement, the DOJ and FCC have previously concluded that cable advertising is not part of the relevant market for local broadcast advertising for at least a significant number of advertisers. *See* Complaint ¶¶ 14-16, *United States v. Gannett Co., Inc.*, No. 1:13-cv-01984 (D.D.C. 2013); *NBCUniversal Order* ¶¶ 152-54; *see also* Complaint ¶ 10, *United States v. Raycom Media Inc.*, No. 1:08-cv-01510 (2008). Viewed from this perspective, the proposed transaction combines no competitive advertising assets, and so raises no conceivable antitrust concerns. TWC owns no local broadcast stations that could compete with NBCUniversal's local broadcast stations. And Comcast and Time Warner Cable's cable businesses do not compete in the sale of advertising.

Comcast does not believe that the DOJ and FCC need to reexamine this conclusion in the context of the TWC transaction. Nevertheless, if the DOJ or FCC do so, they should recognize that the advertising marketplace is much broader than just cable and broadcast, encompassing numerous competitors, such as radio, online and others. Local advertisers can choose from all of these alternative media to reach their target audience. It would certainly make no sense to define a market consisting solely of local cable advertising and local broadcast advertising.

6. **Comcast testified that the company does not and will not control 82 percent of the cable advertising market.**

Response: To clarify, during the hearing, I questioned the accuracy of the assumption that Comcast would control 82 percent of the local cable advertising market post-transaction. I also observed that, even assuming the estimate were correct, Comcast's post-transaction share would be 82 percent of a market segment (i.e., local cable advertising) that itself represents only seven percent of the overall local advertising market. This is far too small a share to present any antitrust concerns.[13]

In addition, from an economic standpoint, it is not particularly meaningful to discuss national market share of local markets, as some of the questions below posit. Consider a

[13] *See* House Transcript 160:3765-3769 ("So even assuming that we are going to control 82 percent of the cable advertising market, which I do not think is accurate, by the way, but we will be controlling 82 percent of 7 percent of the market. And I do not think that present serious or cognizable antitrust risks or harms.").

simple example: If an advertiser (such as a local car dealership) wants to purchase advertising time in Boston to reach potential consumers in Boston, this advertiser would not view advertising in Los Angeles as a competitive substitute. Thus, combining advertising inventory in Boston and Los Angeles (through a merger or otherwise) can have no competitive effect on the Boston car dealership, because that car dealership never was interested in purchasing advertising in Los Angeles in the first place.

Please clarify the percent that:

> **•Comcast ad sales (including NBC, NBC O&Os, Telemundo, NBC Cable networks, Comcast Spotlight, Comcast Spotlight representation deals, Time Warner Cable, Time Warner representation deals) will hold on the overall $72 billion television advertising market?**

Response: The $72 billion figure cited in my testimony represents the local advertising market as a whole,[14] which is not limited to television advertising and includes multiple other outlets for advertisers to reach consumers in local markets. The local *cable* advertising segment constitutes only approximately six to seven percent of the local advertising market. As Professor Christopher Yoo of the University of Pennsylvania testified during the April 9, 2014 Senate Judiciary Committee hearing, "[i]f you're a local advertiser, 93 percent of your money is going elsewhere. *And a 7 percent concentration level under any antitrust standard is irrelevant.*" (Emphasis added.)

Nevertheless, if one were to aggregate local advertising sales revenues for Comcast, NBCUniversal, Comcast Spotlight, and representational sales (including through interconnects and NCC Media[15]), the amount would represent approximately five percent of the local advertising available throughout the United States.[16] If TWC's publicly reported advertising revenues were included, and assuming these revenues reflect only local advertising sales, the combined number would rise immaterially to less than seven percent.[17] Even if relevant (which they are not), these shares are likewise below any level of concentration that raises any legitimate antitrust concerns.

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14 SNL Kagan data (2013).

15 NCC Media is a national firm co-owned by Comcast, TWC, and Cox, which allows national advertisers to buy advertising in local markets. NCC Media sells local advertising across DMAs for these three MVPDs, as well as other MVPDs, such as Verizon, AT&T, Dish Network, DirecTV, and other cable companies, including overbuilders like WOW. NCC Media's revenues are distributed pro rata to the participating MVPDs, including Comcast's share, even though the total amount is reported by Comcast. *See* Comcast Corp., Annual Report (Form 10-K) (Feb. 12, 2014).

16 The NBCUniversal national cable networks and NBC network do not sell local advertising and thus those advertising revenues are not part of (or reflected in) the $72 billion local advertising market referenced in this question.

17 This calculation is based on TWC's publicly reported, aggregate advertising revenues. Time Warner Cable, Annual Report (10-K) (Feb. 18, 2014).

Further, as I noted during the hearing, Comcast and TWC operate in distinct geographic footprints and do not compete for local advertisers. Combining the Comcast and TWC systems, therefore, will not reduce advertisers' choices to reach households in any relevant local market. Although Comcast's geographic footprint may be larger post-transaction, advertisers will still have multiple outlets for placing local advertising, including other broadcast television, other MVPDs, radio, newspapers, direct mail, outdoor display advertising, and Internet media, which is growing rapidly.[18]

> **•Comcast local ad sales (including NBC O&Os, Telemundo, Comcast Spotlight, Comcast Spotlight representation deals, Time Warner Cable, Time Warner representation deals) will hold on the overall $17 billion local television advertising market?**

Response: As a threshold matter, this $17 billion number appears to include only local spot cable advertising, local broadcast advertising, and regional sports networks,[19] and does not include the multiple additional options that are available to advertisers on a local basis and reflected in the $72 billion local advertising sales figure. Focusing only on these television market segments is not particularly meaningful from an antitrust perspective. As Professor Yoo and others have explained, the relevant market is the local advertising market as a whole, representing all the various options local advertisers choose among when spending money to advertise locally.

Nonetheless, local advertising revenues for these Comcast and NBCUniversal entities would reflect approximately 21 percent of the local television advertising sold in the United States. If TWC's publicly-reported advertising revenues were included, and assuming these revenues reflect only local advertising sales, the combined number would represent approximately 27 percent. These percentages (which likewise are not meaningful) are still below a level that might raise any anticompetitive concerns, even assuming this limited set of market segments was at all relevant for purposes of antitrust analysis.

> **•Comcast local cable ad sales (including Comcast Spotlight, Comcast Spotlight representation deals, Time Warner Cable, Time Warner representation deals) will hold on the overall $5.4 billion cable advertising market?**

Response: As I reiterated above, because local cable advertising constitutes only a fraction of the local advertising market, even if an entity represented a large share of the local cable advertising segment it would not raise anticompetitive concerns. Moreover,

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[18] *See, e.g.*, Will Richmond, *IAB: Advertisers' Interest In TV and Video Is Now At Parity*, VideoNuze, Apr. 28, 2014, http://iq.videonuze.com/article/iab-advertisers-interest-in-tv-and-video-is-now-at-parity (reporting recent survey of agency and brand buyers indicating that interest in TV and online video advertising *is now at parity* and that nearly two-third of the respondents expect to increase their online video spending in the next twelve months).

[19] SNL Kagan data (2013).

because cable companies typically do not compete for local cable advertising dollars (as in the case of Comcast and TWC), and in fact collaborate to pool and sell local cable advertising through interconnects and agents such as NCC Media, it is even more evident that this transaction will not materially affect competition or change existing practices in this market segment.

With this in mind, Comcast's share of the local cable advertising sold in the United States (including NCC Media) is under 40 percent. Comcast does not have access to non-public TWC data that would be required to include its local cable advertising sales in this calculation.

> **•Comcast local cable ad sales representation deals (including Comcast Spotlight representation deals, Time Warner representation deals) will hold on the overall $1.4 billion local television cable advertising representation market?**

Response: Local cable advertising sales through interconnects that Comcast manages, NCC Media, and other representations (including representation of TWC in some local systems) reflect approximately 40 percent of local cable advertising sold through interconnects in the United States. Comcast does not have access to non-public TWC data that would be required to include local cable advertising sales it manages for others in this calculation. In all events, looking at the relative shares of advertising revenues in this segment is not meaningful for antitrust analysis purposes, for the same reasons outlined above.

It bears noting, moreover, that there are multiple other national firms that provide services similar to NCC Media, including TelAmerica, CTV, Cable Scoop, Cable Time, Zip Tech Media, WorldLink, ITN, Delivery Agent (The Band), and AudienceXpress. There will be no reduction in choice among these services for local advertisers as a result of the transaction. Likewise, an MVPD will retain the same ability, post-transaction, as it has today to sell its local spot cable advertising time directly to advertisers or through any of the interconnects that Comcast manages, which are open to all MVPDs.[20]

> **•of the top 50 Interconnects, how many of which Comcast own the largest share?**

Response: To clarify, Comcast does not "own" interconnects. Interconnects are collaborative arrangements between MVPDs to pool advertising time, with one of the MVPDs managing the sales of the pooled advertising time as a representative for the other MVPDs. Currently, Comcast manages 26 of the interconnects in the top 50 Designated Market Areas ("DMAs").

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[20] In areas where Comcast currently manages interconnects, it has chosen to deal directly with MVPDs – and does not typically contract with "middlemen" media firms that merely add costs to the interconnect and benefit neither MVPDs nor advertisers.

The transaction will have no material effect on these collaborative arrangements or competition in any local advertising markets, for the reasons noted above. In addition, local cable advertising's share of the local advertising market will remain well below any level that might possibly create any legitimate anticompetitive concern.

•of the 210 Designated Market Areas, how many of which Comcast be the largest company?

Response: Comcast currently manages 57 of the interconnects in the 210 DMAs. The transaction will have no material effect on these collaborative arrangements or competition in any of these DMAs. An MVPD will retain the same ability, post-transaction, as it has today to sell its local spot cable advertising time directly to advertisers or through any of the interconnects that Comcast manages. And local cable advertising's share of the local advertising market will remain well below any level that might possibly create any legitimate anticompetitive concern.

Are there any competitive concerns associated with the percentages of market share indicated above? Please address your answer to each market referenced above.

Response: No. The transaction will not change the state of competition in the local advertising market and does not present any antitrust concerns in the local advertising market or any of the various market segments indicated above.

7. **During the hearing, you mentioned various factors that Comcast considers when evaluating carriage requests and making carriage decisions. Could you please explain in more detail what factors Comcast considers in these decisions?**

Response: Comcast strives to serve the diverse needs and interests of our customers by offering a wide variety of compelling content. If we fail to carry programming that our customers value, they have the option to switch to any number of competing MVPDs that do carry it.

When deciding which channels to add to our cable lineup, or when making other carriage and distribution decisions for existing channels, we consider a wide mix of business factors. These typically include our best judgment of whether current and prospective customers will value the programming; how carriage of the programming will affect costs and customers' monthly rates; whether there is sufficient available bandwidth for the additional programming; and other potential uses of the bandwidth. For new networks, we also consider the business experience of the management team who will be running the network, the network's proposed fees and carriage demands, the strength of the network's rights to content that will be integral to the programming (e.g., an original series, sports rights, etc.), whether Comcast's competition carries the programming, and other factors.

8. How does Comcast make decisions regarding carriage of diverse programming? How would you describe the availability of diverse programming to consumers as far as cable packaging? Is diverse programming available to consumers on lower-priced tiers or tiers which are affordable, or is it placed on higher-priced or specialty tiers?

Response: As described above in response to Question 7, Comcast considers a number of factors when making carriage decisions, including ones involving diverse programming. Comcast is proud of the amount of diverse programming we make available to our customers. Comcast currently carries more than 100 cable networks geared toward the African American, Hispanic/Latino, Asian American, and female audiences. These include:

- *11 cable networks geared toward the African American community.*
- *58 cable networks geared toward the Hispanic/Latino community.* Comcast fulfilled its commitment to launch a package of 40 to 60 Spanish-language channels in all major Latino markets, including South Florida. The XFINITY TV Latino packages now include over 60 Latino networks in English and Spanish, including 50+ independent channels in the Spanish-only "H" tier. Comcast also launched the Xfinity Latino website (Xfinity.com/Latino), which features almost 9,000 choices and 2,500 hours of movies and shows online free to XFINITY Latino customers.
- *25 cable networks geared toward the Asian community.* Highlights include Mnet, the only 24/7 English-language nationwide television network in the U.S. targeting Asian Americans, and MYX TV, a channel carried in Seattle and western Washington state made for and by Asian Americans.

Since 2011, and as part of our commitments in the *NBCUniversal Order*, Comcast has also launched four independent networks with Hispanic American or African American ownership. These include ASPIRE, BabyFirst Americas, REVOLT, and El Rey. All of these networks are carried on our Digital Basic tier. We have committed to launch four additional minority-owned networks in the next few years.

In addition, since the NBCUniversal transaction, Comcast has expanded its distribution of a host of minority channels to millions of additional customers. This increased distribution is consistent with commitments that Comcast made as part of memoranda of understandings ("MOU") with various diverse organizations, in conjunction with the NBCUniversal transaction.

For example, consistent with the MOU, Comcast has made the Africa Channel available to over two million additional customers, and TV One available to over 600,000 additional customers. Comcast likewise extended distribution of seven Hispanic programming services (Azteca America, Galavisión, HITN, LATV, nuvoTV (f/k/a

SiTV), UniMás (f/k/a Telefutura), and Univision) by more than 14 million subscribers.[21] Mnet was also expanded to millions of additional subscribers in major DMAs. And we increased the number of video-on-demand ("VOD") hours for diverse programming by more than 270 percent, while increasing the number of online hours for diverse programming (via Xfinity.com) by nearly 170 percent.

Comcast promotes and helps drive viewer interest in diverse programming, including that provided by independent networks, through a variety of innovative ways that many of these networks, particularly smaller ones, could not do on their own. For example, between 2011 and 2013, we created Xfinity "microsites" tailored for African American, Asian-Pacific, Hispanic, and LBGT audiences.[22] Each microsite brings together culturally relevant entertainment from a variety of sources in a central, easy-to-navigate location. We have also invested heavily to develop and deploy the first-of-its-kind Xfinity Latino Entertainment Channel, a linear, interactive "barker" channel available to over 20 million subscribers that promotes curated, Latino-relevant content.

Comcast has transitioned its systems to digital, and we now carry scores of diverse networks on our digital basic tier (currently generally branded as "D1" or "Digital Classic") at affordable prices.[23] As I explained during the hearing, all 11 of the networks geared toward African Americans are available on our digital basic tier or a more highly penetrated tier.[24] The Latino-focused independent networks El Rey and BabyFirst Americas are likewise available on the digital basic tier, and depending on a viewer's package, Spanish-language broadcast channels like Univision, Telemundo, or UniMás (f/k/a Telefutura) are also included in the limited basic lineup that goes to 100% of

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21 This exceeded, by more than 40 percent, Comcast's commitment in the NBCUniversal transaction to expand carriage of three Hispanic networks by 10 million subscribers.

22 *See* http://xfinity.com/celebrateblacktv; http://xfinity.com/asia; http://xfinity.com/latino; http://xfinity.com/lgbt.

23 Pricing information for Comcast's Digital Starter, on a system-by-system basis, is available at http://www.comcast.com/Corporate/Learn/DigitalCable/TVChannelLineUp.html. It is important to note that the standard list price for Digital Starter (or other Comcast products and services) often do not reflect the actual rates, including discounts and promotions, paid by customers. For example, over two-thirds of Comcast customers take advantage of bundled two or three product offerings and the price breaks they provide. In addition, in recent years, at any given time, approximately 50 percent of Comcast customers are on promotional packages. To the extent customers have participated (or are participating) in promotions or other packaging options, their rates may be significantly lower than the standard list price on the Comcast website for a particular package, further reducing their monthly rates below our standard advertised prices.

