S. HRG. 113–710

EXAMINING THE COMCAST-TIME WARNER CABLE MERGER AND THE IMPACT ON CONSUMERS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

APRIL 9, 2014

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U.S. GOVERNMENT PUBLISHING OFFICE

95–816 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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APRIL 9, 2014, 10:06 A.M.

STATEMENTS OF COMMITTEE MEMBERS

WITNESSES

QUESTIONS

ANSWERS

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

EXAMINING THE COMCAST-TIME WARNER CABLE MERGER AND THE IMPACT ON CONSUMERS

WEDNESDAY, APRIL 9, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in Room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Hatch, Graham, and Lee.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. I would like to welcome everybody here. The Chair and Ranking Member of the Subcommittee with jurisdiction, Senator Klobuchar and Senator Lee, will be taking over the hearing at some point during the morning, and I appreciate the work both of them have done in getting us here.

The original business of the cable industry—delivering television programming—is, as we all know, migrating to the Internet, and the industry has been changing in response. Consumers can now watch what they want and when they want. And if any of us have any question about it, ask our children or our grandchildren, and they will explain it to us.

But when companies like Comcast and Time Warner Cable were founded, the term "binge watching" was unheard of; now it describes how many Americans watch their favorite shows. Cable companies have moved beyond delivering television, adapting their networks to provide broadband. They are now the sole source of this service for millions of Americans. As a result, they play a dominant role in how many people in the country get their information. Consumers deserve to know how the combination of the two largest companies in the industry will impact them. Every Senator has heard from their constituents saying, "What is this going to do to me?"

So we are going to cover the current state of the video and broadband markets. We will hear discussion of vertical integration, relevant markets, and public interest standards. These are important issues to consider when analyzing the merger. Consumers, though, do not want to hear complex legal jargon or obscure regulatory terms. They just want to know why their cable bills keep going up. They want to know why they do not have more choice of providers. And consumers want to know is this merger good for them or not. Frankly, every one of us wants to find out the same things.

In 1996, I voted against the *Telecommunications Act* in part because of concerns I had about the lack of competition in the cable TV market. And I am still concerned. Similar questions are now being raised about the broadband industry, where consumers feel like they get large bills and inadequate choices.

In Vermont, we are deeply concerned about net neutrality, but we do not simply want lip service. We want meaningful rules of the road to protect an open Internet so that anyone with an idea can have a chance to succeed in the online marketplace. And Vermonters are not alone in this. Thousands of Americans have flooded the FCC in recent weeks with comments supporting the restoration of open Internet rules, and their voices have to be heard.

I appreciate that Comcast agreed to be bound by the FCC's Open Internet rules as part of the NBCUniversal transaction. This was an important commitment, especially now that core elements of the Open Internet Order have been struck down. The conditions that currently apply to Comcast should not be seen as the end point but, rather, the minimum level of protection that should apply to promote competition online. And regardless of the outcome of this latest merger, I hope that Comcast will accept an extension of these rules beyond 2018. Better still, I urge them to support stronger rules that protect consumers and drive innovation.

The recent interconnection deal between Comcast and Netflix also raises important questions for advocates of net neutrality. When ISPs can charge tolls or block access to their networks, net neutrality policies alone may no longer be enough to protect consumers or promote an open Internet. If companies have to enter special agreements to ensure adequate quality for their streaming video service, I worry about the potential impact on other bandwidth-intensive services. One that I think of that I worked on for years is telemedicine, especially tying together medical centers in rural areas. It is an annoyance for consumers when they cannot stream the most recent season of "House of Cards" due to an interconnection dispute. But it is really serious if it becomes a matter of life or death for patients who cannot reach health care for the same reason.

So the proposed transaction touches on a range of critical policy issues going beyond just the broadband space. There are important questions about diverse and independent video programming and a vibrant marketplace for online video. So we have to ask how this is going to impact consumers, and I urge the FCC and Justice Department to consider this just as carefully.

So I thank everybody for being here. I am going to yield to Senator Grassley. Then I understand Senator Klobuchar and Senator Lee have brief statements.

[The prepared statement of Senator Leahy appears as a submission for the record.]

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Well, good morning. Thanks for the witnesses being here.

Our Judiciary Committee's role is not to decide whether or on what conditions Comcast and Time Warner will be permitted to merge. The Federal Communications Commission and the Justice Department are responsible for determining whether there are any issues with this transaction. But no doubt a hearing like this, as we have had in this Committee on other mergers, is a very important part of the process, because it does give the Committee an opportunity to hear and to conduct proper oversight not only of this specific merger but also to make sure that we understand the issues and that the Federal Communications Commission and the Justice Department are carrying out the law.

Every year we are seeing new and exciting innovations in technology and communications. When I first came to Congress, I did not carry a phone around in my pocket like we do now. I never knew that one day there would even be such a thing as Twitter and that I would have 75,000 followers. Innovations like these have radically changed how we communicate and how we interact with each other, how we learn, how we get news, how we conduct business, and access entertainment.

Access to the Internet is quickly becoming an absolute necessity. Americans need it to compete in this fast-paced and, more importantly, the globalized economy that has developed over the last 50 years and is going to be more important in the future. They need the Internet to stay in touch not only with family and friends but probably very much a part of their economic lifeline, and particularly when they have access to their choice, and what a wide range of choice now.

Right now we are experiencing a bit of a revolution in Internet technology. Just some examples: Products like Verizon FiOS and Google Fiber are changing the Internet's infrastructure by delivering faster access through fiber optic cables. And on the content side, companies like Netflix and Hulu are allowing people to "cut the cord" and access their media through the Internet and their handheld devices.

Comcast and Time Warner control a significant amount of the cable infrastructure that Americans use to access high-speed Internet. They control the cable lines that go directly into people's homes. So there is a lot of interest in what will happen if the two companies merge and, quite frankly, probably just stated a little bit differently, but I have the same interest that Chairman Leahy has expressed. Consumers want to know whether a combined Comcast-Time Warner will be in a better position to expand high-speed Internet access. Will consumers have higher cable bills? Will they have more or less content choices? Will the merger inhibit growth and deployment of broadband services? Will it enhance competition with other companies? And what are the downstream effects of the merger?

Another question is whether or not a combined Comcast-Time Warner will impact television or Internet content in a detrimental way. Will the company be able to block consumers' access to content? Or will the merger allow the company to negotiate for better licensing arrangements from popular broadcasters like ESPN and Disney? Because Comcast creates some of its own programming, some have suggested that this will put independent programmers at a disadvantage. Well, all of those things are what this hearing is all about.

Today we have an opportunity to learn how these markets actually work and what a Comcast-Time Warner merger could mean to competition and consumers. There is no doubt that a combined Comcast-Time Warner could significantly affect the markets for television programming, high-speed Internet access, and program access, and there has been no shortage of opinions expressed in the media since the companies announced the planned merger.

So I look forward to a very important hearing and also following up with how DOJ and FCC are going to respond.

Thank you, Mr. Chairman.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Chairman LEAHY. Thank you.

Senator Klobuchar.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you to you and Senator Grassley for holding this very important hearing.

Competition in the cable industry is one of the most critical issues that this Committee faces for a very simple reason: Cable is the primary way Americans get pay TV and broadband Internet access. This issue literally touches people's lives every day, and it touches their wallets every month.

As Senator Lee, the Ranking Member of our Subcommittee, and I have said from the day the merger was announced, the proposed merger between Comcast and Time Warner Cable, the two largest cable companies in the country, presents unique issues.

From my perspective, while the companies' service areas do not overlap, this cannot be our only focus of our discussion today. The combined company would control about 30 percent of the pay television market and 40 percent of the wireline broadband market, with some estimates putting it at 50 percent.

