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"

Washington, D.C.

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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 <u>one hundred times less than the prevailing rate:</u> 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 <u>only</u> 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.

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[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).