24 During the hearing, I noted that TV One and other African-American owned or African-American directed channels are carried on our most popular, lowest-cost digital tier, digital basic (or "D1"). To clarify, by "lowest-cost," I was referring to the overall value proposition from a per-channel and content basis for the customer.

Comcast's customers. In addition, Comcast has dozens of Latino-focused channels that are available on the H tier for an everyday low price.[25]

9. **How does Comcast make decisions regarding providing carriage to independent programmers, specifically independent programming targeted at rural audiences?**

Response: Comcast considers multiple factors when making carriage decisions regarding any network, including independent networks, with the goal of making our programming lineup attractive and compelling to our current customers and prospective customers. Comcast has a stellar record of carrying independent programmers. Between January 2011 and the end of 2013, Comcast added 20 independent networks and expanded carriage of over 120 independent networks. In total, Comcast carries over 160 independent networks, including many small, diverse, and international ones.

Comcast carries a significant amount of independent programming that appeals across diverse demographics, including rural audiences, such as HSN, QVC, C-SPAN, and Bloomberg Television. We also carry independent programming geared toward the specific needs and interests of rural viewers, including Blue Highways, INSP, HRTV, Outdoor Channel, World Fishing Network, Sportsman Channel, RFD-TV, and FamilyNet. This and other rural-themed programming available on Comcast's systems is discussed more fully below, in my response to Question 10.

10. **What factors were considered in the decision to reduce distribution of RFD-TV? Has Comcast reduced the carriage of other Rural Media Group-owned programming? What other programming does Comcast make available to its subscribers that is geared toward the needs and interests of rural audiences?**

Response: With respect to RFD-TV, the decision to reduce distribution of the network in Colorado and New Mexico was made by the local systems based on legitimate business factors. Among other things, the Denver and Albuquerque systems were very bandwidth constrained, and reclaimed bandwidth was needed to improve Internet speeds and enhance other services for Comcast customers. In addition, our local systems made a reasonable judgment that Comcast customers in those markets placed a greater value on the increased availability of high-definition ("HD") channels for certain programming on various systems, which again required reclaimed bandwidth, including Disney Jr., Cooking Channel, Big Ten Network, C-SPAN, Ovation, Reelz, Tennis Channel, KQCK, Smithsonian Channel, and Root Sports Rocky Mountain. Certain systems also launched networks in standard definition ("SD") that they did not carry at all, including KXTU-Mundo, KQCK, ESPN Classic, The Word, BTN, BYUTV, JTV, Ovation, RLTV,

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[25] A customer who purchases just the Latino "H" tier will pay an everyday price in the range of $16.95 to $19.95 per month, depending on the region in which the viewer lives. These prices are the everyday price and do not include promotional pricing, which in the case of an "H" tier viewer can result in savings of anywhere from $10 to $20 per month depending on the entire package of Comcast services a customer prefers.

Cooking Channel, de Pelicula, DIY, Root Sports Rocky Mountain, and Teleformula. And some systems used these changes to make regional channel realignments, as well.

Notably, Rural Media Group ("RMG"), the parent company of RFD-TV, has seen a significant *net gain* in carriage of its programming by Comcast since the NBCUniversal transaction in 2011. Although Comcast reduced distribution of RFD-TV by about 470,000 subscribers in August 2013, Comcast still carries the network to approximately 650,000 customers. Over the same time period, Comcast has nearly *doubled* its carriage of RMG's FamilyNet, RFD-TV's sister channel, from approximately 1.3 million subscribers in 2011 to over 2.7 million subscribers at the end of 2013. In other words, RMG has seen a net gain of *over a million* subscribers on Comcast systems since the NBCUniversal transaction. And, in several of those systems, FamilyNet, like RFD-TV, is carried on Comcast's popular digital basic tier.

Further, FamilyNet carries substantially the same rural-themed programming as RFD-TV. In 2013, RMG largely consolidated the programming shown on RFD-TV with FamilyNet.[26] During the week of May 12, 2014, for example, a FamilyNet viewer could watch over 56 hours of the *exact same* content available on RFD-TV. This constitutes over 41 percent of FamilyNet's programming that week.[27] Similarly, for the week of June 23, 2014, a FamilyNet viewer could watch over 61 hours of the *exact same* content available on RFD-TV – which is about 45 percent of FamilyNet's programming that week.[28]

FamilyNet's overlapping content with RFD-TV includes programming from RFD-TV's equestrian, lifestyle, music, and agricultural shows. Both channels carry:

- *Equestrian Nation*, *Roping & Riding with Tyler Magnus*, *The Horse Show with Rick Lamb*, *All Around Performance Horse*, and *Gentle Giants*.

- *Bluegrass Backroads*, *Cowboy Authentic*, *Texas Country Reporter*, and *Cowboy Church*.

- *Country's Family Reunion*, *Mollie B Polka Party*, *The Music City Show*, *Hee-Haw*, and the *Penny Gilley Show*.

- And, although FamilyNet does not carry RFD-TV's five-hour mid-day agricultural market reports, it offers many agricultural shows that RFD-TV also

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26 *See* Kent Gibbons, *Rural TV Parent Buys FamilyNet*, Multichannel News, Oct. 22, 2012, http://multichannel.com/news/content/rural-tv-parent-buys-familynet/359973.

27 This figure *excludes* infomercial programming time from the calculation.

28 *See* Exhibit 1 (FamilyNet Schedule for the week of June 23, 2014 showing extensive overlap with RFD-TV programming).

carries, including *Rural Evening News*, *This Week in Agribusiness*, *Ag-PhD*, and *American Farmer*.

In addition to RMG's RFD-TV and FamilyNet networks, Comcast carries many other networks that are geared to the needs and interests of rural viewers and that connect rural viewpoints with urban viewers. Many of these are independent networks (indicated in bold) and include: **Blue Highways**, CMT, Great American Country, Destination America, **HRTV**, **Outdoor Channel, World Fishing Network, Sportsman Channel**, TVLand, **INSP**, Encore Westerns, and **Me TV**.

Agricultural market news programming is available from other channels on Comcast's western systems, as well. For example, on stations in Colorado and New Mexico, *Farm with Ian Knauer* is aired weekly on the respective PBS multicasts; while in Colorado a show called *Agribusiness*, featuring weather forecasts and interviews with farming leaders, is aired on Sunday mornings on KTVD.[29]

In addition to the rural-themed sports content available on HRTV, Outdoor Channel, World Fishing Network, and Sportsman Channel, other channels that Comcast carries also feature rural sports programming. For example, CBS Sports carries Professional Bull Riding and the Professional Rodeo Cowboy Association challenges; and Great American Country aired the Wrangler National Finals Rodeo.

Other Comcast channels also carry programming that generally features rural and country lifestyle and entertainment. In fact, across Comcast's cable system footprint, reality programming that features rural lifestyles and connects urban viewers with rural viewpoints are ubiquitous. For example:

- Cooking shows on Food Network and PBS feature western and southern cooking, such as *A Chef's Life*, *Pioneer Woman*, and *Trisha's Southern Kitchen*.
- Me TV broadcasts *Bonanza* and *Gunsmoke* reruns alongside reruns of *Daniel Boone* and *Rawhide*.
- INSP broadcasts reruns of classics such as *Little House on the Prairie* and other family-friendly programming.
- CMT features reruns of *The Dukes of Hazzard*, while *The Beverly Hillbillies* airs on TVLand, along with *Bonanza* and *Gunsmoke*.
- Encore Westerns features classic westerns around the clock.

[29] Besides television, Rural Radio XM provides RFD-TV's market reports, and other radio stations broadcast agricultural news on the radio and on the web, including offerings from the USDA and the Farm Journal Market Radio.

Comcast will continue to make carriage decisions based on legitimate and reasonable business factors to ensure that it offers programming that appeals to viewers with diverse interests and viewpoints, including rural audiences.

11. During the hearing, concerns were raised about the extent to which the proposed transaction would give Comcast increased market power in the local cable advertising market, including advertising interconnects. Can you describe the state of competition in the advertising markets where Comcast currently has a presence? How will the proposed transaction affect this competition? If the transaction is approved, will the increased size of the combined company affect the ability of smaller advertisers and MVPDs to access local advertising outlets?

Response: With respect to the state of competition in local advertising markets, in 2013, advertisers spent approximately $72 billion on local advertising, with cable *in the aggregate* representing only approximately a $5 billion – or about a six or seven percent share.[30] As Professor Christopher Yoo of the University of Pennsylvania testified during the April 9, 2014 Senate Judiciary Committee hearing, "[i]f you're a local advertiser, 93 percent of your money is going elsewhere. *And a 7 percent concentration level under any antitrust standard is irrelevant.*" (Emphasis added.) Similarly, Comcast and TWC only have approximately eight to 11 percent of television viewing saleable impressions in their respective local markets. This too is far below any concentration level that might raise antitrust concerns.

The local advertising market is intensely competitive and advertisers have many outlets to place local advertising, including broadcast television, other MVPDs, radio, newspapers, direct mail, outdoor display advertising, and Internet media. In fact, Internet advertising, including search, display, and, especially, video advertising, is growing very rapidly.[31] Given this intense competition, it is simply unrealistic to think Comcast will dominate any local advertising market. Although Comcast's geographic footprint may be larger post-transaction, its share of the local TV advertising market will still be very small, and advertisers will still have multiple outlets for placing local advertising.

As to the effect of the proposed Comcast-TWC transaction on the local advertising market, the transaction will not have any adverse effect on competition for several reasons. First, Comcast Cable and TWC do not compete for advertising dollars today, so the transaction will not eliminate any competition. To the contrary, in many markets, Comcast and TWC already participate in "interconnects," arrangements that allow MVPDs to pool their advertising inventory with inventory from other MVPDs.[32]

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30 SNL Kagan Data (2013).

31 *See, e.g.*, Will Richmond, *IAB: Advertisers' Interest In TV and Video Is Now At Parity*, VideoNuze, Apr. 28. 2014. http://iq.videonuze.com/article/iab-advertisers-interest-in-tv-and-video-is-now-at-parity (reporting recent survey of agency and brand buyers indicating that interest in TV and online video advertising *is now at parity* and that nearly two-third of the respondents expect to increase their online video spending in the next twelve months).

32 "Interconnects" are comprised of a group of local MVPDs that operate in the same DMA and pool their available local spot advertising time, typically under the management of one of the MVPDs who acts as the seller.

Comcast and TWC are also co-owners (with Cox) of NCC Media, a national firm that sells local advertising across DMAs.[33] National advertisers can purchase time from NCC Media and thus reach subscribers of many MVPDs in all of the DMAs where they operate. An advertiser could also make a buy through NCC Media to target subscribers of particular MVPDs in a particular DMA. Given the high level of existing collaboration between Comcast and TWC in the local advertising business, it is especially clear that the transaction will not change anything.

Second, any overlap between NBCUniversal broadcast stations and TWC systems does not raise competitive concerns.[34] The DOJ and FCC have previously concluded that cable advertising is not part of the relevant market for local broadcast advertising for at least a significant number of advertisers. *See* Complaint ¶¶ 14-16, *United States v. Gannett Co., Inc.*, No. 1:13-cv-01984 (D.D.C. 2013); *NBCUniversal Order* ¶¶ 152-54; *see also* Complaint ¶ 10, *United States v. Raycom Media Inc.*, No. 1:08-cv-01510 (2008). If the DOJ and FCC were to reconsider this conclusion, it would be appropriate to include not only cable and broadcast advertising in the relevant market, but also Internet, mobile, radio, and print advertising. Seen from that perspective, it is clear that any overlap resulting from the transaction will be immaterial. Moreover, even if one were to focus more narrowly on television advertising, advertisers will still have ample opportunities to advertise on broadcast stations after the transaction. For example, in each of the New York, Los Angeles, San Diego, and Dallas/Fort Worth DMAs where Comcast currently owns an NBC broadcast station and TWC owns a cable system, there are between five and 12 unique owners of English-language broadcast stations. According to BIA/Kelsey data, moreover, local broadcast and local cable advertising *combined* only account for approximately one-third of local advertising spending in the New York, Los Angeles, Dallas/Fort Worth, and San Diego DMAs.

Third, Comcast will continue its policy of admitting all MVPDs to any interconnects that it manages.[35] Comcast will follow these same practices for any new interconnects that it

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This arrangement permits advertisers to reach consumers residing in each of the participating MVPDs' systems within the DMA with a single purchase from the "interconnect," rather than having to purchase local spots directly from multiple MVPDs to reach the same target audience. For example, through an interconnect, a local car dealer can schedule a commercial to run at the same time on the same channel on all participating MVPDs' systems within a DMA.

33 NCC Media sells local advertising time for these three MVPDs, as well as several other MVPDs. There are multiple other national firms that provide similar services, including TelAmerica, CTV, Cable Scoop, Cable Time, Zip Tech Media, WorldLink, ITN, Delivery Agent (The Band), and AudienceXpress.

34 There are a few DMAs – New York, Los Angeles, San Diego, and Dallas/Fort Worth – where Comcast currently owns an NBC broadcast station and TWC owns a cable system. In addition, some of the Charter systems that Comcast proposes to acquire also serve in part the New York, Los Angeles, and Dallas/Fort Worth DMAs, as well as the Hartford DMA, where NBC O&O broadcast stations are present.

35 In its managed interconnects, Comcast has chosen to deal directly with MVPDs – and does not typically contract with "middlemen" media firms that merely add costs to the interconnect and benefit neither MVPDs nor advertisers.

manages post-transaction, and advertisers will continue to have the same multiple options to purchase local cable spot buys discussed above.

Finally, the transaction will benefit local advertisers in several ways. Local cable spot buys enable advertisers to target consumers in preselected geographic zones within a given DMA. This kind of "local zoning" is extremely valuable to advertisers because it helps them reach their target audiences more effectively and efficiently than many other advertising platforms. In addition, the transaction will enhance Comcast's ability to develop and deploy other attractive and innovative options for local advertisers, such as dynamic ad insertion[36] and addressable ads[37] in VOD content.

12. **Has your company ever de-peered or been de-peered by (or otherwise pnrposefully disconnected with or been disconnected from) any Internet service provider or other Internet traffic carrier? If so, please list each such instance and identify the company or companies involved.**

Response: To the best of my knowledge, Comcast has never de-peered or been de-peered by (or otherwise purposefully disconnected with or been disconnected from) any ISP or other Internet traffic carrier.

13. **During the heariug, Mr. Schaeffer testified that a company such as Comcast would always have asymmetric traffic relationships with other Internet service providers. Is that indeed your company's experience, or does Comcast ever have balauced traffic with any of the other providers with which it interconnects? When traffic is out of balance, how do you handle the situation? What is the industry norm?**

Response: Mr. Schaeffer's assertion was incorrect. Comcast is a major provider of transit services, just like Cogent, and engages in settlement-free peering with over 40 networks. Comcast traffic to and from its peers is in relative balance – and this *includes* Cogent.