Its size and scope would give it the power to affect prices, service, and content offerings throughout the industry and the future of online video competition.

There are a number of critical questions that we need to ask.

First, what is in this merger for consumers? Comcast has already said they are not promising that their consumers will pay less or that their bills will increase less quickly. What benefits do consumers stand to gain that they would not have gained without the merger? And do they outweigh the potential harms that could result if the merger is approved?

This merger is also relevant for consumers who are outside of Comcast's and Time Warner Cable's footprint. Competitive video providers to Time Warner Cable will now have to buy must-have NBC programming, including regional sports networks, from their competitor. There are concerns that the merged company's larger presence throughout the country, especially in major markets like New York and L.A., will give it even more leverage to charge competitors more for its programming—a cost that could be passed on to consumers.

By combining its vertical integration of content ownership with an expanded share of the cable market, Comcast would also have greater negotiating leverage with independent programmers. We hear regularly from these companies, many of whom are reluctant to go public because of how it might affect their negotiating positions.

They say it is increasingly hard to negotiate carriage agreements in a market where content providers and distributors are consolidating. A post-merger Comcast would sit on both sides of the fence. It would be the gatekeeper to a third of the cable market and stand as one of the largest content providers. Consumers should know whether this merger enhances or limits the diversity of programming.

Finally, as has been noted, we need to pay special attention to the impact this merger will have on the Internet and online video distributors like Netflix, YouTube, and Hulu. During the Comcast-NBC merger, the FCC highlighted that Comcast has "the incentive and ability to hinder the development of rival online video offerings." Concerns have been raised that the merged entity would now have even greater ability to limit competition through data caps, discrimination against non-affiliated content, and charging content providers for access to that last mile of network.

What will happen to the next Netflix that today is still just a dream in a garage? We want to make sure that the next new and competitive online service will be able to get their content to the merged company's growing consumer base. With control of nearly 40 percent of the national broadband market, Comcast could potentially exert undue terms, conditions, and prices on online providers that are trying to serve their customers.

The lines between cable and Internet are rapidly blurring, and 10 years from now, Americans will be consuming media in new and innovative ways. The question is: Who is going to be delivering that content? Will that content be coming from Comcast or be coming from an independent online distributor or some combination? Will it be channeled through a cable box or routed through the Internet?

The merger has implications for how much these services will cost and what variety of programs and applications can be delivered into our homes. Technology and market innovation should result in Americans receiving better services and more value, not less service and less value.

I look very forward to hearing from our witnesses today.

Chairman LEAHY. Thank you very much.

Senator Lee.

OPENING STATEMENT OF HON. MICHAEL S. LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you, Mr. Chairman. Today's hearing has received significant attention throughout the country, and with some good reason. The proposed merger between Comcast and Time

Warner has implications for two markets that affect the everyday lives of most Americans, certainly a majority of the people in my State and in the country as a whole.

Most Americans pay a monthly bill for both video and broadband Internet. In fact, as recently as 2012, 90 percent of U.S. households with a television paid for a television subscription. And a recent study concluded that approximately 70 percent of U.S. adults over the age of 18 have broadband access within their home.

The parties to this proposed merger have carefully structured their transaction in an apparent effort to maximize their chances of gaining the necessary regulatory approval. The two companies assure us that they do not currently compete in each other's footprint, and the combined company would have less than 30 percent of the video market, a number that some have suggested as a figure within a sort of safe harbor for concentration within the relevant market.

Comcast has vertically integrated with NBCUniversal. This is a complicating factor for a larger distributor of video content and broadband Internet that is seeking to become larger. But as the company points out, it remains subject to conditions stemming from regulatory approval of that previous transaction.

The proposed merger has, nonetheless, raised some potentially very serious concerns. This transaction takes place against the backdrop of significant pre-existing concerns with respect to the competitive state of the market for video and for broadband Internet.

I have heard concerns for some time that the effects of robust competition, whether experienced in terms of pricing or quality of service, are not currently enjoyed in these markets. It is important that this Committee take into account the state of competition in the markets for video and Internet as pre-existing issues may make it more likely for a large transaction to pose some kind of a competitive threat.

At the same time, if concerns related to this transaction result only from issues affecting those industries as a whole, it may, arguably, be unfair to the merging parties to impose only on them conditions designed to ameliorate competition. Regardless of the outcome of the agency's review of this transaction, I think it is important for Congress to continue to monitor the competitive state within these markets throughout the country.

Concerns with this transaction also arise from the nature of the services at issue. Internet in particular is of obvious importance to American families and to businesses, and it is of special importance to an increasing degree. The combined company will potentially control greater than 50 percent of high-speed Internet access across the country. Markets do, of course, change quickly and government must be careful not to step in where economic forces will better direct and better incentivize future investment and development of new products. But where the stakes are high—and surely they are high with respect to Americans' access to the Internet—any potential for anticompetitive effects or for undue control of that market must be scrutinized very carefully.

It is also important to note here that this is an extremely large transaction affecting both the video market and the Internet market. A complicating factor arises given that Comcast owns NBCUniversal. Considering the significant share of the video and Internet market that the new Comcast would have and considering the well-known political leanings of NBC, I have heard concerns that Comcast might have the incentive and the ability to discriminate against certain political content, including, for example, conservative political content, and that that capacity could be significantly enhanced as a result of this transaction.

Now, as with any matter before this Committee or the relevant enforcement agencies, it is essential that we apply proper economic analysis and ground our conclusions in the evidence before us by ensuring that we protect competition rather than trying to protect any individual company or competitor from competition. We can help create market conditions that benefit consumers and promote economic growth throughout the country.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, and I thank you and Senator Klobuchar for your work on this.

The first witness is David Cohen, executive vice president, Comcast Corporation. His work covers a broad range of activities, including corporate communications, government and regulatory affairs, public affairs, legal affairs, corporate administration, community investment. No stranger to Capitol Hill, Mr. Cohen, please go ahead.

STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION, PHILADELPHIA, PENNSYLVANIA

Mr. COHEN. Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify and explain the substantial benefits to consumers of the transaction between Comcast and Time Warner Cable.

Traditional boundaries between media, communications, and technology companies are becoming obsolete. While this transaction will make us bigger, that is a good thing, not a problem. Most of our real competitors are national and global and larger than us, like the Bells, satellite companies, Apple, Google, Sony, and Netflix. In fact, the business reason for this transaction is to create the scale that will enable Comcast to invest more in innovation and infrastructure and enhance our ability to compete more effectively. And when we invest, our competitors invest, too. AT&T has already said that our transaction, and I quote here, “puts a heightened sense of urgency” on other companies to invest more in their networks and improve service, and consumers will benefit from this competitive investment cycle.

Our investment will bring Time Warner Cable residential customers faster Internet speeds, more programming choices, our next-generation X1 entertainment operating system, and more robust WiFi. Business customers will benefit from a stronger new entrant offering more choice and better prices.

Comcast has a record of investing in new technologies and networks. Two announcements we are making today underscore that commitment.

First, our XFINITY WiFi network achieved another milestone with the deployment of more than one million hot spots.

And, second, we have just increased Internet speeds again. Our 50-meg service in the Northeast will increase to 105 meg, and our 105-meg service will increase to 150 meg at no additional charge to consumers. This is the 13th time we have increased Internet speeds in 12 years.

This transaction will generate other substantial public interest benefits as well. Just two examples:

First, we have committed to extend to the entire Time Warner Cable footprint our industry-leading Internet Essentials program that has already connected 1.2 million low-income Americans to the Internet. And our commitment to abide by the judicially vacated Open Internet rules will also extend to Time Warner Cable customers.

