



**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”**

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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.

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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.