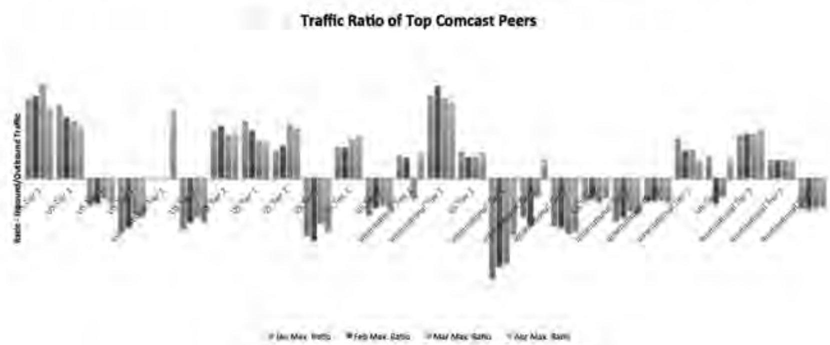
Contrary to Mr. Schaeffer's claims at the hearing, Comcast's traffic load does *not* just reflect service to residential subscribers. Comcast – like Cogent – serves websites, CDNs, universities, large businesses, and content providers (including NBCUniversal and others). Comcast is a major provider of transit services to the rest of the Internet for these entities – *including to Cogent's network*. As a result, Comcast tends to send roughly the same amount of traffic off-net, to its peers, as it receives collectively from them. In some

[36] Dynamic ad insertion technology separates ads from the programming stream so that they can be dynamically inserted into, or removed from, the programming. This technology thus allows advertisers to tailor their messages on VOD platforms in a more timely manner, giving them more meaningful access to the increasingly large segment of consumers who engage in time-shifted viewing or view content using devices other than a traditional television (e.g., a computer, tablet, or smartphone).

[37] Addressable advertising allows marketers purchasing advertising spots on cable network programs to augment geographic zone targeting (i.e., advertising targeted at specific zip codes or neighborhoods) with advertising targeted to individual households based on demographics and other household-specific characteristics.

instances, in fact, Comcast *sends* more traffic to some of its peers than it receives, though unlike Cogent, Comcast works to remain within its mutual agreed-to policies and agreements for settlement-free peering with each peer. And, unlike Cogent, Comcast has never de-peered or been de-peered by (or otherwise purposefully disconnected with or been disconnected from) any ISP or other traffic carrier.

The graph below depicts peak traffic ratio of Comcast's top 20+ settlement-free peers from January through April 2014, showing the ratio of inbound/outbound traffic. These data confirm that Comcast's exchange of traffic is relatively balanced with these peers – and show that Mr. Schaeffer's claims at the hearing were demonstrably wrong. Indeed, in the wake of the Netflix arrangement with Comcast, Comcast's and Cogent's networks are again in balance, which makes Mr. Shaeffer's claim particularly indefensible.



14. During the hearing, Mr. Schaeffer asserted that Comcast's ports with Cogent remain congested even after Netflix interconnected directly with Comcast's network and thereby took its traffic off of Cogent's network. Is Comcast continuing to experience congestion in its interconnection ports with Cogent's network?

Response: Mr. Schaeffer was again wrong. After Netflix directly interconnected with Comcast and removed its content from Cogent in April 2014, the exchange of traffic between Cogent and Comcast again became relatively balanced and congestion free. As of May 2014, Comcast has several 100 Gbps of capacity with Cogent that on average is running at only 40 percent utilization in, and 30 percent utilization out, with a highly balanced ratio of 1.3:1.

Mr. Schaeffer's claim that Comcast's traffic remains imbalanced and congested is indefensible. Like Comcast, Cogent regularly monitors traffic loads with its peers, and Mr. Schaeffer was surely aware that the parties' traffic had resumed relative balance and was no longer congested. His assertion to the contrary was simply false.

15. During the hearing, Mr. Schaeffer indicated that Comcast's interconnection strategy is intended to limit the ability of over-the-top video providers such as Netflix to compete with Comcast's own video offerings. Does Comcast make interconnection decisions based on its video delivery prodnct? Conld the strategy that Mr. Schaeffer posits be successful?

Response: Mr. Schaeffer was again wrong. The Netflix dispute to which Mr. Schaeffer is referring was not about Netflix's content or discrimination in any way. The dispute related to Cogent's *own* routing behavior.

More specifically, the number of ports between Comcast and Cogent in 2013 reflected the parties' annual capacity planning and forecasts – a process Comcast conducts with all its peers under its settlement-free interconnection policy ("SFI Policy").[38] Under that arrangement, the parties had relatively balanced traffic and no congestion. Then, in a matter of just a few months, primarily as a result of its agreement with Netflix, Cogent's traffic increased *five times* (or 500 percent) over its normal levels. As a result, Cogent rapidly went out of compliance with the parties' agreed-to settlement-free arrangement. The interconnection bandwidth Cogent had arranged with Comcast suddenly and markedly outstripped the amount of capacity necessary to accommodate the parties' settlement-free traffic exchange, and the flow of traffic between the parties became grossly lopsided.

Comcast did what it could to relieve this capacity problem by supplementing Cogent with an additional 50 Gbps, for free, and asked Cogent to engage in some traffic load balancing efforts with its customers. Cogent refused to cooperate, even in the face of this additional deployment of free capacity by Comcast. The result was increasing congestion as traffic from Cogent (primarily from Cogent's customer Netflix) increased, which was harmful to Comcast (and other ISPs). It interfered with Comcast's customers' ability to reach sites or customers served by Cogent, and to obtain content from customers served by Cogent (including Netflix) without quality problems.

Responsible ISPs work to ensure that their traffic loads comply with the agreements they have in place with their peers. It is common for a transit ISP to work with its large customers to manage their traffic so as to avoid causing congestion or peering problems (e.g., by encouraging the customer to use a variety of routes). Comcast has addressed similar situations with its large volume customers, and they are almost always very cooperative. Large-volume customers are (or should be) very aware that they have the power to create congestion, which can result in effective "denial of service" situations, and normally act very responsibly to avoid these issues. Congestion is easily corrected *in real time* if the traffic is properly managed by distributing it among the various routes available to the customer, rather than insisting that all of it stay on one provider's route.

[38] Comcast's SFI policy provides that "[e]xisting SFI network peers of Comcast will have their status reviewed periodically to ensure that joint capacity planning intervals are sufficient for growth, contacts are refreshed for operations purposes, and all criteria continue to be met." SFI Policy, http://www.comcast.com/peering.

Nevertheless, when traffic once in balance becomes out of balance, so that the relationship becomes inconsistent with the parties' settlement-free peering arrangement, the parties tend to work together to keep their traffic flowing. Cogent refused to do this.

Regrettably, Cogent's refusal to engage in this kind of Internet "hygiene" – which is the industry norm – is hardly unusual conduct for Cogent. As Verizon noted during a similar dispute with Cogent in 2013:

> "Cogent is not compliant with one of the basic and long-standing requirements for most settlement-free peering arrangements: that traffic between the providers be *roughly in balance*. When the traffic loads are not symmetric, the provider with the heavier load typically pays the other for transit. * * * This is [simply] a bandwidth provider that is unhappy that they are out of balance and will have to make alternative arrangements for capacity enhancements, just like any other interconnecting ISP."[39]

Cogent did the same thing to Level 3 in 2005, and was eventually de-peered by Level 3. As Level 3 said:

> "We determined that the agreement that we had with Cogent was not equitable to Level 3. There are a number of factors that determine whether a peering relationship is mutually beneficial. For example, Cogent was sending far more traffic to the Level 3 network than Level 3 was sending to Cogent's network. It is important to keep in mind that traffic received by Level 3 in a peering relationship must be moved across Level 3's network at considerable expense. Simply put, this means that, without paying, Cogent was using far more of Level 3's network, far more of the time, than the reverse. Following our review, we decided that it was *unfair for us to be subsidizing Cogent's business*."[40]

And that is the tip of the iceberg. Cogent has had similar disputes with a host of other networks, resulting in other instances of de-peering.[41] In fact, Cogent stands out among most other ISPs for a history of these disputes.

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[39] *See* David Young, Verizon, *Unbalanced Peering, and the Real Story Behind the Verizon/Cogent Dispute*, Policy Blog (June 19, 2013), http://publicpolicy.verizon.com/blog/entry/unbalanced-peering-and-the-real-story-behind-the-verizon-cogent-dispute (emphasis added).

[40] *See* Press Release, Level 3, Level 3 Issues Statement Concerning Internet Peering and Cogent Communications, http://www.prnewswire.com/news-releases/level-3-issues-statement-concerning-internet-peering-and-cogent-communications-55014572.html (emphasis added).

[41] Since 2002, Cogent has been involved *in at least 10* similar peering disputes with AOL, Verizon, Level 3, Sprint, France Telecom, ESNet, Telia, China Telecom, and others. *See* http://www.cybertelecom.org/industry/cogent.htm.

In all events, the invidious strategy Mr. Schaeffer ascribes to Comcast would make little sense as a practical matter. Blocking or degrading an interconnect would *not* prevent OVDs or other content providers from reaching Comcast's customers and would only harm *Comcast*.

As noted above, Comcast has over 40 settlement-free routes and dozens of substantial paid peering and transit arrangements for the transport of traffic to Comcast's ISP network for delivery to Comcast's customers. Those connections are always an available option for every content provider. Content providers have significant control over the routes they use to reach an ISP's network. No content provider, including Netflix, is ever compelled to deal with Comcast directly.

Further, blocking or degrading these connections would accomplish nothing for Comcast. Content providers who had used the blocked or degraded route could simply turn to the 39+ other options available to them. In fact, many content providers and CDNs use multiple, redundant routes, so they can make that switch in real time. Netflix, for example, previously used three to four different CDN routes to reach Comcast's network. At any time, Netflix could have transferred some, most, or all of its traffic to any of those other links, to avoid the congestion problems with Cogent – and Netflix did do this for some of its traffic, prior to deciding to seek a direct interconnection arrangement with Comcast.

Moreover, as Mr. Schaeffer admitted during the hearing, Internet transit prices have plummeted by 99 percent in the last 15 years amidst a competitive boom that saw new transit providers, including Comcast, enter the interconnection market. Thus, OVDs and other content providers not only have multiple options to reach Comcast's network, but can also do so on a cost-effective basis.

16. Does Comcast carry RFD-TV's affiliated network, FamilyNet, and if so has Comcast's carriage of that affiliated network increased or decreased since the Comcast-NBCUniversal transaction? Also, please identify the Comcast systems on which FamilyNet is currently carried.

Response: Yes. Comcast carries FamilyNet on numerous systems across the United States and has *increased* FamilyNet's carriage from approximately 1.3 million subscribers in 2011 to over 2.7 million subscribers at the end of 2013.[42] As a result, RMG has seen a net gain of *over one million* subscribers on Comcast systems since the NBCUniversal transaction.

Moreover, as shown above, FamilyNet's programming is substantially similar to RFD-TV's rural-themed programming. Over 40 percent is the *exact same* programming.

[42] The Comcast systems that currently carry FamilyNet are listed in Exhibit 2.

17. **Please list and describe the factors Comcast takes into account in determining whether to carry an independent network in the first instance and, if it does, how it determines tiering and penetration levels for that network. Does Comcast's evaluation take into accouut the presence of Comcast-affiliated networks that compete with the independent network? How?**

Response: Please refer to my response to Question 7 above for a description of the factors Comcast takes into account when making carriage decisions, including with respect to independent networks. With respect to tiering and penetration levels, these are determined using a related mix of factors that are considered on a network-by-network basis. For example, independent networks are carried on a variety of different tiers, but across the industry, new networks usually are not launched on the most highly penetrated tiers. These networks may be given greater distribution as they prove attractive to and valued by consumers. In contrast, sports programming has a strong value to networks, distributors, and advertisers because subscribers want access to their favorite teams' events, and the live nature of the programming makes it uniquely resistant to ad-skipping, which is especially attractive to advertisers. The pro teams recognize this value and demand broad distribution of their sports events by MVPDs to help build fan support and loyalty. For these reasons, RSNs are commonly carried on an MVPD's first or second most widely distributed tier. Additionally, like other MVPDs, Comcast also has to constantly balance how the distribution of new channels affects monthly customer rates.

Comcast makes carriage decisions, including tiering and penetration determinations, based on these and other legitimate and reasonable business considerations. And Comcast bargains fairly with all programmers, as demonstrated by its stellar record of carrying independent programmers.

18. **The FCC's 2011 order approving Comcast's acquisition of NBCU defined an "independent" network as one that is not an affiliate of a top 15 programming network. Under this definition, what is the highest level of distribution of an independent network on Comcast today? On Time Warner Cable?**

Response: Although I do not have comprehensive information for TWC on this question, Comcast carries multiple independent networks on our limited basic tier, which is our most widely-distributed tier. For example, HSN, QVC, C-SPAN, C-SPAN 2, and C-SPAN 3, Jewelry TV, TV Guide Network, Univision, EWTN, BBC America, Bloomberg Television, UP (f/k/a GMC), GSN, and UniMás (f/k/a Telefutura) are widely distributed to between approximately 16 million and 21 million subscribers, depending on the network.

19. **Comcast's acquisition of Time Warner Cable reportedly will give Comcast a two-thirds equity interest in Bright House Networks, another top-10 cable operator. Including this ownership interest, will Comcast's service footprint be larger than 30% of the market?**

Response: TWC has a two-thirds legal interest in the partnership that owns Bright House; however, these systems are and will continue to be managed on a day-to-day basis exclusively by Advance/Newhouse Partnership – an entity in which TWC holds no legal or economic interest.[43] Because Bright House is not managed by TWC, and because Advance/Newhouse Partnership is and will remain in control of that entity's operations, the *pro forma* transfer of TWC's indirect interest in Bright House to Comcast will have no competitive significance – and Bright House customers should expect that company will continue to deliver the outstanding service for which it is known.[44]

For these reasons, Comcast did not count the Bright House subscribers when we said that, post-transactions, Comcast will manage fewer than 30 percent of MVPD households. In fact, after the Charter-related divestitures, this share will be approximately 29 percent of MVPD households.[45]

20. According to your testimony, Comcast dropped RFD-TV in Colorado and New Mexico markets due to bandwidth constraints and the desire to carry high-definition channels. According to the testimony by RFD-TV's Chairman, Comcast dropped RFD-TV's HD channel and introduced replacement programming for RFD-TV that reportedly generated mnch lower viewership. How do you explain this decision given the statements in your testimony and at the hearing?

Response: As more fully addressed in my response to Question 10, Comcast reduced distribution of RFD-TV in certain systems in Colorado and New Mexico for legitimate business reasons, including a need to reclaim bandwidth. The "high ratings" cited by Mr. Gottsch are based on only four days of prime-time programming, in a single month (May 2013), from a small sample size in three markets. These "ratings" are not statistically significant. Further, it is important to note that RFD-TV derived its limited ratings data from a service called Rentrak, rather than the long-established, more widely used Nielsen ratings. In Colorado and New Mexico, these ratings are primarily based on and modeled off of data from DirecTV and Dish. Rentrak does not have access to Comcast's data, so RFD-TV's ratings as reported by Rentrak do *not* measure any actual Comcast customer viewing.

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43 TWC provides certain services to Bright House for an annual fee, including programming and technology support.

44 Comcast and Bright House have systems that modestly overlap in certain areas, mostly in Florida. These minor service area overlaps are no cause for competitive concern. In these areas, Comcast and Bright House compete vigorously today for subscribers and will continue to compete after the transactions are consummated.

45 Although it would be inappropriate to include Bright House subscribers under these circumstances, even if those subscribers were counted toward the share of MVPD subscribers it would only increase that number by a couple of percentage points, which is still far below a level that might create any concerns about bottleneck control over programming. *See, e.g.*, *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009).

21. During the hearing, you described Comcast as an "urban cluster" cable network. What percentage and number of Comcast's current customers reside in rural counties (C&D counties)? What percentage and number of the combined entity post-merger will reside in rural counties (C&D couuties)?