More investment, faster speeds, better technology, more Americans connected—even with these compelling benefits, we understand the questions that arise any time two big companies combine. But, objectively, this is not a challenging transaction from an antitrust perspective. Our companies serve separate and distinct geographic areas. We do not compete for customers anywhere. So the transaction will not lead to any reduction in competition or consumer choice in any market.

We also will not gain undue power over programmers. After divestitures, the combined company will manage subscribers representing less than 30 percent of the market. The FCC twice adopted a rule setting a 30-percent ownership cap to prevent a single cable operator from wielding bottleneck control over programmers, and the Federal courts twice rejected it, finding that no cable operator could exercise market power at 30 percent or even higher market shares.

Last, American consumers will enjoy the same choice among broadband providers before and after this transaction. There are no competition issues in that market either.

Mr. Chairman, Comcast represents the American dream. We were founded 50 years ago with 1,200 customers in Tupelo, Mississippi. We have always strived to invest, innovate, and lead our industry with a focus on the consumer. If this contract is approved, it will give us the scale and reach to innovate and compete against our national and global competitors.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Cohen appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

And as per our normal procedure, the full statements—of course, you have a longer statement—will be made part of the record of each of the witnesses.

The next witness is Arthur Minson, executive vice president and chief financial officer of Time Warner Cable. He oversees all of Time Warner Cable's financial functions, including its financial operations, financial planning and analysis, treasury, accounting, tax, mergers and acquisitions, internal audit, and investor relations.

Please go ahead, Mr. Minson.

STATEMENT OF ARTHUR T. MINSON, JR., EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, TIME WARNER CABLE INC., NEW YORK, NEW YORK

Mr. MINSON. Mr. Chairman and Members of the Committee, thank you for the opportunity to speak with you today. I am pleased to be here to discuss the proposed transaction between Comcast and Time Warner Cable.

Let me start by saying that I share David's view that the combination of our two companies will bring substantial benefits to our customers, our employees, and the local communities we serve.

Cable companies operate in an incredibly dynamic marketplace, and we face robust competition from a wide range of sophisticated national and global powerhouses. We compete to develop the most innovative products and services, to attract and retain both customers and employees, and to access funding for our ongoing operating and capital investments. As a result, we must adapt in order to succeed.

As chief financial officer, one of my responsibilities is overseeing our allocation of capital, both human capital as well as investments in our products, services, and physical infrastructure. We have invested billions in capital expenditures and made significant strides in developing and offering innovative new products and services for our customers.

But when the opportunity to combine with Comcast arose, we knew it would be a game changer. By joining our complementary technological strengths and creating greater scale, the transaction will allow the combined company to bring next-generation video, broadband, and voice services to customers faster than either company could do on its own.

Let me provide some examples of the benefits our customers will see as a result of this transaction.

Time Warner Cable recently announced plans to invest billions of dollars over the next three years to upgrade our network. Comcast has already completed similar upgrades to its network. As a combined company, our subscribers will capitalize on Comcast's experience to accelerate the rollout of these consumer benefits across the entire Time Warner Cable footprint.

The transaction will also benefit the business market. Greater scale will enable the combined company to offer more advanced services to our existing small and medium-sized business customers and also offer a competitive alternative to larger businesses in the regional and national marketplace.

Given our limited geographic footprint, we have been hindered in our ability to compete with national telecom providers in serving multiregional and national enterprise customers. After the transaction, the greater coverage of the combined company will encompass significantly more multiregional business locations, allowing us to compete more aggressively and provide better alternatives for businesses than either Time Warner Cable or Comcast could accomplish alone.

Let me conclude by saying that we believe this transaction will create a world-class provider of video, broadband, and voice products and services, resulting in greater competition and consumer choices in this already robust marketplace.

Thank you for the opportunity to appear before you today. I look forward to answering your questions.

[The prepared statement of Mr. Minson appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Minson.

Our next witness is Gene Kimmelman. He is the president and CEO of the Washington, DC-based Public Knowledge. He previously served as director of the Internet Freedom and Human Rights Project at the New America Foundation. He was Chief Counsel at the U.S. Department of Justice's Antitrust Division and is also well known to this Committee.

Please go ahead, Mr. Kimmelman.

STATEMENT OF GENE KIMMELMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PUBLIC KNOWLEDGE, WASHINGTON, DC

Mr. KIMMELMAN. Thank you, Mr. Chairman and Members of the Committee. I am here to represent the Internet users and the TV consumers on behalf of Public Knowledge, which is a nonprofit dedicated to an open Internet, open access to lawful content, and innovative technologies.

I want to note that I worked at the Department of Justice during a previous Comcast transaction, so I contacted DOJ ethics officials who provided guidance on what kinds of information cannot in any way, shape, or form be used. And because I am confident that I can abide by those limitations, I am very comfortable being here this morning testifying.

Now, after years of constant, substantial cable rate increases and poor service, things are finally starting to change—very slowly, a little bit—with new online video streaming services, new mobile devices, tablets, alternative set-top boxes. These are all beginning to deliver consumers innovative new services, more video choices at lower prices, and some new first-run programming.

This has some cable companies starting to think about offering a la carte individual channels, some cable companies talking about going all broadband with their services, some of the top network programmers beginning to think about selling first-run content directly online.

Now, as good as this sounds for consumers, these low-cost choices are anathema to Comcast, which maximizes revenue by keeping consumers in a high-priced, monthly cable bundled XFINITY service package and by charging top dollar for NBCU networks, sports, and cable programming, driving up traditional cable bundle prices for all distributors nationwide. So the transaction could fundamentally undermine these new, wonderful, innovative options consumers are seeing.

Comcast, with its control of video and high-speed broadband, adding Time Warner's systems, could lock in increased high prices for NBCU programming and sports and regional sports and cable programming; expand Comcast's ability to press down prices for other quality programming below market rates, harming quality in the marketplace; increase Comcast's ability to dissuade other programmers from distributing high-quality programs directly online; undermine innovation by controlling equipment and standards and apps, and many consumer interfaces that block other business models in this marketplace; and, finally, could provide favorable interconnection speeds, quality, pricing for XFINITY services compared to all competitors.

These forms of leverage would come from the combined power of what looks almost like a nationwide octopus with tentacles reflecting each of these leverage points, massive tentacles, each individually capable of squeezing innovation in sectors all throughout the distribution chain, and each tentacle able to fill in when the other one is removed. In other words, this proposed transaction consolidates too much power in the combined video and high-speed Internet market, giving Comcast a virtual gatekeeper role for fast Internet-delivered video and innovative new services.

Mr. Chairman, Members of the Committee, the issue before antitrust officials and communications regulators is really very, very simple. If we want more innovative, low-priced, Internet-delivered services, this merger must be rejected.

Thank you.

[The prepared statement of Mr. Kimmelman appears as a submission for the record.]

Chairman LEAHY. Thank you, Mr. Kimmelman.

Our next witness is James Bosworth. He is the chief executive officer of Back9Network, a network focused on the golf lifestyle. Mr. Bosworth previously held high-level sales and marketing positions at a number of leading golf equipment companies, and I would note that in college he led the Seton Hall Pirates to a Big East golf championship.

That might have been a few years ago, but we wanted to remind everybody of that, Mr. Bosworth. Please go ahead.

STATEMENT OF JAMES L. BOSWORTH, JR., CHAIRMAN AND CHIEF EXECUTIVE OFFICER, BACK9NETWORK INC., HARTFORD, CONNECTICUT

Mr. BOSWORTH. Thank you, Chairman. Good morning, Chairman Leahy, Ranking Member Grassley, and Members of the Committee. My name is Jamie Bosworth, and I am the chairman and CEO of the Back9Network, an independent and aspiring 24/7 cable network. I very much appreciate the opportunity to testify before you today.