Response: As I noted during the hearing, Comcast is primarily an urban-clustered cable network, which reflects, among other things, the history of our local franchise awards and various acquisitions of other cable systems that Comcast has made over the years. Our system locations do not reflect any disinterest by Comcast in serving any particular viewer population. To the contrary, we strive to serve the needs and interests of all of our customers, including those who reside in more rural communities.

With respect to where Comcast's systems are located, we do not maintain this information in a way that identifies systems by C&D counties. However, attached as Exhibit 3 is a list of all the DMAs where the combined company will have systems post-transaction (and related divestitures), as well as a map depicting the post-transaction service areas. This information shows that the combined company's systems will remain primarily urban-clustered.

22. Is it possible that consumers in urban markets like Denver may have an interest in western and rural focused programing? How do you intend to meet that interest?

Response: Comcast carries many networks that are geared to viewers interested in western and rural focused programming, including customers in urban markets like Denver. This programming includes:

- Channels that feature rural lifestyle and entertainment such as Great American Country, Destination America, CMT, HRTV, Outdoor Channel, Sportsman Channel, World Fishing Network, and Blue Highways.

- In addition to the rural-themed sports content available on HRTV, Outdoor Channel, World Fishing Network, and Sportsman Channel, other channels that Comcast carries also feature rural sports programming. For example, CBS Sports carries Professional Bull Riding and the Professional Rodeo Cowboy Association challenges; and Great American Country aired the Wrangler National Finals Rodeo.

- Other Comcast channels include programming that generally features rural and country lifestyle and entertainment. In fact, across Comcast's cable system, reality programming that features rural lifestyles and connects urban viewers with rural viewpoints are ubiquitous. For example:

    - Cooking shows on Food Network and PBS feature western and southern cooking, such as *A Chef's Life*, *Pioneer Woman*, and *Trisha's Southern Kitchen*.

- Me TV broadcasts *Bonanza* and *Gunsmoke* reruns alongside reruns of *Daniel Boone*, and *Rawhide*.

- INSP broadcasts reruns of classics such as *Little House on the Prairie* and other family-friendly programming.

- CMT features reruns of *The Dukes of Hazzard*, while *The Beverly Hillbillies* airs on TVLand, along with *Bonanza* and *Gunsmoke*.

- Encore Westerns features classic westerns around the clock.

- In addition, Comcast carries RMG's RFD-TV on systems in larger cities such as Jacksonville, Florida, Nashville, Tennessee, Salt Lake City, Utah, and Richmond, Virginia; and FamilyNet on systems in cities such as Miami-Fort Lauderdale, Florida, Atlanta, Georgia, Memphis, Tennessee, and Houston, Texas.

23. According to the testimony by RFD-TV's Chairman, RFD-TV was the only channel carried on Comcast's network devoted to independent rural programming. What other channels does Comcast currently carry devoted to independent rural programming and in which markets, and what independent rural programming does it plan to carry post-merger and in which markets? Please be specific in describing how Comcast meets its responsibility to carry rural independent programming, and how it will do so following the merger.

Response: Comcast has a stellar record of carrying independent programming. More specifically, and as further detailed in my response to Question 9, some of the many independent channels Comcast currently carries that are geared toward the interests and needs of rural viewers include:

- Blue Highways (carried to approximately 200,000 customers);[46]

- INSP (carried to nearly 13 million customers);

- HRTV (carried to over 1 million customers);

- Outdoor Channel (carried to over 12 million customers);

- World Fishing Network (carried to over 1.5 million customers);

- Sportsman Channel (carried to over 10 million customers);

- FamilyNet (carried to approximately 2.7 million customers); and

[46] All of these customer numbers are current through June 2014.

- RFD-TV (carried to approximately 650,000 customers).

These independent networks are carried on assorted tiers, including Digital Starter and Digital Classic, and are offered as part of different packages and promotions, which may vary by region.

Following the merger, Comcast will continue to carry programming that is geared toward the interests and needs of rural viewers. TWC currently carries most of the same networks identified above, and Comcast expects that this programming will continue to be available to millions of customers after the merger.[47] In addition, Comcast will continue to evaluate fairly carriage requests involving other rural-themed programming, based on the same mix of factors described in my responses to Questions 7 through 10 above.

24. Please identify all Comcast-owned programming that had lower ratings than RDF-TV in Colorado and New Mexico at the time RFD-TV was dropped from the lineup in those states. Please ideutify which channels were added within 60 days of RFD-TV's removal and the current ratings of those channels.

Response: At the time Comcast reduced its carriage of RFD-TV in Colorado and New Mexico, according to Nielsen data[48], RFD-TV did not have reportable measurable viewership in any relevant Comcast system.[49] A handful of NBCUniversal-owned networks, varying by system, also did not have reportable measurable viewership by Nielsen; these are listed in Exhibit 4. A list of the HD and other channels that Comcast added to the relevant systems in the 60 days after RFD-TV's carriage was reduced, and their current ratings, is attached as Exhibit 5.

Further, Comcast continues to carry RFD-TV to over 650,000 customers, and Comcast carries RFD-TV's sister station, FamilyNet, on numerous systems across the United States. Comcast has *increased* FamilyNet's carriage from approximately 1.3 million subscribers in 2011 to over 2.7 million subscribers at the end of 2013. As a result, RMG has seen a net gain of *over a million* subscribers on Comcast systems since the NBCUniversal transaction. As detailed in my response to Question 10, FamilyNet's

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[47] Comcast does not have access, pre-transaction, to TWC's carriage numbers or other details for these networks.

[48] Comcast subscribes to Nielsen for ratings data. Nielsen provides rating data based on DMAs, and rolls up viewership of channels offered in standard definition and high definition for ratings purposes. As noted earlier, RFD-TV uses a ratings service called Rentrak. Rentrak does not have access to Comcast's data and so the limited ratings data that RFD-TV cites do not reflect any actual viewing by Comcast customers.

[49] In order to have ratings measured and reported by Nielsen, a channel's cumulative viewership must meet a certain threshold. Even if a channel meets the cumulative threshold for measurement, the cumulative viewership may still register a "zero" rating. If a channel is not reportable (e.g., does not meet the minimum threshold), Nielsen will indicate "N/A" for the rating.

programming is substantially similar to RFD-TV's rural-themed programming. In fact, over 40 percent is the *exact same* programming.

25. **You stated that Comcast and Time Warner Cable "do not compete for customers in any market" and that if the Comcast-Time Warner Cable merger is approved, the combined company would represent "less than 30 percent of the total MVPD market."**

Would you provide the Subcommittee with the results of any analysis that you performed that provides market share information for the combined company on a "market-by-market basis" for the top 50 media markets? Furthermore, to the extent available, could you please include in the analysis key demographic information?

Response: SNL Kagan collects video market share data for MVPD subscribers, inclusive of cable, DBS, and telco platform services, as a percentage of aggregate video market subscribers. SNL Kagan compiles these data by DMAs, geographic areas in which local broadcast television viewing is historically measured by the Nielsen Company. The combined company will operate systems in 38 of the Top 50 DMAs. Attached as Exhibit 6 is Comcast's analysis of the combined company's post-transaction, post-divestitures market share in each of those DMAs based on SNL Kagan's subscribership data for the fourth quarter of 2014. Comcast does not collect key demographic information and does not otherwise have access to such data from third parties in a form that may be publicly disclosed.

It is important to note that DMAs are simply Nielsen constructs for purposes of providing TV viewership ratings and are not relevant markets for antitrust purposes. DMAs do not correspond to the actual transfer of systems between Comcast, Charter, and a newly formed MVPD, SpinCo (as part of the divestiture transactions); instead, systems are transferred at the local franchise level. Accordingly, the market shares reflected in Exhibit 6 are more of an approximation than an accurate reflection of the combined company's market share.

The most relevant consideration for competitive analysis is whether consumers have a *choice* of providers for video services. In 2011, 98.6 percent of U.S. homes had access to at least three MVPDs, and 35.3 percent had access to at least four.[50] And consumers in *all* DMAs have access to two nationwide DBS distributors as well as rapidly growing OVDs. In fact, there will be *11 or more video MVPDs* in most of the 16 of the top 20 DMAs where the combined company will have systems, and *at least six MVPDs in each* of them, as the chart below indicates.[51]

50 *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, ¶ 36 (2013).

51 *See* Exhibit 7 (Map of Video Service Providers in the 16 of the Top 20 DMAs with Combined Company Presence Post-Transaction).

Video Providers in the Top 20 Designated Market Areas (DMAs)

Rank	DMA	Providers (excluding Comcast and TWC)	Total	Post-Transaction
1	**New York, NY**	Dish, DirecTV, Verizon, RCN, Cablevision, and 5 others	**10**	-1 (Charter)
2	**Los Angeles, CA**	Dish, DirecTV, Verizon, AT&T, and 16 others	**20**	-1 (Charter)
3	**Chicago, IL**	Dish, DirecTV, AT&T, RCN, WOW!, and 7 others	**12**	No Change
4	**Philadelphia, PA**	Dish, DirecTV, Verizon, RCN, Atlantic Broadband, and 4 others	**9**	No Change
5	**Dallas-Ft. Worth, TX**	Dish, DirecTV, Verizon, AT&T, Cable One, and 27 others	**32**	-1 (Charter)
6	**San Francisco-Oakland-San Jose, CA**	Dish, DirecTV, AT&T, WARPSPEED, and 4 others	**8**	-1 (Charter)
7	**Boston, MA (Manchester, NH)**	Dish, DirecTV, Verizon, RCN, MetroCast, and 6 others	**11**	-1 (Charter)
8	**Washington, DC (Hagerstown, MD)**	Dish, DirecTV, Verizon, RCN, Atlantic Broadband, and 8 others	**13**	No Change
9	**Atlanta, GA**	Dish, DirecTV, AT&T, Windstream, WOW!, and 9 others	**14**	No Change
10	**Houston, TX**	Dish, DirecTV, AT&T, CenturyLink, Consolidated Communications, and 24 others	**29**	No Change
11	**Detroit, MI** *(no Comcast or TWC presence post-transaction)*	–	**11**	+1 (SpinCo)
12	**Phoenix, AZ** *(no current Comcast or TWC presence)*	–	**13**	No Change
13	**Seattle-Tacoma, WA**	Dish, DirecTV, Frontier, Coast Communications, Wave, and 11 others	**16**	No Change
14	**Tampa-St. Petersburg, FL**	Dish, DirecTV, Verizon, WOW!, CenturyLink, and 6 others	**11**	No Change
15	**Minneapolis-St. Paul, MN** *(no Comcast or TWC presence post-transaction)*	–	**42**	+1 (SpinCo)
16	**Miami-Ft. Lauderdale, FL**	Dish, DirecTV, AT&T, Advanced Cable Communications, Atlantic Broadband, and 2 others	**7**	No Change
17	**Denver, CO**	Dish, DirecTV, Consolidated Communications, Suddenlink, Midcontinent, and 16 others	**21**	No Change
18	**Orlando-Daytona Beach-Melbourne, FL**	Dish, DirecTV, AT&T, Grande Communications, CenturyLink, and 7 others	**12**	No Change
19	**Cleveland, OH** *(no Comcast or TWC presence post-transaction)*	–	**9**	No Change
20	**Sacramento-Stockton-Modesto, CA**	Dish, DirecTV, Sierra Nevada Communications, WARPSPEED, Wave, and 8 others	**13**	-1 (Charter)

Source: GeoResults

26. Can you please explain the factors involved in Comcast's decision to enter into new carriage agreements? Does Comcast consider in any respect the potential for competition against its owned content when deciding whether to enter into a new carriage agreement?

Response: Comcast evaluates all carriage requests fairly, based on the interest and needs of its customers, and does not discriminate based on whether new programming may compete with our affiliated content. Please refer to my responses to Questions 7, 8, and 17 for a more complete discussion of the wide mix of factors that Comcast considers in evaluating carriage requests, including from independent programmers.

Questions from Rep. Louie Gohmert for Mr. Cohen

27. During the hearing, you acknowledged that TheBlaze attempted to acquire a network that is affiliated with Comcast and is widely distributed by Comcast. Yon volunteered that that network is RLTV. You asserted that since Comcast has an equity interest of only approximately 8% in RLTV, it has no operational control over RLTV and no ability to approve or reject potential buyers. [DPM]

- **What other financial and commercial arrangements and relationships does Comcast have with RLTV?**
- **Is Comcast a material creditor of RLTV as a result of lending money to RLTV?**
- **Is RLTV cnrrent in its obligations to Comcast?**
- **Insofar as a buyer of RLTV would assume full or partial responsibility for any debt that Comcast holds in RLTV, wouldn't a creditor in Comcast's position have a say, and likely a definitive one, in deciding whether a particular buyer was suitable?**
- **Is it not true that Comcast, in fact, does have a substantial say in approving or vetoing a potential buyer of RLTV?**
- **Did Comcast tell RLTV that TheBlaze was not a suitable buyer for RLTV, or less desirable than other options?**

Response: Comcast holds a convertible note relating to an investment in RLTV, but, as is common in the industry, the note contains a confidentiality covenant that prohibits disclosure of the terms and conditions of this financial arrangement to third parties. Generally speaking, it is not atypical for Comcast to have certain rights and protections in the event of a change of control involving a network in which Comcast has made an equity investment. However, in the particular case of RLTV, Comcast has not provided RLTV with our views on whether TheBlaze is or was a suitable buyer for RLTV, or whether it is more or less desirable than other options that RLTV may be considering. As RLTV's President and CEO, Paul FitzPatrick, stated in a letter to Comcast concerning the discussion of TheBlaze and RLTV that occurred during the House Judiciary Subcommittee hearing, "Comcast not only was not notified of, or otherwise reviewed any details of a possible sale of RLTV to TheBlaze, but to our knowledge, Comcast never made any statements whatsoever or took any position regarding a transaction between RLTV and TheBlaze." *See* Letter from P. FitzPatrick to G. Rigdon (May 27, 2014) (attached as Exhibit 8).

28. During the hearing, you asserted that the service description clause in RLTV's carriage agreement with Comcast would prevent its conversion, after purchase by another buyer, to a service that conveys "news."

•Please enumerate the categories of programming that are permitted under the service description clause in the current RLTV agreement. Is "news" among those categories?

•Noting that RLTV describes itself in its press releases as providing programming that covers "current events", among other categories of programming, please explain why the service description clause precludes carriage of news programming by a new buyer and why RLTV is not already in violation of the service description clause.

Response: Generally speaking, a carriage agreement will contain a service or programming description, which may vary in the level of specificity – some may contain fairly general references to a programming genre or different programming genres, while others may contain more detailed content descriptions, sometimes even including representative programming schedules.

Carriage agreements commonly include confidentiality provisions that prohibit the disclosure of material terms and conditions, including the content or service description, to third parties.[52] Comcast's carriage agreement with RLTV contains this kind of confidentiality provision. Under these confidentiality provisions, for example, a prospective buyer of a network typically would be required to enter into a comprehensive non-disclosure agreement ("NDA") as a condition to reviewing carriage agreements, as appears to be the case between RLTV and TheBlaze. *See* Exhibit 8 at 1 (referencing an NDA between the parties).

Of course, what a network says publicly about its programming, as well as watching the network itself, can indicate the types of programming its service description might include. In the case of RLTV, the network publicly promotes its programming as specifically targeting people over 50. As I noted during the House Judiciary Subcommittee hearing, RLTV's service is not general news or political commentary. However, the confidentiality provisions in Comcast's carriage agreement with RLTV preclude a detailed enumeration and disclosure of the categories of programming that are

[52] The FCC has long recognized the importance of these confidentiality provisions in the industry and afforded strict confidential protections for carriage agreements. *See, e.g.*, *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd. 24816, ¶ 61 (1998); 47 C.F.R. § 0.457(d)(1)(iv).

expressly permitted under the contract. Nevertheless, Comcast has not been involved in any discussions with either RLTV or TheBlaze concerning whether any proposed programming by TheBlaze would conform with the applicable service description provisions in Comcast's carriage agreement or require a modification to them or any other provisions in the agreement.[53]

29. Please also explain how the service description clause works in practice when a programming service proposes to sell to a new buyer.

> **•Is it not true that the service description clause, if its language poses an obstacle to a desired transaction, is a matter of negotiation and may be modified to allow changes in the programming if necessary?**
>
> **•Please explain why service description clauses were not a fatal obstacle to Style becoming Esquire; to Current becoming Al Jazeera; to Oxygen becoming Pivot; or to Fine Living becoming Cooking Channel.**

Response: Generally speaking, service description provisions in a carriage agreement for a programming network can be a matter of negotiation and modified upon agreement between the relevant parties. A buyer of a programming network may also choose to continue with the same kind of programming shown on the network, or make changes to the programming that fit within the existing service description provisions of a carriage agreement, thus requiring no modification to those provisions. Because these contractual provisions are subject to confidentiality restrictions, Comcast is not in a position to discuss publicly the service descriptions in its carriage agreements with the various rebranded networks identified in your question.[54]

30. You said a number of times during the hearing that if Comcast is suspected of discriminating in favor of its programming affiliates in carriage decisions, the answer is the program carriage regime at the FCC.

> **•Please enumerate the number of times that Comcast has been served with a program carriage complaint in the past ten years. With respect to each complaint, please specify which programming services (affiliated and non-affiliated) were involved and what the outcome of the case was.**

Response: In more than two decades since the program carriage statute was enacted, and after thousands of negotiations, only four networks have ever brought a program carriage complaint against Comcast – and none of those complaints succeeded on the merits. As discussed more fully below, Comcast prevailed in the WealthTV case; the D.C. Circuit

[53] *See* Exhibit 8 (RLTV letter).

[54] For clarification, with respect to Pivot, Halogen TV and Documentary Channel were part of that channel change, not Oxygen.

ruled in Comcast's favor in the complaint brought by the Tennis Channel; and the MASN and NFL Network cases settled after we made strong showings of nondiscrimination before the FCC.

Comcast bargains fairly. If this sometimes results in a decision not to carry a particular service, or not to carry the network as broadly as it demands, that is a function of the marketplace and is entirely permissible under the FCC's rules. There is not and should not be a mandate for any MVPD to carry every network. Programmers can easily allege carriage discrimination that does not in fact exist (or even the potential of discrimination during the pendency of a transaction), often simply to try and gain more leverage in carriage negotiations. The actual facts and outcome of these disputes prove that Comcast makes carriage decisions based on legitimate business considerations, such as the price and value of the programming offered, the likelihood that the programming will meet the needs of our customers, and similar considerations. There are hundreds of programming services unaffiliated with Comcast, and Comcast either carries or has fairly considered carriage of the vast majority of them.

The following is a description of the handful of program carriage disputes in the past ten years where a Comcast entity was served with a program carriage complaint.[55]

- In 2005, TCR Sports Broadcasting Holding, L.L.P., doing business as Mid-Atlantic Sports Network ("MASN"), filed a program carriage complaint against Comcast. The parties settled this dispute in 2006, with Comcast carrying MASN in the vast majority of Comcast's systems in MASN's service territory. In 2008, notwithstanding the prior settlement and carriage deal, MASN filed a program carriage complaint demanding carriage on Comcast systems serving subscribers in Harrisburg, Pennsylvania, and Tri-Cities, Roanoke and Lynchburg, Virginia. After a full evidentiary hearing, the FCC's Enforcement Bureau filed formal comments stating that MASN's complaint was not meritorious. Specifically, the Enforcement Bureau advised the Presiding Judge that MASN had failed to refute the fact that Comcast had legitimate business reasons for not carrying MASN in the disputed service areas. Comcast and MASN settled the dispute thereafter, before any additional FCC proceedings.

- In April 2008, Herring Broadcasting, Inc., doing business as WealthTV ("WealthTV"), filed a program carriage complaint alleging that Comcast (and three

[55] While not a complaint under the program carriage rules, in 2007, after the FCC imposed the program carriage arbitration condition for RSNs in the Adelphia Order, The America Channel ("TAC"), which had announced plans to launch as a general interest channel, instead acquired rights to some college sports and filed a demand for program carriage arbitration, claiming that it was now an RSN eligible to use that condition. As TAC had not yet launched, Comcast petitioned the FCC for a declaratory ruling as to whether TAC was a qualified RSN and thus entitled to arbitration. Although the FCC suspended the Adelphia Order's program carriage arbitration condition indefinitely because of its susceptibility to abuse, the FCC nevertheless "grandfathered" TAC to allow it to pursue arbitration. The parties' settlement in October 2007 guaranteed carriage of TAC on Comcast's systems. But, after more than six years, the network has never launched.

other defendants, including TWC) had each discriminated on the basis of affiliation by deciding not to carry the network. Comcast (and all of the other defendants) prevailed in the case, as the FCC's Chief Administrative Law Judge ("ALJ") found that Comcast had made its carriage decisions for business reasons unrelated to its lack of affiliation with WealthTV. The Presiding Judge also found that the complainant had "failed completely" to prove its allegations, that its evidence was "unreliable," and that its witnesses were "not credible." The full Commission affirmed this decision and found for Comcast (and the other defendants) – a decision that was later affirmed by the United States Court of Appeals for the Ninth Circuit.

- In May 2008, the NFL, owner of the NFL Network ("NFLN"), filed a program carriage complaint alleging that Comcast discriminated on the basis of affiliation against NFLN by treating Versus and Golf Channel more favorably than NFLN; and that Comcast's alleged discrimination restrained NFLN from competing and had no legitimate business purpose. At a full evidentiary hearing in April 2009 before the FCC's Chief ALJ, Comcast argued, among other things, that: (1) NFLN received the carriage it bargained for in the parties' contract; (2) Comcast appropriately repositioned NFLN from a broadly penetrated digital tier to the sports tier when NFLN imposed an enormous surcharge for its eight-game package – a repositioning right that NFLN had offered to induce Comcast's original carriage of the network; and (3) the eight-game package was not worth the price that NFLN was demanding. The case settled shortly after the hearing.

- In January 2010, Tennis Channel filed a program carriage complaint alleging that Comcast unlawfully discriminated against Tennis Channel by treating Versus and Golf Channel more favorably than Tennis Channel by continuing to carry Tennis Channel on a sports tier while carrying those networks on highly-penetrated tiers. The Chief ALJ ruled in favor of Tennis Channel in December 2011, as did the Commission in July 2012. On appeal, the United States Court of Appeals for the D.C. Circuit emphatically and unanimously ruled in favor of Comcast, finding that Comcast's carriage decision was appropriate and non-discriminatory, as its decision not to move Tennis Channel from a sports tier to expanded basic was simply a "straight-up financial analysis" of the immense additional costs the change would impose on Comcast and its customers, with no evidence of any corresponding benefits. When given the opportunity to pursue the case at the Supreme Court, the government's own lawyers chose not to do so. And the U.S. Supreme Court denied Tennis Channel's petition for review of the decision.[56]

•Please identify any complaint that eventuated in carriage of the complainant's network, specifying whether such carriage was the result of an administrative or judicial ruling or settlement of litigation.

56 Tennis Channel has moved to reopen proceedings at the FCC, which Comcast has opposed.

Response: In the MASN case discussed above, the parties signed a settlement agreement in August 2006 providing MASN broad carriage in Comcast's systems in MASN's territory, and the case was dismissed. The second MASN case was also settled, resulting in carriage of the programming in most of the systems identified in the complaint on mutually agreeable terms.

•Please identify any instance in the past five years in which Comcast has taken a position in pleadings at the FCC or before a court or in legislative testimony on the constitutionality of the program carriage regime. Please identify the same with respect to any instance in the past five years in which Comcast has argued that the program carriage regime is outdated and should be repealed or modified.

Response: Comcast submitted comments and was active in the proceeding during the FCC's most recent program carriage rulemaking, *see* MB Docket Nos. 07-42 and 11-131, modifying and proposing changes to the program carriage rules. Comcast opposed the proposed changes, and in particular the lawfulness of the proposed standstill rule.

The programming market is more competitive than ever, and we believe these the terms of carriage agreements can and should be handled through ordinary commercial negotiations. Comcast's experiences with the program carriage complaints discussed above have shown that program carriage complaints are not well-suited to baseball-style arbitration or other expedited dispute mechanisms.

Comcast has consistently advocated that, in today's intensely competitive environment, it makes no sense for the FCC to interfere in the marketplace in a manner that tips the scales by creating new, artificial incentives or leverage for programmers. And that is particularly true in this era of rising programming costs and rapid change within the industry. Comcast and other MVPDs must retain the latitude to reach deals that make economic sense across the board, which means having the ability to resist unreasonable pricing and tier demands. Proposals that would facilitate litigation over every such decision would distort the marketplace and seriously impair First Amendment freedoms. There is no valid need for regulation – much less expanded regulation – in this area.

•Does Comcast currently support the constitutionality and vitality of the program carriage regime?

Response: Comcast believes that changes or proposals that would expand the rules make no sense at a time when the marketplace is very competitive, and programmers and distributors are successfully figuring out how to make their content available in more ways. There is no lack of diversity that the government needs to address; literally hundreds of channels are available to pay TV subscribers; and numerous online distributors are expanding their content offerings every day. The programming market is more competitive than ever, and we believe these kinds of issues can and should be handled through voluntary commercial negotiations. That said, Comcast does and will continue to comply with the existing rules.

EXHIBIT 1

FamilyNet Schedule June 23-June 29

(Yellow highlighted shows are duplicative of shows on RFD-TV, FamilyNet's sister station.)

TIME	Monday June 23, 2014	Tuesday June 24, 2014	Wednesday June 25, 2014	Thursday June 26, 2014	Friday June 27, 2014	Saturday June 28, 2014	Sunday June 29, 2014
12:00 am	Family Marketplace	Highway to Heaven	Classic Tractor Fever	Highway to Heaven	Highway to Heaven	Trains and Locomotives	Family Marketplace
12:30 am							Closer Look
1:00 am		Wretched	Wretched	Wretched	Wretched	Wretched	Family Marketplace
1:30 am		Family Marketplace	Family Marketplace	Family Marketplace	Family Marketplace	Family Marketplace	
2:00 am							
2:30 am							
3:00 am							
3:30 am							
4:00 am							
4:30 am		Wretched	Wretched	Wretched	Wretched	Wretched	
5:00 am		Family Marketplace	Family Marketplace	Family Marketplace	Family Marketplace	Family Marketplace	
5:30 am							
6:00 am	Fleamarket Mania	Fleamarket Mania	Fleamarket Mania	Fleamarket Mania	Fleamarket Mania	Zoo Diaries	Horse Talk Live
6:30 am	Embassy Chefs	Embassy Chefs	Embassy Chefs	Embassy Chefs	Embassy Chefs	Zoo Diaries	
7:00 am	Judie Byrds Kitchen	Judie Byrds Kitchen	Judie Byrds Kitchen	Judie Byrds Kitchen	Judie Byrds Kitchen	What Color is Your Dog	Small Town Big Deal HD
7:30 am	Quilt in a Day HD	Quilt in a Day HD	Quilt in a Day HD	Quilt in a Day HD	Quilt in a Day HD	Future Phenoms	Dutch Oven and Camp Cooking
8:00 am	Your Health	Your Health	Your Health	Your Health	Your Health	Cowboy Dan's Frontier	Turning Point w/ DavidJeremiah
8:30 am					Superior Sunrise	Aqua Kids	
9:00 am	This Week in Agribusiness HD	Cowboy Authentic HD	Out on the Land HD	Mollie B Polka Party HD	Superior Livestock Auction	America's War Heroes	Charles Stanley
9:30 am		Gentle Giants HD	All American Cowgirl Chicks HD			Horsing Around New Zealand	
10:00 am	HEE HAW	Rural America Live Repeat	Ag PhD HD	Classic Tractor Fever		Advantage Horsemanship	Spirit Fest
10:30 am			Cattlemen to Cattlemen HD			Horse Country USA	Sing Out America
11:00 am	Wilburn Brothers	American Rancher HD		Trains and Locomotives		Crossing the Cumberlands	Love Worth Finding
11:30 am	Pop Goes the Country	Red Steagall West of Wall St.	Stockshow Confidential HD				Faith in Practice
12:00 pm	Advantage Horsemanship	Horse Country USA	Sure in the Saddle	Total Team Roping		Indiana Outdoor Adventures	Cowboy Church HD
12:30 pm	Indiana Outdoor Adventures	American Farmer TV HD	Nature's Adventures	Cooking Outdoors w/Johnny Nix		The Right Place w/Kevin Sport	Cowboy Church HD
1:00 pm	America's War Heroes	The Penny Gilley Show	The Agility Show	Crossing the Cumberlands		Cooking Outdoors w/Johnny Nix	Brush Arbor Jubilee
1:30 pm	Inside Music Row	Music Row Profiles	The Right Place w/Kevin Sport			American Farmer TV HD	Billy Graham
2:00 pm	Ralph Emery's Memories	Ralph Emery's Memories	Ralph Emery's Memories	Ralph Emery's Memories		Virginia Dreams Center Stage	Nature's Adventures
2:30 pm						BTS With Kenny & Friends	Rx For a Healthy Lifestyle
3:00 pm	Your Health	Your Health	Your Health	Your Health		Inside Music Row	Roadtrip to History
3:30 pm						Music Row Profiles	Young Country
4:00 pm	Beverly Hillbillies	Beverly Hillbillies	Beverly Hillbillies	Beverly Hillbillies		The Agility Show	The Penny Gilley Show
4:30 pm	Ms. Lucy's Cajun Classroom	Ms. Lucy's Cajun Classroom	Ms. Lucy's Cajun Classroom	Ms. Lucy's Cajun Classroom		Sure in the Saddle	Equine VIP
5:00 pm	Dennis Reis	Downunder Horsemanship HD	Parelli Natural Horsemanship HD	American Rancher HD		Total Team Roping	Gentle Giants HD
5:30 pm	Horse Master w/Julie Goodnight		Equestrian Nation	Gentle Giants HD		The Music City Show	The Jimmy Sturr Show HD
6:00 pm	The Ride with Cord McCoy HD	Inside Reining HD	The Weekend Cutter HD	All Around Performance Horse HD	Total Team Roping	Gaither Gospel Hour	Ralph Emery's Memories
6:30 pm	Craig Cameron	Chris Cox HD	The Horse Show	Roping & Riding w/Tyler Magnus	Ken McNabb		
7:00 pm							

	Texas Country Reporter	Texas Country Reporter	Texas Country Reporter	Texas Country Reporter	Texas Country Reporter	Reno's Old Time Music HD	Country's Family Reunion HD
7:30 pm	Rural Evening News	Rural Evening News	Rural Evening News	Rural Evening News	Rural Evening News	Presleys' Country Jubilee HD	
8:00 pm	Rural America Live HD	Little Britches Rodeo HD	The Marty Stuart Show	WPRA Today HD	Professional Roughstock HD	The Marty Stuart Show HD	HEE HAW
8:30 pm		All American Cowgirl Chicks HD	PBR Heroes & Legends	Small Town Big Deal HD	Red Steagall West of Wall St	Midwest Country	
9:00 pm	HEE HAW	Country's Family Reunion HD	HEE HAW	Live From Daryl's House HD	Gaither Gospel Hour		The Marty Stuart Show
9:30 pm				The Marty Stuart Show HD		Cumberland Highlanders	Live From Daryl's House HD
10:00 pm	Crook & Chase HD	Crook & Chase HD	Crook & Chase HD	Crook & Chase HD	Crook & Chase HD	Mollie B Polka Party HD	Gaither Gospel Hour
10:30 pm							
11:00 pm	America's Heartland HD	America's Heartland HD	America's Heartland HD	America's Heartland HD	America's Heartland HD	Larry's Country Diner HD	Closer Look
11:30 pm	Rural Evening News	Rural Evening News	Rural Evening News	Rural Evening News	Rural Evening News		The Joey+Rory Show HD