Based in Hartford, Connecticut, Back9Network is an independent network focused on providing golf lifestyle programming that attracts a larger, more diverse audience to the game.

Americans spend $177 billion on golf lifestyle each year, and our programming centers on this market. We are tremendously proud of what we have accomplished over the past two years: state-of-the-art production facilities, job creation, and the fastest-growing online audience in golf.

But when it comes to getting on the air, our story is very similar to that of other truly independent networks. We are up against a distribution system that stifles innovation and consumer choice. It is dominated by a few large players.

We are concerned that this merger may make a bad situation even worse. True independent networks like ours, with zero affiliation with any other channels or distributors, rely solely on advertising revenue in the early years. Therefore, there are only two requirements for a successful cable launch: One, the ability to produce or require quality programming; and, two, initial carriage on one of the four largest video distributors: Comcast, DIRECTV, DISH Network, or Time Warner Cable. They are the only distributors that have the ability to reach the viewers in the top markets that the advertisers want and demand.

But it is not that simple. Satellite providers have severe bandwidth limitations and are hesitant to launch new channels. So today new channels need permission to compete from one of the two cable providers—Comcast or Time Warner Cable. And because of the Comcast-NBCUniversal merger, Comcast vertical integration makes it one of the largest content providers as well.

Now, if you marry that vertical integration with distribution in 10 of the top 10 markets, 23 of the top 25 markets, and 37 of the top 40 markets, then suddenly Comcast alone has tremendous power to decide what gets on the air. Let me share with you what that means for our channel and for other aspiring independent networks. It does not matter that our programming has been praised by cable executives. It does not matter that we are offering an attractive value proposition. We are competing directly with a Comcast-owned network, the Golf Channel, and that gives Comcast every incentive to keep us off the air.

More tellingly, productive conversations that we had with Time Warner Cable stalled as the merger was announced. We would not worry about Comcast's vertical integration if there were effective competition in the distribution marketplace. We would put our programming up against the Golf Channel and let the audience decide what is compelling. But in the real world, new, independent networks need to be in the top 10 markets, and that means you need to be in Comcast and Time Warner Cable.

In conclusion, the choice to testify today was very difficult because we want nothing more than to be in business with Mr. Cohen and Mr. Minson. But it is important that we be here. We are fighting for the right to exist—for our investors, for our employees, and, most importantly, for the consumer. If this merger goes through without effective, enforceable conditions that force Comcast to treat new channels fairly, we are concerned for both channel innovation and consumer choice in the future. But we remain cautiously optimistic. We hope Comcast will be true to its legal obligation and not discriminate based upon its ownership of the Golf Channel. And we hope that Comcast will judge us on the merits of our content and on our carriage proposal. However, right now they are both judge and jury.

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

[The prepared statement of Mr. Bosworth appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Bosworth.

Our next witness, Richard Sherwin, is founder and CEO of Spot On Networks, LLC. That is a provider wireless telecommunication for the multifamily market. He has, as I understand, 30 years of experience in wireless communications, radio frequency transmissions, including significant experience with wireless and wired telecommunication ventures in Europe.

Mr. Sherwin, thank you for coming, and please go ahead.

STATEMENT OF RICHARD J. SHERWIN, CHIEF EXECUTIVE OFFICER, SPOT ON NETWORKS, LLC, NEW HAVEN, CONNECTICUT

Mr. SHERWIN. Thank you, Mr. Chairman, thank you, Senators, for the opportunity to present our experiences with both Comcast and Time Warner.

Spot On has been serving the multifamily residential community for a decade, as you mentioned. We provide high-quality, high-speed WiFi services to buildings which otherwise would have only limited and more expensive choices for high-speed broadband. We believe in doing well by doing good.

The multifamily residential community currently represents nearly 35 percent of the United States population. This segment includes a large percentage of affordable housing. The population residing in these communities uses wireless communications almost exclusively for all their communication needs. This is a big change because of the demographic in the multifamily community.

Spot On has been in the forefront of innovative design approaches, new technologies, and more efficient ways to serve these multifamily communities. And although we have spent millions of dollars and a decade of hard work building these businesses, we are still a David to the Goliaths of the cable companies with whom we often compete.

I am proud to say that Spot On's services and those of our WiFi competitors, our brethren, are generally 30 percent less costly than services provided by the dominant cable providers, and Spot On provides unique features not otherwise found in other wired or wireless access technologies or provided in off-the-shelf or cable company-supplied wireless routers that merely redistribute a signal.

The problem of serving multifamily communities is further exacerbated by green initiatives, energy conservation in buildings which dictate the choice of building materials. These materials prevent cellular signals from penetrating inside these buildings and decrease the effectiveness of wireless to reach this segment of the population. These problems even present public safety concerns because not only are normal voice calls deterred and data access limited, but 911 calls are, at best, sketchy.

Communitywide managed WiFi service can not only resolve these service issues but also deliver significantly larger capacity to residents inside these buildings. We bring high-speed broadband to a building, relying on a big broadband supplier, often a cable operator like Comcast, sometimes a fiber operator, as the source of the backhaul broadband.

It is important to understand how important our service and the service offered by similar companies to ours is to competition. Usually the cable company that supplies us also provides retail cable services and content in that particular area. Frequently, the cable company is the only retail supplier to that area. Once we secure a broadband backhaul, we build our own facilities-based network inside the building, making use of the FCC-allocated WiFi spectrum and offer service to users. These users use our distributed wireless network to do all sorts of things from social networking, video streaming, smart building applications, email, et cetera, and now even for voice calls.

We need bandwidth to the buildings that come from companies like Time Warner, Verizon FiOS, Comcast Business, and Charter. If we could not acquire that broadband from a large broadband provider, for whatever the reason, we would be basically out of business. Competition would be squelched. There would be no innovation.

Comcast has refused to sell us broadband in many areas of the country over the last 12 months, although prior to that they had continued to do so. So we think conditions need to be placed on this kind of a merger in which wholesale broadband is available to providers such as us. And we also believe that in certain markets, because Comcast will be the only provider of high-speed broadband service in the market, that they should be prohibited from using their financial power to exclude alternate high-speed Internet providers from offering competitive high-speed wireless Internet access in multifamily residential communities.

Thank you very much for your time.

[The prepared statement of Mr. Sherwin appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Sherwin.

Christopher Yoo is the John H. Chestnut Professor of Law, Communication, and Computer & Information Science at the University of Pennsylvania. He is also the founding director of UPenn's Center for Technology, Innovation and Competition. Professor Yoo's research, I am told, focuses on law and technology, particularly the regulation of electronic communications.

We thank you for taking the time to be here, Professor.

Please go ahead.

STATEMENT OF CHRISTOPHER S. YOO, JOHN H. CHESTNUT PROFESSOR OF LAW, COMMUNICATION, AND COMPUTER & INFORMATION SCIENCE, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL, PHILADELPHIA, PENNSYLVANIA

Mr. YOO. Thank you to you, Mr. Chairman, Ranking Member Grassley, and the Committee for inviting me. I am happy to have the opportunity to offer my views on the impact the proposed merger between Comcast and Time Warner Cable would have on consumers. My written submission contains my complete testimony. I would like to focus on the two issues the Committee has identified: the impact of the merger on the market for traditional cable channels, such as ESPN, the Disney Channel, and the like; and the impact on the market for broadband Internet access.

First, with respect to the distribution of traditional television networks, established principles of antitrust and communications law indicate that the merger is unlikely to harm consumers. The lack of any overlap in the areas served by Comcast and Time Warner Cable means that the merger should not affect the prices that subscribers pay for cable television subscriptions. In short, consumers would have the same number of choices of multichannel video providers the day after the merger as they did the day before.

Two major court decisions in 2001 and 2009 also rejected arguments that companies that controlled only 30 percent of nationwide cable subscribers could inflict anticompetitive harm on cable networks. In light of the merging parties' commitment to reduce their holdings so that they control no more than 30 percent of the national market, these court decisions represent a potentially insuperable obstacle to claims that allowing the transaction to proceed would adversely affect this market.

Moreover, those court decisions were issued in a different era when the multichannel video market was much less competitive. Since 2009, the costs of program acquisition have risen substantially faster than cable rates as program providers have driven increasingly tough bargains. At the same time, the number of options for video distribution has continued to increase as Verizon's FiOS and AT&T's U-verse networks have expanded their customer bases and Internet-based systems such as Netflix, Amazon, Hulu, Google, Roku, and Apple have emerged as important video platforms.

This industry is just not structured in a way that would make anticompetitive harm in the market for video programming likely, and the residual concerns may be addressed by the extensive program carriage and access rules that the FCC has developed to ensure that the entire industry has sufficient access to video content and distribution. The regulatory agencies have repeatedly recognized that such problems are better handled through general rules applicable to all industry players than through one-off conditions that bind only merging parties.

Turning to the market for broadband Internet access, the lack of any overlap in the areas served by Comcast and Time Warner Cable again makes it unlikely that the merger would affect the prices that subscribers pay. In addition, the structure of the market for broadband Internet access makes competitive harms less likely than in the market for cable television. By my count, the merged company will control 32 percent of the nationwide broadband subscribers, but more importantly, the market for broadband Internet access is really undergoing dynamic change. AT&T's Project VIP is expanding the reach of its DSL network and increasing download speeds to 45 megabits per second, and even to 75 and 100 megabits per second in substantial areas of its footprint. Google is extending its fiber initiative beyond Kansas City, Provo, and Austin to 34 additional cities. At the same time, wireless broadband providers are racing to build out LTE, which typically delivers an average of 12 megabits per second in a world where viewers only need eight megabits per second to view high-definition television. LTE Advanced promises to deliver speeds of 150 to 300 megabits per second.

In addition, interconnection in the Internet space is fundamentally different from interconnection in the cable television system. In cable television, the failure to come to an agreement means subscribers cannot receive content. With respect to the Internet, multiple ways to reach consumers always exist. In fact, Comcast maintains 40 settlement-free peering relationships and 8,000 transit relationships, which ensures that disagreements over price do not prevent anyone from reaching access to content. And in any event, Comcast will remain bound by the open Internet Order via its prior commitments, and that commitment would be extended to Time Warner Cable.

In closing, it bears keeping in mind how dynamic and unpredictable this sector has been. Consider February 29, 2000, when Time Warner was before this Committee to discuss its merger with America Online. What many predicted would be the end of history ended up being the end of $200 billion of Time Warner shareholder value. In addition, a few short years ago, many argued fiber-to-the-home would soon consign cable to the dustbin of history. These episodes underscore how easy it is to hypothesize problems that never materialize and how easy it is to overlook how innovation and willingness to undertake commercial risk can create greater consumer benefits than anyone could have anticipated.

[The prepared statement of Mr. Yoo appears as a submission for the record.]

Chairman LEAHY. Thank you very much, and your full statement will be part of the record.

Mr. Cohen, obviously you have heard this, that cable and broadband customers, many are concerned about how the merger will affect what they are going to pay. That is as much as any issue we are hearing on the Hill.

You said that you would be able to compete more effectively as a result of increased scale. You also said, "We are certainly not promising that customer bills are going to go down or even increase less rapidly." So if they are not going to go down, they could increase, the merger will reduce the number of competing companies in both cable TV and broadband Internet, how specifically does it help the consumer?

Mr. COHEN. Mr. Chairman, let me briefly address both halves of that question. I am very careful about what I commit to and what I promise. I can make you and the Members of this Committee one absolute commitment, which is that there is nothing in this transaction that will cause anyone's cable bills to go up. I have a nasty little habit of telling the truth, and when I was asked, "Are people's cable bills going to go down?" I said, "I cannot make that commitment." But between the synergies in this deal and whatever marginal additional leverage we might have in programming and equipment supply purchasing, whatever economic benefits are generate will ultimately inure to the benefit of consumers.

And let us face it. Consumers today are in the driver's seat. Both for broadband and, in particular, for video, there are a vast number of competitive choices. And that is why the scale that we are trying to get here to stimulate investment to provide a better experience for consumers is so important to us and to the American consumer.

So I am just going to tick off the litany of what consumers will get as a result of this transaction: faster broadband; greater network reliability and security; better in-home WiFi; access to a more ubiquitous national WiFi network; access to Comcast's revolutionary new X1 video viewing experience; access to greater on-demand choices, 50,000 on-demand choices; access to Comcast's industry-leading TV Everywhere experience where people can view video live and on-demand on portable devices inside the home and outside the home; the protections of the no-blocking and non-discrimination provisions of the open Internet order; and more generic public interest benefits like extension of the Internet essential program to low-income customers of Time Warner Cable; extension of our diversity and community investment commitments across the Time Warner Cable footprint. So I think consumers are the big winners in this transaction.

Chairman LEAHY. You have also said that you will apply the FCC's open Internet rules to Time Warner Cable until 2018. Will you do it beyond 2018?

Mr. COHEN. I think the answer to that is that we will be doing it beyond 2018 because Chairman Wheeler and the FCC have already started a proceeding to put in place industrywide open Internet protections. And I cannot imagine that the Commission is not going to have those rules in place well before 2018.

Chairman LEAHY. Now, Mr. Minson, you must be expecting this question, but your CEO will get $80 million for his two months of work as CEO before he agreed to sell the company. You will get $27 million if the merger is approved for less than a year in your position.

Now, do these golden parachutes help your shareholders?

Mr. MINSON. Let me, Mr. Chairman, give you——

Chairman LEAHY. And you knew you would be asked that question, so go ahead.

Mr. MINSON. Let me give you our perspective on how we make operating and strategic decisions at the company. For us, the North Star for us is what is best for the consumer, and we concluded that this deal is far and away the best outcome for our consumers.

The reason for that is—in our marketplace a few things really matter. Products matter, innovation matters, and speed matters. And I think as a result of this deal, you will have positive outcomes in all three areas.

Chairman LEAHY. And the golden parachutes? Not wanting to interrupt by going back to my question.

Mr. MINSON. As it relates to the overall compensation packages, I would say for transactions of this size and for transactions this complex, I think you will find that they are in line.

Chairman LEAHY. You may find that not all consumers agree, but it is what it is.

Mr. Bosworth—if I might just take a moment for one more question.

Senator GRASSLEY. You take as long as you want. You are Chairman.

Chairman LEAHY. No, no. I want to give everybody else a chance. But——

Senator GRASSLEY. You are fair.

Chairman LEAHY. Thank you. Mr. Bosworth, I am intrigued by what you discussed about your network. I am not a golfer, but the fact that you could have a 24-hour network and people want it, that is pretty amazing. You have worked very hard doing that. I understand your frustration that you cannot get carried on cable or satellite.

Why is it critical for you to be carried by Comcast? Could you simply operate as an online video service?

Mr. BOSWORTH. Thank you, Senator. That is actually a great question, and while online content and over-the-top content is increasing, the average American still watches 20 times more video content via television, and the advertising rates mirror that as well.

Chairman LEAHY. Thank you very much. I will have other questions for the record. I am going to be leaving soon, but I will come back, and Senator Klobuchar will be chairing. We will keep this record open until the end of the week for others who have questions or statements.

[The questions of Chairman Leahy appear as submissions for the record.]

Chairman LEAHY. Senator Grassley.