EXHIBIT 2

FAMILY NET CARRIAGE ANALYSIS (AS OF APRIL 2014)

LINEUP	STATE	SERVICE LEVEL
AD FLORENCE	AL	D1
AD GADSDEN	AL	D1
AD HUNTSVILLE	AL	D1
AD MOBILE	AL	D1
AD TUSCALOOSA	AL	D1
AD EASTERN ARKANSAS	AR	D1
AD LITTLE ROCK	AR	D1
AD ALACHUA COUNTY	FL	D1
AD BELLE GLADE-PAHOKEE	FL	D1
AD BOCA RATON/DELRAY BEACH	FL	D1
AD BREVARD COUNTY	FL	D1
AD BROWARD COUNTY	FL	D1
AD CAPE CORAL	FL	D1
AD CAPE HAZE	FL	D1
AD CELEBRATION	FL	D1
AD CLEWISTON	FL	D1
AD CORAL GABLES	FL	D1
AD DADE COUNTY	FL	D1
AD DEBARY	FL	D1
AD DUNNELLON-GAINES	FL	D1
AD DUNNELLON-ORLANDO	FL	D1
AD DUNNELLON-TAMPA	FL	D1
AD EVERGLADES CITY	FL	D1
AD FT PIERCE	FL	D1
AD GATEWAY/FT MYERS	FL	D1
AD HIALEAH	FL	D1
AD HOMESTEAD	FL	D1
AD JACKSONVILLE	FL	D1
AD KEY WEST	FL	D1
AD LAKE COUNTY	FL	D1
AD LAKE PLACID	FL	D1
AD LAKE WALES	FL	D1
AD LEHIGH ACRES	FL	D1
AD MARCO ISLAND	FL	D1
AD MARION COUNTY	FL	D1
AD METRO MIAMI	FL	D1
AD MIAMI-DADE COUNTY	FL	D1
AD OKEECHOBEE-NAPLES	FL	D1
AD OKEECHOBEE-WPB	FL	D1
AD PALATKA	FL	D1
AD PALM BEACH GARDENS	FL	D1
AD PEMBROKE-MIRAMAR	FL	D1
AD POMPANO BEACH	FL	D1

LINEUP	STATE	SERVICE LEVEL
AD PORT CHARLOTTE	FL	D1
AD SARASOTA	FL	D1
AD SEBASTIAN	FL	D1
AD SEBRING	FL	D1
AD SOUTH DADE [KENDALL]	FL	D1
AD SOUTHEAST CITRUS	FL	D1
AD SOUTHEAST CITRUS NRB	FL	D1
AD SPRING LAKE	FL	D1
AD ST AUGUSTINE	FL	D1
AD STUART	FL	D1
AD VENICE	FL	D1
AD VENICE SOUTH	FL	D1
AD VERO BEACH	FL	D1
AD WELAKA	FL	D1
AD WEST PALM BEACH	FL	D1
AD WHISPER LAKES-ORLANDO	FL	D1
AD WHISPER LAKES-TAMPA	FL	D1
AD WPB-IBIS JV-CCMG	FL	D1
AD YULEE	FL	D1
AD 3C'S	GA	D1
AD ATLANTA STONE MOUNTAIN	GA	D1
AD ATLANTA VININGS	GA	D1
AD BATTLEFIELD	GA	D1
AD BRUNSWICK	GA	D1
AD CALHOUN [GORDON CO]	GA	D1
AD CLAXTON	GA	D1
AD DARIEN	GA	D1
AD HINESVILLE	GA	D1
AD JEKYLL ISLAND	GA	D1
AD LAFAYETTE	GA	D1
AD METTER	GA	D1
AD ROME	GA	D1
AD SAVANNAH	GA	D1
AD ST MARYS	GA	D1
AD WINDER	GA	D1
OLATHE	KS	D1
AD CAMPBELLSVILLE	KY	D1
AD ELIZABETHTOWN	KY	D1
AD FRANKLIN [TELEMEDIA]	KY	D1
AD FT CAMPBELL	KY	D1
AD HORSE CAVE	KY	D1
AD HOUMA	LA	D1
AD MONROE	LA	D1
AD SHREVEPORT	LA	D1
AD ST JOHN EASTBANK	LA	D1
AD ST JOHN WESTBANK-LA PLACE	LA	D1

LINEUP	STATE	SERVICE LEVEL
INDEPENDENCE	MO	D1
AD BOLTON/EDWARDS	MS	D1
AD CORINTH	MS	D1
AD FULTON	MS	D1
AD HATTIESBURG	MS	B2
AD JACKSON	MS	D1
AD LAUREL	MS	B2
AD MERIDIAN	MS	B2
AD PELAHATCHIE	MS	D1
AD TUPELO	MS	D1
AD CHARLESTON	SC	D1
AD ATHENS	TN	D1
AD BENTON	TN	D1
AD BULLS GAP-KNOXVILLE	TN	D1
AD BULLS GAP-TRI CITIES	TN	D1
AD CARTHAGE-HARTS-LAFAYETTE	TN	D1
AD CHATTANOOGA	TN	D1
AD FAIRFIELD GLADE GC	TN	D1
AD FRANKLIN COUNTY	TN	D1
AD GRAY	TN	D1
AD GREENEVILLE	TN	D1
AD KNOXVILLE	TN	D1
AD LAFOLLETTE	TN	D1
AD LYNCHBURG	TN	D1
AD MEMPHIS	TN	D1
AD NASHVILLE	TN	D1
AD OAK RIDGE	TN	D1
AD SMITHVILLE	TN	D1
AD TOWNSEND	TN	D1
AD HOUSTON	TX	D1
AD HOUSTON (TW)	TX	D1
AD GALAX	VA	D1
AD GLADE SPRING	VA	D1
AD NORTON	VA	D1
CHESTERFIELD VA	VA	D1
POWHATAN	VA	D1
RICHMOND	VA	D1
RICHMOND - CAROLINE	VA	D1

EXHIBIT 3

All DMAs With a Post-Transaction, Post-Divestitures Combined Company Presence
DMA
New York, NY
Los Angeles, CA
Chicago, IL
Philadelphia, PA
San Francisco-Oakland-San Jose, CA
Boston, MA (Manchester, NH)
Washington, DC (Hagerstown, MD)
Dallas-Ft. Worth, TX
Atlanta, GA
Houston, TX
Seattle-Tacoma, WA
Tampa-St. Petersburg (Sarasota), FL
Miami-Ft. Lauderdale, FL
Denver, CO
Orlando-Daytona Beach-Melbourne, FL
Sacramento-Stockton-Modesto, CA
Phoenix (Prescott), AZ
Pittsburgh, PA
Baltimore, MD
Portland, OR
Hartford & New Haven, CT
Charlotte, NC
Raleigh-Durham (Fayetteville), NC
San Diego, CA
Nashville, TN
Kansas City, MO
Salt Lake City, UT
San Antonio, TX
Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC
Harrisburg-Lancaster-Lebanon-York, PA
Norfolk-Portsmouth-Newport News, VA
Jacksonville, FL
West Palm Beach-Ft. Pierce, FL
Austin, TX
Providence, RI-New Bedford, MA
Greensboro-High Point-Winston Salem, NC
Memphis, TN
Buffalo, NY
New Orleans, LA
Albuquerque-Santa Fe, NM
Richmond-Petersburg, VA

Wilkes Barre-Scranton-Hazleton, PA
Albany-Schenectady-Troy, NY
Knoxville, TN
Little Rock-Pine Bluff, AR
Fresno-Visalia, CA
Ft. Myers-Naples, FL
Charleston-Huntington, WV
Honolulu, HI
Syracuse, NY
Roanoke-Lynchburg, VA
Portland-Auburn, ME
Columbia, SC
Spokane, WA
Omaha, NE
Rochester, NY
Champaign & Springfield-Decatur, IL
Tucson (Sierra Vista), AZ
Charleston, SC
Burlington, VT-Plattsburgh, NY
Shreveport, LA
Colorado Springs-Pueblo, CO
Jackson, MS
Savannah, GA
South Bend-Elkhart, IN
Waco-Temple-Bryan, TX
Greenville-New Bern-Washington, NC
Davenport, IA-Rock Island-Moline, IL
Myrtle Beach-Florence, SC
Springfield-Holyoke, MA
Lincoln & Hastings-Kearney, NE
Harlingen-Weslaco-Brownsville-McAllen, TX
Tallahassee, FL-Thomasville, GA
Augusta, GA-Aiken, SC
El Paso, TX (Las Cruces, NM)
Johnstown-Altoona-State College, PA
Peoria-Bloomington, IL
Monterey-Salinas, CA
Santa Barbara-Santa Maria-San Luis Obispo, CA
Eugene, OR
La Crosse-Eau Claire, WI
Macon, GA
Columbus, GA (Opelika, AL)
Yakima-Pasco-Richland-Kennewick, WA
Wilmington, NC
Amarillo, TX
Rockford, IL
Corpus Christi, TX

Chico-Redding, CA
Monroe, LA-El Dorado, AR
Salisbury, MD
Palm Springs, CA
Columbus-Tupelo-West Point-Houston, MS
Medford-Klamath Falls, OR
Wichita Falls, TX & Lawton, OK
Beaumont-Port Arthur, TX
Biloxi-Gulfport, MS
Wheeling, WV-Steubenville, OH
Bluefield-Beckley-Oak Hill, WV
Binghamton, NY
Bangor, ME
Gainesville, FL
Panama City, FL
Clarksburg-Weston, WV
Hattiesburg-Laurel, MS
Elmira (Corning), NY
Harrisonburg, VA
Yuma, AZ-El Centro, CA
Utica, NY
Quincy, IL-Hannibal, MO-Keokuk, IA
Jackson, TN
Watertown, NY
Charlottesville, VA
Meridian, MS
Parkersburg, WV
Eureka, CA
Mankato, MN
Laredo, TX
Presque Isle, ME

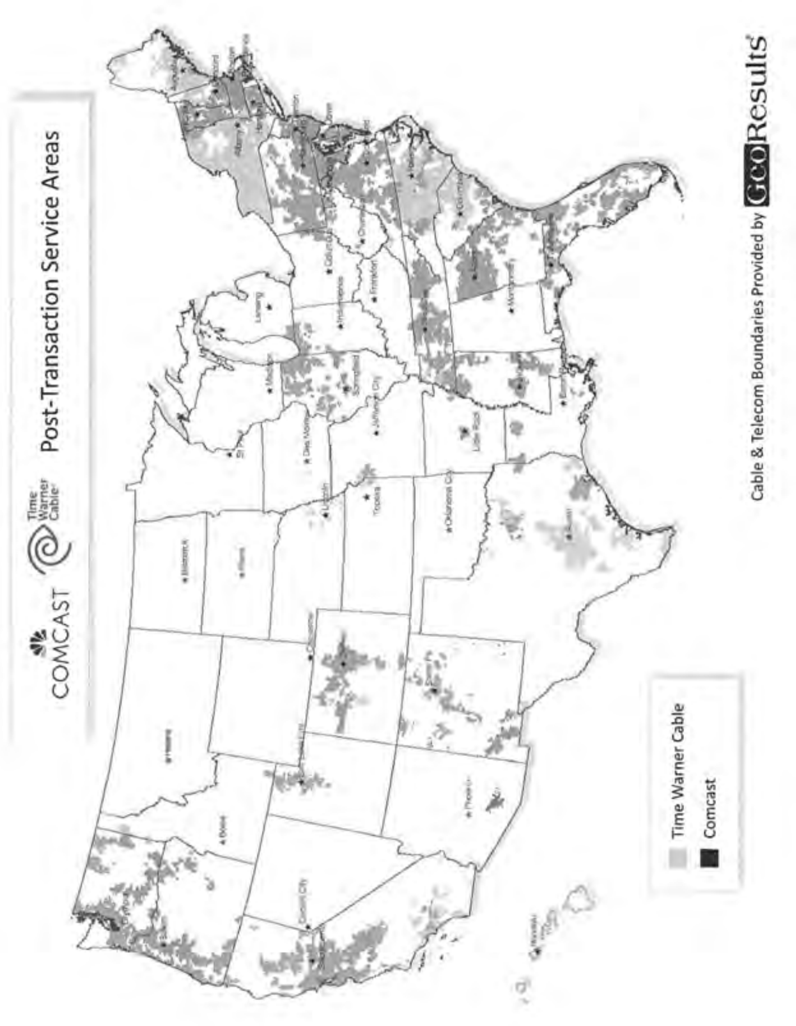
COMCAST
Time Warner Cable
Post-Transaction Service Areas
Time Warner Cable
Comcast
Cable & Telecom Boundaries Provided by GeoResults

EXHIBIT 4

RFD-TV Ratings Prior to Removal from Colorado and New Mexico Systems

Denver	
Network	**Rating**
Sprout	0.46
Golf Channel	0.12
TV One	0.08
Esquire Network (Formerly Style)	0.07
mun2	0.04
G4	0.04
MLB Network	0.01
RLTV	0.01
Chiller	0.00
Cloo (Formerly Sleuth)	0.00
Comcast Entertainment Television	0.00
NHL Network	0.00
RFD-TV	0.00
Universal Sports	0.00
C2	N/A
Comcast Television Network	N/A
FearNET	N/A
ShopNBC	N/A

Colorado Springs	
Network	**Rating**
C2	N/A
Chiller	N/A
Cloo (Formerly Sleuth)	N/A
CNBC World	N/A
Comcast Entertainment Television	N/A
Comcast Television Network	N/A
Esquire Network (Formerly Style)	N/A
FearNET	N/A
G4	N/A
Golf Channel	N/A
MLB Network	N/A
mun2	N/A
NHL Network	N/A
RFD-TV	N/A
RLTV	N/A
ShopNBC	N/A
Sprout	N/A
TV One	N/A

Albuquerque	
Network	**Rating**
Esquire Network (Formerly Style)	0.09
Sprout	0.09
G4	0.09
Golf Channel	0.07
MLB Network	0.02
Chiller	0.01
TV One	0.01
RLTV	0.00
NHL Network	0.00
Cloo (Formerly Sleuth)	0.00
mun2	0.00
Universal Sports	0.00
C2	N/A
CNBC World	N/A
Comcast Entertainment Television	N/A
Comcast Television Network	N/A
RFD-TV	N/A

Las Cruces	
Network	**Rating**
C2	N/A
Chiller	N/A
Cloo (Formerly Sleuth)	N/A
CNBC World	N/A
Comcast Entertainment Television	N/A
Comcast Television Network	N/A
Esquire Network (Formerly Style)	N/A
FearNET	N/A
G4	N/A
Golf Channel	N/A
MLB Network	N/A
mun2	N/A
NHL Network	N/A
RFD-TV	N/A
RLTV	N/A
Sprout	N/A
TV One	N/A
Universal HD	N/A

Souce Information:
Source for Ratings Information: Nielsen Media Research
Specs for Ratings Data: Wired Cable, Household ratings/impressions, extrapolated by
Arianna (overnights) for metered markets (Denver, Albuquerque) and Sweeps/surveys for diary markets (Colorado Springs and El Paso)
Time Frame: the 30 days prior to the reduction of RFD-TV - July 12 - Aug 11, 2013

Notes:
Comcast does not subscribe to Nielsen ratings for individual cable systems, and all data provided is at the market (Wired Cable) level.