Senator GRASSLEY. And also after I ask my questions, Senator Lee is going to take over as Ranking Member of the Subcommittee.

First of all, I thank all of you for coming here. I am going to ask two questions first of Mr. Cohen, but I want you others to listen because at the end of my questions, I will give you an opportunity to respond or add to, if you want to, but I am not going to call on you. But that is part of my program.

Mr. Cohen, if the merger is approved, Comcast-Time Warner Cable would become the largest cable television and IT service provider in our country. Its size would give the company increased ability to demand more favorable terms and rates from content providers and equipment manufacturers. What effect will this—it is really three parts, so listen to all three parts. What effect will this have on smaller TV and Internet providers? If content providers are forced to charge Comcast-Time Warner significantly less, will they end up charging smaller providers more? And will consumers in places like my State of Iowa, which is not served by Comcast, pay higher TV and Internet prices because of the merger?

Mr. COHEN. Okay. I think I only got two parts, but I think I can cover that.

Senator GRASSLEY. Okay.

Mr. COHEN. So let me do two parts to the answer, and I think I can merge them all together, which is—we currently have 22 million customers, Comcast does, and we are the largest cable company at 22 million customers. And I wish I could represent to you that I thought by moving to 30 million customers we would generate all this wonderful leverage and be able to really negotiate harsh programming deals, bring down the costs of programming, bring down the cost of equipment. But I do not think that is the reality. Programmers have inordinate market power and attractiveness of their content. I will just give you one statistic that I think drives this home. So this is for Comcast, the largest cable company in the country.

Over the last decade, our programming costs have gone up 98 percent, while our cable rates over that period of time have gone up basically at half that rate. So it shows you the balance of power in the market where programmers have so much more power at the negotiating table. So I do not think you are going to see dramatic shifts in programming costs or in equipment costs as a result of this transaction. And, by the way, that is one of the reasons why I say I just cannot guarantee that I think cable prices are going to go down as a result of this transaction because programming costs are our number one cost input in our business model.

But for whatever we are able to move the needle even marginally in terms of negotiating better programming rates for our company, better equipment costs for our company, which will inure to the benefit of our customers, I think any sound economic theory and any economist will tell you that that does not have an impact on what other cable companies are paying for their program or equipment. And the easiest way for me to explain this, since I am not an economist, but as it has been explained to me, is that if you posit that that is the case, that is, if we get a programmer to drop their costs to us by $100, that they will go out and try and collect that $100 from another cable provider, that means that they have left $100 on the table with that other cable provider; that is, they negotiated the deal and they said, "We do not need that last $100 because we are getting it from Comcast." And as soon as they do not get it from Comcast, they have to go back and say, "Oops, we need another $100."

In fact, programmers and equipment manufacturers will negotiate to get the last dollar that they can from everyone who they are negotiating against, and this is a form of what I believe is called "adjacent market economic theory," that there is no impact on what a programmer or an equipment manufacturer would charge to another multichannel video provider based upon the negotiations that are taking place with Comcast.

Senator GRASSLEY. Mr. Kimmelman, I see you want to respond.

Mr. KIMMELMAN. If I may, Senator. That is a nice economic theory. I am sure programmers charge as much as they can now, but with an additional eight million subscribers or 10 million subscribers from Time Warner, Comcast will be in the driver's seat. You are either on their system serving more than 30 million customers, or you are not. Will that impact the price? You have got to believe it will. If that price goes down for other programmers, they could reduce the quality or they could try to pass it along to other vendors.

And even if Mr. Yoo has some interesting statistics about other players in the market, this is a highly concentrated transmission market. There are very few players in any community who can offer Internet or a big package of video programming.

So the squeeze will come from Comcast. It is logical. They will want to save money. I commend them for trying to do that. The ramifications will cascade through the economy and could lead to significant price increases for others.

Senator GRASSLEY. Professor Yoo.

Mr. YOO. We are at a seminal moment in the history of the television industry. Looking at traditional video in some ways masks the fact that it is losing subscribers, and what we are seeing is a transformation to online video systems that is changing the economics, changing who the market leaders are, and changing what the future outcomes are likely to be.

We are also fortunate to live in a world where 98 percent of American households have three choices in providers, which is the best in the world. I think we are at a moment where things are going to change whether the companies like it or not, and we need to allow them to respond to those changes in the environment.

Senator GRASSLEY. Okay. Mr. Sherwin.

Mr. SHERWIN. Senator, you raised the issue a little while ago, the impact on Internet service providers, and I would like to address that for the moment. I mentioned to you in my opening that Comcast has refused to sell to us for the last year. When they are the only provider of high-speed broadband in a specific area, a geographic area, it makes it very difficult for us to provide services. In effect, then what happens is the competition is limited.

My suggestion to you would be that we find some compromise position in which a condition is imposed where wholesale broadband is available to Internet service providers, which would address the issue you raised on the Internet service provision.

Senator GRASSLEY. I think you go ahead, Mr. Cohen, and then I am not going to take time of the Committee with a second question. I will submit it for answer in writing.

Go ahead.

Mr. COHEN. Just a brief response to Mr. Sherwin. I actually think Mr. Sherwin's testimony sets forth in a pretty compelling fashion why there is no need for such a condition in this transaction. He points out that he has Internet interconnection agreements with a wide variety of companies—Comcast, Time Warner Cable, Verizon, AT&T, Level 3, and a number of other companies. I know that today—and I am just not aware of any refusal on the part of Comcast to do business with Mr. Sherwin. I know that today we have about a hundred commercial agreements with Mr. Sherwin in a hundred different buildings in America, and that in all of those cases there is at least one other option that Mr. Sherwin has to obtain services. And in some of those buildings, there may be three or four other options for him to be able to pursue.

So the issue of wholesale unbundling of our network is an issue that was vigorously raised in the NBCUniversal transaction, one which we vigorously fought in that transaction, and one in which the Department of Justice and the FCC concluded that the market was sufficiently dynamic and competitive that it was not going to compel wholesale unbundling of our Internet service.

[The questions of Senator Grassley appear as submissions for the record.]

Senator GRASSLEY. Thank you.

Senator KLOBUCHAR [presiding]. Thank you very much.

I know Senator Grassley is going to go and vote, and if you noticed that there are not many people left here, it is because people are coming in and voting. It is not like they have left for the day.

I want to start with you, Mr. Cohen. You talked about some of the benefits you foresee coming from this merger. Would those things not happen if there was not a merger?

Mr. COHEN. So I think the answer, Senator, is that those things are going to happen faster and with more certainty than they would occur in the event there was not a merger. And I was really talking about the immediate consumer benefits. The reason those benefits have not occurred in the Time Warner Cable footprint is because of the difference of scale between Comcast and Time Warner Cable, and it is the scale that leads to the investment that leads to the rapid deployment of those benefits.

And when we move beyond the immediate, and when we look at our competitors and what they are investing and innovation that they are rolling out, we believe going forward in the future that in the absence of comparable scale to the national and global competitors that are our real competitors in this market, our customers will fall behind. We will not have the choice, the innovation, and the technology to be able to offer them in the future.

Senator KLOBUCHAR. Mr. Bosworth, I know the environment for independent programmers is not that easy right now. I have heard from many of them. So what is it about this merger that you think will make it harder for independents? And why can't you simply go to other cable providers and satellite providers to get carriage from them? Why would you need Comcast or Time Warner? I think I know the answer.

Mr. BOSWORTH. Thank you, Senator. Like we said, the combined merger would put them in 27 of the top 30 markets, and young networks need to generate their revenue through advertisers, and the advertisers demand that we be in those large markets.

Senator KLOBUCHAR. Well, Comcast brings up Apple and Amazon and Netflix as competitors and other outlets programmers can go to. Are these viable options for Back9Network?

Mr. BOSWORTH. It is increasing but yet still the average American watches 20 times more video via television than they do online.

Senator KLOBUCHAR. Mr. Cohen, what competitive pressures are there to keep Comcast from dictating terms and creating high hurdles for programming like Mr. Bosworth's?

Mr. COHEN. Okay. So three answers, if I can.

First of all, Comcast is probably the most independent programmer-friendly multichannel video distributor in the marketplace. We carry 160 independent programmers. Six out of every channels that we carry are independent programmers. In the last three years alone, we have provided expanded carriage to 120 independent programmers, and we have launched five new, independent programming networks, including four that are minority owned and minority controlled. And there have been numerous independent networks that have publicly expressed the views that I am expressing here today about our independent programmer friendliness.

Number two, the primary legal protection for an independent programmer who wants to be carried or the program carriage rules that the FCC has, those rules prohibit us from discriminating against a provider who wants carriage on our systems. So there is——

Senator KLOBUCHAR. But there have been some challenges, right, with——

Mr. COHEN. Well, there have been a handful of challenges that we have tended to prevail on because there is an attitude—or there is—look, I do not begrudge—I do not begrudge independent programmers' efforts to get carriages. You said in your question it is tough to get carriage for any new networks today. By the way, Comcast—talk about our vertical integration—we have dropped a network in the last three years because we had trouble getting carriage elsewhere for that network.

So it is tough to get carriage deals, period. The space is very populated, and it is very difficult to be able to do that.

But we are—we try as hard as we can to have reasonable and rational discussions with independent programmers. And by the way, I would include the Back9Network in that category of networks that we are talking to and that we are trying to reach arrangements with. There was a meeting just this week between our program affiliation group and the Back9Network, which was scheduled well before we knew that Back9Network was going to be a witness at this hearing.

Senator KLOBUCHAR. Do you want to get to the third reason?

Mr. COHEN. Right. And the third reason is that we carry these networks because we are always focused on the consumer. So if you have compelling content and you can make the case that our consumers want to watch this content, we will carry it.

Senator KLOBUCHAR. Okay. Thank you very much.

Mr. COHEN. Sorry.

Senator KLOBUCHAR. I do not want to miss the paycheck fairness vote.

Mr. Kimmelman, do you want to respond to that? And then I will be turning it over to Mr. Franken or Mr. Lee.

Mr. KIMMELMAN. I will just say very quickly this is the real scale question, as the scale issue raised before about acquiring Time Warner. One could say with $45 billion you could do a lot of those other things without having to buy up the second largest company in the market.

But here on the scale side you cannot launch, you cannot get out there, as Mr. Bosworth said, unless you have advertisers willing to support you. They will only support you if you have enough distribution. So it is a no-win game, and the problem particularly, having been involved in crafting those original provisions more than 20 years ago, I throw up my hands, because when you are vertically integrated and you have a golf channel, and someone else comes along, how do you judge whether it is a fair way of putting someone on or not, whether—we know they have a self-interest in their own channel. This becomes almost an impossible task. It has been extremely difficult for the FCC. And so I question whether those rules can really do the job.

Senator KLOBUCHAR. Thank you. Do you think those rules then should be changed? Or do you think as the Justice Department considers this merger that that should be part of the consideration, in addition?

Mr. KIMMELMAN. Senator Klobuchar, I think it is appropriate for both reviewing agencies to consider all of its existing safeguards as they take on a new transaction to determine whether the old ones work, because to just reapply them without understanding whether they work would make no sense whatsoever.

Senator KLOBUCHAR. Okay. Very good. I am going to turn this over to Senator Lee, and then Senator Franken will be next. Thank you very much.

Senator LEE [presiding]. Thank you, Madam Chair, and thanks to all of you for being here today.

Mr. Cohen, why don't I start with you? As I referenced briefly in my opening statement, I have heard some concerns related to content, related to the idea of one company controlling a significant share of both Internet and video distribution. So, you know, whether with respect to politically affiliated networks or content or otherwise, I have heard some concerns expressed that the emerging Comcast, the post-merger Comcast, might have the incentive or even the predilection but certainly an enhanced capacity, due to its larger size, to discriminate against certain types of content, including political content.

How would you respond to those concerns?

Mr. COHEN. So we started talking about this just now, and I think the easiest way to directly respond to that question is to say that it is an important question, but it is a question that is probably the most litigated question in the telecom space in the past 15 or 20 years, and I say that because the FCC went through two lengthy proceedings in the late 1990s and the first decade of the 21st century to determine what level of cable ownership, horizontal ownership, would raise a concern that either the cable company could exercise monopsony power—that is, extract unfair pricing from a programmer—or could serve as a bottleneck to prevent a programmer from reaching the American consumer. And in both cases, the Commission established a 30-percent horizontal ownership cap saying that if you are over 30 percent, those risks were present; but if you were not over 30 percent, those risks were significantly mitigated.

In both cases, the Federal courts overturned the horizontal ownership cap, concluding that the FCC record was arbitrary and capricious, that the facts did not support a 30-percent cap, and that, therefore, the law did not support it either; and that, in fact, the portion that the cable company with 30 percent does not control is known as the "open field"; that is, it is known as "the rest of the public" that you can get to. And what the Federal court said was that a 70-percent open field was considerably larger, considerably greater than what a new programmer would need to be able to be launched and to be able to be viable.

So in this transaction, we announced on day one that we were prepared to divest about three million customers to bring us underneath 30 percent of the total MVPD market. And that is even though by law there is no 30-percent cap, but that 30-percent number is a bit of a hot-button issue for those who watch this space. And by being under 30 percent, we believe that we have a compelling argument that the concerns that you are addressing in your question would not be significant concerns in this transaction.

Senator LEE. Mr. Kimmelman, how do you respond to that?

Mr. KIMMELMAN. Well, as Professor Yoo said, things have changed since those rulings, and those were about generic rules. Here we have a specific transaction with specific ownership, and very importantly, a company with substantial vertical integration in programming, with NBC network, NBC cable programming, sports, regional sports. So they have a variety of different forms of leverage here that are not simply addressed by this simple horizontal issue. And I would say that the thing that has changed the most since those rulings, too, is the Internet, is the growth of high-speed Internet delivery. As we have seen in most places, we do not get much head-to-head competition with two, three, five cable operators or multiple phone companies coming in. It just has not happened. So the Internet has become the vehicle for this new potential form of competition, and with that, they have as many as 50 percent of the really high-speed customers in the country. That could be a chokehold that should be looked at.

Senator LEE. So if I understand you correctly, you are saying that Mr. Cohen's response does not adequately take those two factors into account: number one, the effect of the changes in the Internet market; and, number two, the relationship between Comcast and NBC. Is that—am I——

Mr. KIMMELMAN. That is correct. Yes, Senator.

Senator LEE. Okay. Professor Yoo, would you care to chime in on that, especially since your name was invoked there?

Mr. YOO. Of course. Thank you. To take a historical perspective, people are very concerned about vertical integration. If you look at the facts, vertical integration has been dropping like a stone for 25 years in the traditional cable industry. The industry has below 10 percent vertical integration, and it continues to decrease. And the concerns that this is a growing problem just are not borne out by the facts.

Unlike Mr. Kimmelman, I would say that the Internet cuts the other way. It makes it less likely that people have trouble getting their message out. One of the great benefits of the Internet is people who want to speak can speak, and the transformation that is happening on the Internet, on video, is that it is becoming a video-on-demand world, where people request content. Instead of getting what someone else thinks they should see, people decide for themselves, and actually that has been enriching the environment in ways that are transformative. If you want to see, look at our kids and see how they are doing it. It is just a completely different world.