Nielsen combines HD and SD viewing to networks and stations as an aggregated rating, and not broken out separately.

Ratings reporting thresholds per Nielsen differ between overnight data and survey data.

For the former (Denver and Albuquerque), minimum monthly HH cume of 0.5% determines networks that are reported. For surveys (4-week "Sweeps,") Nielsen applies a 2.5% cume threshold.

N/A means not reportable by Nielsen in that market

EXHIBIT 5

May 2014 Ratings for Networks Added during 60 days after RFD-TV Drop

Denver	
Network	**Rating**
Disney Jr	0.09
Smithsonian	0.04
Cooking Channel	0.01
KQCK	0
KXTU-Mundo (Bcast)	N/A

Albuquerque	
Network	**Rating**
Disney Jr	0.62
Reelz	0.06
ROOT SPORTS ROCKY MOUNTAIN	0.04
Smithsonian	0.03
Cooking Channel	0.02
OVATION	0.02
CSPAN	0.01
DIY	0.01
BTN	0
BYUTV	0
ESPN Classic	0
Tennis Channel	0
De Pelicula	0
Teleformula	0
The Word	N/A
RLTV	N/A

Colorado Springs	
Network	**Rating**
Disney Jr	0.17
Cooking Channel	0
Smithsonian	N/A
KXTU-Mundo (Bcast)	N/A

Las Cruces	
Network	**Rating**
Disney Jr	0.13
JTV	N/A
Smithsonian	N/A
Cooking Channel	N/A
BTN	N/A
CSPAN	N/A
OVATION	N/A
The Word	N/A
Reelz	N/A
Tennis Channel	N/A
BYUTV	N/A
RLTV	N/A

Souce Information:
Source for Ratings Information: Nielsen Media Research
Specs for Ratings Data: Wired Cable, Household ratings/impressions, extrapolated by Arianna (overnights) for metered markets (Denver, Albuquerque) and Sweeps/surveys for diary markets (Colorado Springs and El Paso).
Time Frame: the most recent Nielsen surveys from May 2014

Notes:
Comcast does not subscribe to Nielsen ratings for individual cable systems, and all data provided is at the market (Wired Cable) level.

Nielsen combines HD and SD viewing to networks and stations as an aggregated rating, and not broken out separately.

Ratings reporting thresholds per Nielsen differ between overnight data and survey data.

For the former (Denver and Albuquerque), minimum monthly HH cume of 0.5% determines networks that are reported. For surveys (4-week "Sweeps,") Nielsen applies a 2.5% cume threshold.

N/A means not reportable by Nielsen in that market.

EXHIBIT 6

COMCAST MARKET SHARE IN TOP 50 DMAS WITH A POST-TRANSACTION COMBINED COMPANY PRESENCE

DMA	MARKET SHARE
New York, NY	26.0%
Los Angeles, CA	37.2%
Chicago, IL	49.3%
Philadelphia, PA	54.0%
San Francisco-Oakland-San Jose, CA	56.0%
Boston, MA (Manchester, NH)	63.5%
Washington, DC (Hagerstown, MD)	34.5%
Dallas-Ft. Worth, TX	21.5%
Atlanta, GA	44.4%
Houston, TX	37.2%
Seattle-Tacoma, WA	63.3%
Tampa-St. Petersburg (Sarasota), FL	6.2%
Miami-Ft. Lauderdale, FL	43.8%
Denver, CO	53.2%
Orlando-Daytona Beach-Melbourne, FL	6.8%
Sacramento-Stockton-Modesto, CA	40.2%
Phoenix (Prescott), AZ	0.1%
Pittsburgh, PA	50.1%
Baltimore, MD	46.5%
Portland, OR	55.8%
Hartford & New Haven, CT	48.5%
Charlotte, NC	46.1%
Raleigh-Durham (Fayetteville), NC	49.1%
San Diego, CA	12.9%
Nashville, TN	46.5%
Kansas City, MO	39.4%
Salt Lake City, UT	38.1%
San Antonio, TX	44.7%
Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC	1.0%
Harrisburg-Lancaster-Lebanon-York, PA	57.1%
Norfolk-Portsmouth-Newport News, VA	8.0%
Jacksonville, FL	51.7%
West Palm Beach-Ft. Pierce, FL	40.0%
Austin, TX	42.7%
Providence, RI-New Bedford, MA	26.3%
Greensboro-High Point-Winston Salem, NC	51.9%
Memphis, TN	37.4%

Source: Q4 2013 SNL Kagan

EXHIBIT 7

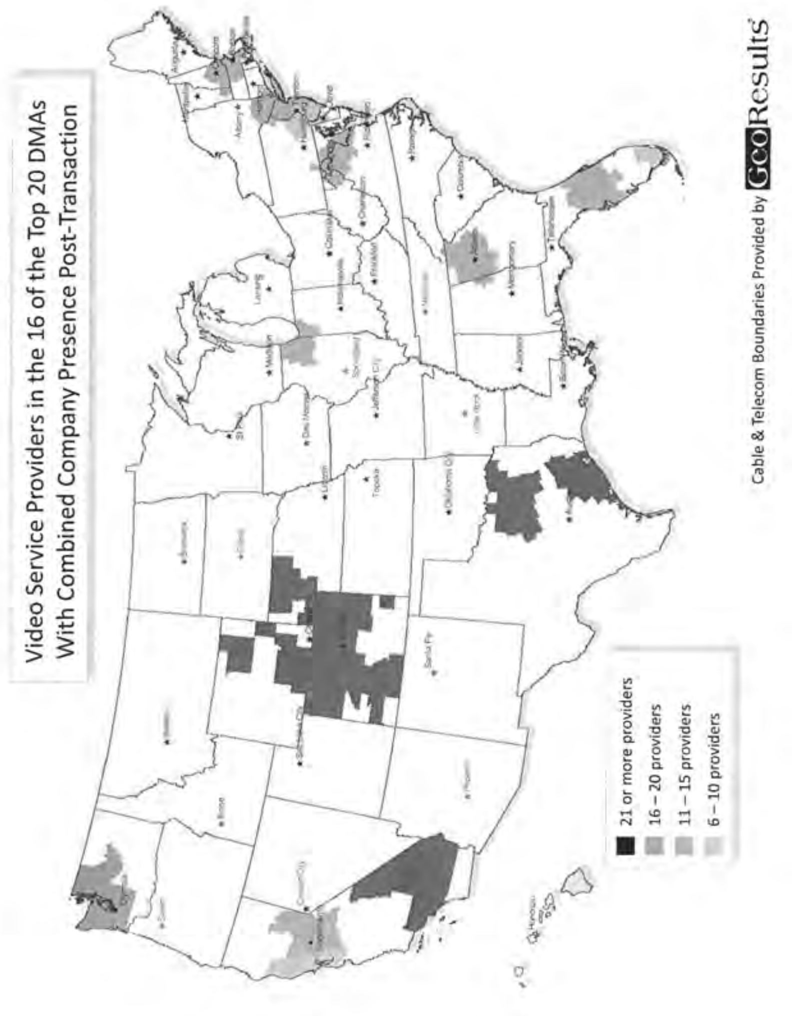
Video Service Providers in the 16 of the Top 20 DMAs
With Combined Company Presence Post-Transaction
21 or more providers
16 – 20 providers
11 – 15 providers
6 – 10 providers
Cable & Telecom Boundaries Provided by GeoResults

EXHIBIT 8

RLTV Experience matters.

May 27, 2014

Mr. Greg Rigdon
Executive Vice President, Content Acquisition
Comcast Cable
One Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103-2838

Dear Greg:

Thank you for taking the time to chat.

I welcome the opportunity to clear up the misinformation that arose during the recent House Judiciary Committee hearing regarding the pending Comcast-Time Warner Cable merger. I was not only disappointed but shocked to learn of the inaccurate statements attributed to Comcast regarding TheBlaze and RLTV.

First, let me confirm for the record that Comcast did not make the statements ascribed to it in Rep. Louie Gohmert's remarks during the hearing. Comcast not only was not notified of, or otherwise reviewed any details of a possible sale of RLTV to TheBlaze, but to our knowledge, Comcast never made any statements whatsoever or took any position regarding a transaction between RLTV and TheBlaze.

With respect to the purported email between RLTV and TheBlaze regarding the 2014 elections, this type of private correspondence simply reflects the musings of an RLTV representative to TheBlaze regarding the logistical considerations of such a prospective partnership. But certainly such musings were not the result of any RLTV discussion with Comcast.

Furthermore, and frankly a very troubling circumstance to RLTV, I am not sure how, why or from whom Rep. Gohmert obtained his information. TheBlaze previously entered into a comprehensive Non-Disclosure Agreement with RLTV, and that NDA was in effect at the time of the hearing and remains in full effect today. Accordingly, we have sent a letter to TheBlaze reminding them of their continuing confidentiality obligations.

RLTV is greatly appreciative of all the efforts that Comcast has made as both an investor and distribution partner of RLTV. We have always enjoyed a respectful and mutually rewarding relationship with Comcast and in our view Comcast has adhered to the highest levels of professionalism in conducting business with its commercial partners, including RLTV. In our many dealings with Comcast, neither you nor any other Comcast representatives with whom

Mr. Greg Rigdon
May 27, 2014
Page 2

we've dealt has ever attempted to exercise any editorial control over RLTV's programming. As a result we at RLTV strongly disagree with TheBlaze's assertions, implying that Comcast makes programming determinations on the basis of political leanings or impact. In short, Comcast has proved an invaluable partner to RLTV in our development and growth, and we look forward to a continuing productive relationship.

We are happy to speak to your contacts to set the record straight. In addition, you are welcome to share this letter as appropriate.

Sincerely,

Paul FitzPatrick
President and CEO

Response to Questions for the Record from Robert D. Marcus, Chairman and CEO, Time Warner Cable Inc.

Questions for the Record from
Chairman Bachus
for the Hearing on "Competition in the Video and Broadband Markets: the Proposed Merger of Comcast and Time Warner Cable"
May 8, 2014

Questions for Mr. Marcus

1. Can you describe the state of competition in the advertising markets where Time Warner Cable currently has a presence? Do you believe the proposed transaction will affect this level of competition, particularly where Time Warner Cable and Comcast participate in local cable advertising and advertising interconnects?

The advertising marketplace is robustly competitive. Time Warner Cable's advertising business competes with a variety of alternative outlets including broadcast television stations, radio stations, newspapers, outdoor display advertising, and Internet sites. Broadcast television remains the dominant force in television advertising and new online opportunities continue to emerge.

The proposed merger is unlikely to have any substantial impact on the market for cable advertising. And any modest effects that do occur will be procompetitive and beneficial for consumers, as the transaction will help the company to compete more effectively against broadcast stations in the sale of advertising slots.

Because Time Warner Cable and Comcast do not overlap in any geographic area, the two companies are not competitors in providing cable advertising to subscriber households. In fact, as you noted in your question, in most instances where the two companies are both present in the same metropolitan area we already sell advertising jointly through "interconnect" arrangements. These procompetitive arrangements allow MVPDs to compete more effectively with broadcasters, benefitting both consumers and advertisers. Where interconnect arrangements are in place the merger will have no impact on cable advertising. In fact, because those interconnect arrangements also include smaller cable operators, telco video providers, and the DBS providers (DirecTV and DISH Network), the merger is also unlikely to have any effect on those providers' advertising sales. This procompetitive transaction will not cause any price increases or diminish the availability of cable advertising opportunities for small business or other advertisers.

Response to Questions for the Record from Matthew M. Polka, President and CEO, American Cable Association

Questions for the Record from Chairman Bachus for the Hearing on "Competition in the Video and Broadband Markets: the Proposed Merger of Comcast and Time Warner Cable" May 8, 2014

Questions for Mr. Polka

1. You argue that the remedies that are contained in the NBC Order are insufficient, particularly with respect to smaller cable providers. Why is that the case, and do you have any suggestions for improvement?

Prior to Comcast/NBCU, the Federal Communications Commission conditioned approvals of license transfers involving the combination of distribution assets of a multichannel video programming distributor ("MVPD") and the programming assets of a broadcast station or regional sports network ("RSNs") on the acquiring parties' "voluntary" acceptance of the remedial condition of "final offer" or "baseball style" arbitration. These conditions were intended to mitigate the incentive and ability of the programmers affiliated with the MVPDs to charge above fair market value prices to other MVPDs. The theory behind this remedy is that a programmer's risk of losing "final offer" arbitration to an MVPD would constrain its pricing behavior. For numerous reasons, this remedy has proven to be of little to no value for small MVPDs and their customers.

The FCC attempted to make the arbitration condition more attractive to small MVPDs in its review of the license transfers associated with the Comcast/NBCU deal. For small MVPDs, one of the main problems with the previously adopted arbitration conditions is that its high fixed costs are likely to exceed any potential financial benefits of winning the arbitration.[1] To address this concern, Comcast agreed, at the insistence of the FCC, to subject itself to a modified version of the arbitration condition, agreeing to a "one-way fee shifting" condition for arbitrations with small MVPDs. This new requirement obligated Comcast to reimburse the MVPD for its arbitration fees if an MVPD with less than 600,000 subscribers wins the arbitration. However, if Comcast wins the arbitration, each side is responsible for its own costs for the arbitration. The FCC recognized the need for "one-way fee shifting" to make a small MVPD's threat to take a programming fee dispute with Comcast to arbitration more credible in order to force Comcast in its negotiations to lower its asking price to a fee closer to fair market value.

Unfortunately, while one-way fee shifting looked attractive from an academic perspective, it alone did not make arbitration any more attractive to small MVPDs. One-way fee shifting works only if the programmer actually believes there is a credible threat that a small MVPD will both seek arbitration and win. In practice, small MVPDs were no more likely to take a programming fee dispute with Comcast to arbitration with this mechanism than without it due to remaining issues, and Comcast felt no greater threat. Since Comcast knew that smaller firms would not engage in arbitration even with one-way fee shifting, it faced no constraints on extracting higher fees from these MVPDs and their customers, consistent with predictions based on economic modeling. In the years since the Comcast/NBCU transaction was approved, despite findings that Comcast/NBCU would have an incentive and ability to charge higher prices to other MVPDs, no small MVPD has utilized the arbitration condition with one-way fee shifting.

The following explains why "one-way fee shifting" alone did not make the arbitration condition more attractive for small MVPDs, and restates the other problems with arbitration for small MVPDs that the FCC has yet to address. In order for small MVPDs to be protected from the additional harms of the Comcast/TWC/Charter deals, it is imperative that all of these remaining issues be addressed.

Lack Of Critical Information: Arbitration works only when a programmer believes there is a real risk that an MVPD will utilize it and can win, and this would occur only if an MVPD can precisely predict the result of the arbitrator's calculation of fair market value. However, in reality, small MVPDs cannot precisely predict such an outcome because they do not have precise information on the key factors that an arbitrator would likely use to make its determination, including: (i) existing and previous prices a vertically integrated programmer charges other MVPDs for the disputed programming; (ii) the size of the volume discounts granted to larger MVPDs versus small MVPDs (a.k.a. "small MVPD" premium); (iii) what other programmers charge for similar programming; (iv) the costs of acquiring the content comprising the programming at issue; (v) the programmer's internal studies or discussions of the imputed value of the disputed programming as sold in bundled agreements; and (vi) the programmer's other internal evidence of the value of the programming. And even to the extent a small MVPD may know bits and pieces of this information, decisions of individual arbitrators will vary widely, leading to even greater uncertainty. Since small MVPDs cannot precisely predict the result of an arbitrator's calculation of fair-market value, their odds of losing an arbitration and not being reimbursed for its expenses remain significant factors in deterring small MVPDs from pursuing arbitration. A vertically integrated programmer would understand this, and therefore would not be deterred from seeking to extract higher fees from small MVPDs at levels predicted based on economic modeling. In other words, a small MVPD cannot assess with any degree of certainty whether it is likely to win the arbitration and have its arbitration costs reimbursed, or lose the arbitration and be forced to cover its own costs.

Small MVPDs Are Risk Averse: One million dollars, the average cost of baseball-style commercial arbitration, is a relatively large share of a small MVPD's revenue. Consequently, small MVPDs are unlikely to take the risk of arbitrating, even with the prospect of potentially being reimbursed down the line for arbitration expenses. This reality discourages small MVPDs from using the arbitration remedy, even under a one-way fee shifting. Faced with the prospect of possibly losing $1 million in arbitration costs and bearing the burden of higher programming costs, a small MVPD will choose to simply "eat" the higher programming costs. One-way fee shifting may make winning an arbitration more financially attractive, but it neither improves a small MVPD's chances of winning nor mitigates the significant cost of losing. Small MVPDs are unwilling to take on that kind of risk.

In addition, other factors exacerbate the problem with the arbitration conditions.

Information Imbalance: Although some of the relevant information is unknown to both the small MVPD and a vertically-integrated programmer, much of the information is unknown *only* to the MVPD. For example, with regard to Comcast, the company will know the prices it charges for its broadcast stations and its regional sports networks to other MVPDs, and the nature of the formulas it uses to account for price variations, such as differences in fees charged to different sized operators, or based on an MVPD's distance from a covered team's home stadium. In addition, Comcast, as the country's largest MVPD, is a purchaser of RSNs around the nation, and therefore has more information on the prices for these networks in general. This imbalance is most stark for small MVPDs, who unlike national distributors, such as DIRECTV, DISH Network, Verizon, and AT&T, typically operate in a single market and carry a single RSN and a single NBC broadcast station. Asymmetric possession of information exacerbates the small MVPD problem of lacking critical information as discussed above. Vertically integrated programmers typically have the information needed to calculate a fair market value, and so the MVPD, who lacks this information, will win only when it can accurately predict when the MVPD-affiliated programmer is bluffing. But knowing that the vertically integrated programmer is bluffing is not enough; the small MVPD will also have to put forth blindly a final offer in advance of obtaining any discovery through the arbitration process, and hope that it didn't choose a rate that is too far below the fair market value, thus risking loss of $1 million in addition to having to pay higher programming fees.

Problems Getting Started: When conditions are first introduced and there is no track record of arbitration results to consult, small MVPDs will be especially poorly informed. This means that the first few MVPDs who test the one-way fee shifting remedy will have to bear especially high risks. Accordingly, there is a particular risk that such arbitrations will never be tried because the first few will be viewed as excessively risky for any small MVPD. This continues to be a problem with regard to the conditions adopted to mitigate the harms of the Comcast/NBCU transaction, which for many of the reasons discussed in this response, have never been utilized by any small MVPDs.

A Vertically Integrated Programmer Subject To An Arbitration Condition Is Likely To Outspend Its Opponents In Arbitrations: An MVPD-affiliated programmer will find it rational and profit maximizing to outspend its opponents in the arbitration process. The programmer will have a reputational incentive to apply overwhelming force in its earliest arbitrations, particularly with risk-adverse small MVPDs, to discourage other small MVPDs from undertaking subsequent arbitrations. Moreover, since a vertically integrated programmer will be in multiple arbitrations and can reuse many aspects of its preparations in later arbitrations, it will likely be able to do more with the money it spends.

The Comcast/NBCU arbitration condition is not only flawed because of its limited utility for small MVPDs, but also because of its limited scope.

The Comcast/NBCU Conditions Do Not Apply To All Programming Affiliated With Comcast: The Comcast/NBCU merger conditions apply only to programming that is controlled or managed by Comcast, which means the following Comcast-affiliated networks are not covered by the conditions: MLB Network, NHL Network, PBS Kids Sprout, Retirement Living TV, Shop NBC, TV One, Weather Channel and Universal Sports. Even though Comcast does not directly control or manage these stations, the company is an investor with a financial interest in seeing these networks charge rivals of its MVPD systems higher fees than non-rivals.

Moreover, as an investor, Comcast has an ability to influence the decision making of their affiliated networks in the fees they charge Comcast's rivals. The only protection that MVPDs have against discriminatory treatment of these Comcast-affiliated networks is the program access rules, but as ACA has argued for many years, these rules are not available to the buying group that negotiates programming deals for nearly all small and medium-sized MVPDs, due to problems in the way the FCC has implemented Congress' program access directives.

Summary: In summary, small MVPDs will not be able to precisely predict the price that will result from arbitration in order to maximize their chance of winning and having their arbitration costs reimbursed. They lack information about other prices that Comcast charges; about the "small MVPD premium" paid by other operators; about the prices other programmers charge for similar programming; and about data and information pertinent to the other factors an arbitrator is likely to consider. Moreover, decisions of arbitrators may vary. The significant risk of losing an arbitration will still generally discourage small MVPDs, who are risk-adverse due to their limited resources, from engaging in arbitration even under one-way fee shifting. Factors exacerbating this are asymmetric information; start-up problems; and the fact that Comcast/NBCU will be a long-term player and find it rational and profit maximizing to outspend its initial opponents. For these reasons, Comcast will know that small MVPDs will not engage in arbitration, and the arbitration process will place no restraint on Comcast from charging small MVPDs higher prices for "must have" programming consistent with the estimates of Professor Rogerson.

Should the FCC simply model any Comcast/TWC remedial arbitration conditions on those applied to Comcast/NBCU, small MVPDs will once again be left with rights but no effective remedies, and the operators and their subscribers will bear the brunt of above-market programming price increases made possible solely by the combination of key programming and distribution assets of the Applicants.

* * * *

In the coming months, ACA looks forward to working with the FCC and Congress on conditions that would prohibit Comcast/TWC from charging small MVPDs more than clear, market-based rates for "must have" programming together with a simplified enforcement mechanism that can provide certain relief when commercial negotiations fail to produce satisfactory outcomes for small MVPDs. Imposing conditions on Comcast/TWC that work for small MVPDs will ameliorate transaction-related harms that otherwise would significantly and adversely affect small MVPDs and their subscribers, while having a *de minimis* impact on either Comcast/TWC specifically or the programming market in general due to the small percentage of the market served by small MVPDs.

Response to Questions for the Record from C. Scott Hemphill, Professor of Law, Columbia Law School

Response to Questions for the Record

C. Scott Hemphill
Professor of Law
Columbia Law School

House Judiciary Committee
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Oversight Hearing on Competition in the Video and Broadband Markets:
The Proposed Merger of Comcast and Time Warner Cable

July 1, 2014

Question #1

During the hearing, Mr. Polka of the ACA testified that, after the merger, Comcast will be able to extract lower prices from video content programmers and that, in turn, the programmers will seek higher payments from other video distributors to compensate for the loss. Do you agree that post-merger (a) Comcast will have sufficient bargaining power to obtain lower prices from programmers than it can obtain today; and (b) programmers will "make up" any shortfall from the discounts they provide to Comcast by raising prices to other video distributors?

Response

I disagree with the conclusion that a post-merger Comcast would have greater bargaining power with programmers, thanks to its enlarged subscriber base. To be sure, the stakes would be higher for a programmer, compared to today, because the programmer could lose more revenue from lost viewers if its contract negotiations with an enlarged Comcast broke down. On the other hand, Comcast would have more to lose too, as more customers could plausibly complain or cancel their service in the event of a breakdown. To conclude that Comcast would gain bargaining power and thereby strike a better deal on a per-subscriber basis, it is necessary to establish that there is some special, disproportionate consequence in the case of bargaining failure.

One such consequence would be if the post-merger Comcast were so large that a programmer would be unable to effectively function without a Comcast deal. In 2007, the Federal Communications Commission reached the conclusion that a video distributor must have at least 30 percent of traditional video subscribers to pose such a risk. This proposed threshold was rejected by the D.C. Circuit for understating the degree of competition in video markets. In any event, it is surely too conservative today, given the rise of alternative online outlets for reaching viewers. This transaction, which results in a share of traditional video distribution slightly less than 30 percent, is therefore unlikely to be of a sufficient size to make a meaningful difference in this respect.

I also disagree with Mr. Polka's conclusion that, if Comcast did secure lower prices, programmers would be expected to make up the "shortfall" by striking a better bargain with other distributors. As a matter of economic principle, a rational programmer should *already* be pushing each distributor as hard as it can, thereby securing the highest price possible for its content from each distributor. This strong, pre-existing incentive to maximize profits from all distributors does not depend on the bargain that Comcast strikes with a programmer.

Question #2

In your testimony, you characterized the Comcast-Netflix interconnection arrangement as "a sign that the market is working well." Please explain why you believe the Comcast-Netflix interconnection arrangement is a reflection of a well-functioning market.

Response

Online video distribution is a rapidly growing business. To handle that growth, it is appropriate to put a price on the additional capacity demands resulting from the increased popularity of online video. It is efficient for the distributor and its end-users, considered collectively, to pay for that capacity, rather than spreading the expense among all customers of an internet service provider. Doing so better aligns usage with cost and incentivizes both investment and economical use.

A variety of business arrangements have been implemented to connect online video distributors with viewers. Paid peering is just one among several possible solutions. The fact of payment is not in itself problematic. After all, payment for interconnection has long been made using some mix of cash and reciprocal carriage of the other firm's traffic. Netflix's agreements with Comcast and Verizon do not indicate a failure of the market that antitrust law might be expected to remedy. To the contrary, these agreements indicate that the parties have the incentive and ability to bargain for mutually productive, socially valuable business arrangements.

Question #3

Can you please explain whether you have any antitrust concerns with the impact of the proposed Comcast-Time Warner Cable on the advertising marketplace?

Response

I have not examined the advertising markets at issue in this transaction in sufficient depth to offer a complete analysis. However, two features of these markets are relevant to the antitrust evaluation. First, advertisers, including local advertisers, have a large number of alternatives to choose from beyond cable, including broadcast television, internet, radio, and newspaper advertising. Second, so far as I am aware, Comcast and Time Warner Cable do not compete for local advertisers, given their distinct footprints. These features make it unlikely that the transaction would substantially increase concentration or reduce head-to-head competition in the sale of local advertising.

Response to Questions for the Record from Dave Schaeffer, Chairman and CEO, Cogent Communications Group, Inc.

Questions for the Record from
Chairman Bachus
for the Hearing on "Competition in the Video and Broadband Markets: the Proposed Merger of Comcast and Time Warner Cable"
May 8, 2014

<u>Questions for Mr. Schaeffer</u>

1. **In your testimony, you argue that Comcast will be able to prevent content from reaching customers over the "last mile." Do the requirements contained in the NBC Order, particularly the Open Internet requirements, adequately address your concerns?**

   No. The Open Internet requirements in the NBC Order do not apply to Comcast's practices relating to interconnection with other networks. Those requirements only apply to traffic inside Comcast's network. Thus, Comcast has the ability to do indirectly (e.g., by keeping interconnection points congested) that which it is prohibited from doing directly. Moreover, the absence of a clear definition of "reasonable network management" (including an explicit statement of how it relates to interconnection practices) compounds the problem.

2. **Comcast argues that the interconnection marketplace is competitive, which has resulted in competitive rates for transit. Do you agree or disagree? Please explain your rationale.**

   It is not clear what Comcast means by the "interconnection marketplace." If it is referring to the market for interconnection to Comcast, that is a market with a monopolist on one side – Comcast. It is a market characterized by increasing payments to Comcast. What is clear is that the price for Internet access (transit) for businesses has declined substantially in recent years. For example, over the past 5 years Cogent has lowered its prices for Internet transit by approximately 22% per year. At the same time, the costs paid by consumers for access to the Internet provided by companies like Comcast have gone up. What explains the difference? Cogent faces vigorous competition in the sale of Internet transit, whereas residential broadband ISPs like Comcast and Time Warner Cable operate in markets in which they enjoy substantial market power, in some cases facing no competition at all.

3. **Can companies like Cogent resort to antitrust remedies to the extent there is anticompetitive behavior in reaching the "last mile," or are those remedies insufficient?**

   Private antitrust enforcement is not a substitute for the prospective application of the antitrust laws (and the FCC's public interest standard) to address the anticompetitive implications of the pending merger. Antitrust cases take too long to be effective, especially in the rapidly-evolving Internet business. Moreover, while companies like Cogent might be compensated for their antitrust injury through treble damages, those damages cannot compensate consumers for losses they sustain—by being denied access to Internet content for which they already have paid—while such a case is being litigated. Even injunctive relief may come too late to remedy the competitive harm to consumers, as well as edge providers who might not survive a sustained period of having their access to Comcast-Time Warner Cable customers degraded or denied.

4. Some of your relationships with interconnection counterparties involve payment, others do not. Is there a clear understanding regarding the degree of traffic flow that needs to change before a relationship switches from a free transfer to a paid transfer? How does Cogent make that clear with its counterparties, and does Comcast engage in similar practices?

The type of interconnection agreement that Cogent enters into with another network is, typically, a function of the other network's reach. As a Tier 1 ISP, Cogent has settlement-free interconnection arrangements with 38 networks around the globe. Cogent also sells transit services to ISPs (among other customers) who do not have a sufficiently robust network to interconnect with Cogent on a settlement-free basis. These are arm's-length commercial relationships that take place in a competitive market. Unlike Comcast and Time Warner Cable, Cogent does not have bottleneck control over access to its customers. As such, again unlike Comcast and Time Warner Cable, Cogent cannot extract terms and conditions that would not prevail in a competitive market. Cogent does not purchase transit services or paid peering to reach any portion of the Internet, nor does it sell paid peering. We do not have any particular insight into what Comcast communicates to other counterparties with whom it deals.

5. Is it possible that the flow of traffic from Comcast would increase to such a degree that you would begin charging it for transit services?

The terms under which Cogent exchanges traffic with Comcast are not a function of traffic ratios. Indeed, the exchange of data over the Internet always has been asymmetrical. Today, Cogent exchanges traffic with Comcast on a settlement-free basis. Although Comcast does not meet Cogent's criteria for settlement-free peering, Cogent nonetheless exchanges traffic with Comcast in this manner based on the substantial market power Comcast has. That market power will be enhanced by the proposed merger.

6. Has your company ever de-peered or been de-peered by (or otherwise purposefully disconnected with or been disconnected from) any Internet service provider or other Internet traffic carrier? If so, please list each such instance and identify the company or companies involved.

Several of Cogent's peers have broken off peering relationships with it. In each case peering was subsequently reestablished.

- AOL in 2003

- Teleglobe in 2005

- France Telecom in 2005

- Level 3 in 2005

- Sprint in 2008.

Cogent broke off its free peering relationships with around 300 networks over several years. Many of these peering relationships had been established to allow Cogent to maintain connectivity with smaller ISPs that might be unreachable if a major player decided to de-peer Cogent. As Cogent expanded the scope of its own network and its interconnections with other peers, it no longer needed to maintain this connectivity to networks that did not meet its peering criteria to deliver access to the entire Internet.