Senator LEE. Okay. I am sure I am going to have more questions later and will want to follow up on this, but my time has expired. We will turn the time over to Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. I want to thank Chairman Leahy for holding this hearing.

What we are talking about today is a $45 billion deal that would combine the Nation's biggest and the Nation's second biggest cable companies and the Nation's biggest and the Nation's third biggest Internet service providers.

There is no doubt that Comcast is a huge influential corporation. I understand there are over a hundred lobbyists making the case for this deal to Members of Congress and our staffs. But I have also heard from over 100,000 consumers who oppose this deal, and I think their voices need to be heard, too.

As members of the Senate Judiciary Committee, we are here to question whether this deal is good for competition and whether it is in the public interest. I am against this deal because I believe it does not meet either test. I believe this deal with result in fewer choices, higher prices, and even worse service for my constituents.

Comcast has argued that there is nothing to worry about here because it does not compete with Time Warner Cable in any zip code. Mr. Cohen has told reporters, "There is absolutely no competitive overlap between the two companies—none." What he is really saying is that these two companies, each of which controls many of its own local markets, want to become one larger company that controls the national market. The new Comcast would operate in 19 of the Nation's 20 biggest markets, 27 of the top 30, as Mr. Bosworth said.

That kind of expansion has a serious impact on competition. For example, when Comcast wanted to acquire NBCUniversal, Comcast's CEO told this Committee not to worry about it because there were still other "robust distributors"—and he specifically named Time Warner Cable—which would prevent Comcast from setting anticompetitive prices for NBC content.

The point was that Comcast could not get away with that sort of behavior because the distributors, including Time Warner Cable, could not stand for it, and they could go to the FCC to complain about it, too.

Later in the hearing, Comcast's CEO also assured us, "We are not getting any larger in cable distribution here."

Well, if this deal goes through, Comcast will become larger in cable distribution, and if this deal goes through, Comcast never again will have to negotiate with Time Warner Cable when it comes to setting prices for NBC content. And NBC content, everyone should remember, is 20-some networks.

Comcast cannot have it both ways. It cannot say that the existence of competition among distributors, including Time Warner Cable, was a reason to approve the NBC deal in 2010 and then turn around a few years later and say that the absence of competition with Time Warner Cable is a reason to approve this deal.

Mr. Kimmelman, what do you make of Comcast's argument that they do not compete against each other at all? Doesn't that really underestimate the anticompetitive implications of this deal?

Mr. KIMMELMAN. Absolutely, Senator Franken. It is true they do not overlap geographically, but that is not the entire competitive analysis either for the Department of Justice or for the Federal Communications Commission. The question here is: Are there ways in which they can leverage unfairly? Do they have excess market power? Can they drive up prices? Can they harm quality and innovation? And there are numerous ways in which they can do that?

If Time Warner can no longer discipline their pricing for NBC programming, prices will go up there. They probably will go up across the entire distribution chain, harming consumers everywhere.

Having the additional leverage of Time Warner as part of the Comcast family gives them enormous power over how the Internet develops the ability to offer new, innovative services. What devices, what consumer interfaces work? If they have almost half of the customers in the country, that is what manufacturers will make: products for that half, meet their specifications. If they continue to want that to be through a bundled, high-priced set of services, I am sure it will be.

These are all enormous dangers that have significant competitive impacts and tremendous harm for consumers.

Senator FRANKEN. Well, speaking of bundled services, we will get to that later. I am out of time.

Mr. Chairman, I very much hope we will go to a second round.

Senator LEE. I am confident we will.

Senator FRANKEN. Great. Thank you.

Senator LEE. Thank you, Senator Franken.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman.

Robert Bork taught us that the overriding objective of antitrust law is to promote consumer welfare. Antitrust enforcement may seek to safeguard robust competition, but it must not become a tool to advantage or disadvantage particular competitors.

I know that some of my friends here today have never met a merger that they liked. But too often government intervention in such matters risks harming consumer welfare and innovation by protecting insufficient competitors from market forces.

Absent clear evidence of market failure, consumers benefit when the government allows free markets to allocate resources in the most efficient manner possible. The markets for both video services and broadband Internet are dynamic and innovative, with new entrants and evolving technologies. Government regulators must be especially careful not to intervene unwisely in such technologically dynamic markets.

Still, the scope of the proposed merger between Comcast and Time Warner raises issues that deserve attention, and I thank all the witnesses for being here today to discuss this matter.

Let me ask you this, Professor Yoo. I would like your view of transaction from the supervision of antitrust law. After all, although the FCC has a broader mandate to examine whether the merger serves the public interest, the Justice Department must look, in my opinion, solely at whether the transaction is consistent with antitrust law. According to your legal analysis, would this merger create for either video or broadband an industry structure resulting in anticompetitive harms under established antitrust or communications law? And, in particular, can you speak to the relevant markets at issue in that analysis?

Some critics stress that the combined company would control 50 percent of high-speed Internet access, a majority of cable subscribers, and 30 percent of—no, MVPD customers. But are those the markets relevant to antitrust analysis in a video space that includes satellite providers and Internet video platforms, or in a rapidly evolving broadband space that includes enhanced DSL fiber, DSL fiber and advanced LTE services?

Now, that is a lot of questions for you, but I just thought I would ask them anyway.

Mr. YOO. Well, they are insightful questions, so I thank you for them.

The people who have cited a number of close to 50 percent market share for the merged entity have not taken into account the latest technological advances that are going on right now. DSL is rapidly improving and deploying a vast array of new technologies, including IP DSLAMS and vectoring and a bunch of technical jargon which I will not bother the Committee with. But what is happening is AT&T is rolling out a new 45-meg service across 80 percent of its footprint and enhanced to 10-meg in some areas, and we are not the only country. The U.K., Germany, a lot of different countries are on this strategy.

And when you start to see that, you see that DSL is actually coming back from the dead, and the facts say that where DSL has not enhanced itself, yes, it is losing market share to cable. But in the areas where AT&T has upgraded its network, it is actually taking subscribers from cable.

And so we see a market where the only way you can get the 50 percent number is if you pretend that DSL is not a competitor. The cable companies who are losing customers to DSL right now would beg to differ because the fact for them is they are competing. This is the exact kind of dynamic competition which we want, which is cable got better, but even as of today, the markets are not structured in a way that any anticompetitive effects are likely under conventional antitrust analysis. But what antitrust law will also tell you is what matters is not what is happening today, but it is what is going to happen in the future that really should drive the analysis, and that world is going to become even more competitive than the facts today would lead you to believe.

Senator HATCH. Well, thank you.

Now, Mr. Cohen or Mr. Minson, whoever wants to answer it, we all know the broadband marketplace is dynamic. Five years ago, many believed that no one could compete effectively against the Bells. Today some suggest that no one will be able to compete effectively against cable in providing broadband.

What are the competitive conditions you now face? And how do you see the broadband marketplace evolving in the near future? Either or both.

Mr. COHEN. I will go first, Artie.

So thank you, Senator, and I think we see a fiercely competitive broadband marketplace across our entire footprint. In each of the top MSAs in the country, there are double-digit broadband competitors in that space, and I will give you—just to look at the combined footprint of Comcast and Time Warner Cable, in 98.4 percent of that footprint, the consumers have a choice between Comcast, Time Warner—Comcast or Time Warner Cable and at least one top-10 ILEC. So that is in 98.4 percent of our combined footprint.

As Professor Yoo just pointed out, there is a virtuous investment cycle that is occurring here. We started—we launched, the cable industry launched cable model service. That stimulated the Bells to take DSL off the shelves. It existed for more—they invested in it and launched that product. We invested more in cable modem service and made cable speeds much faster. That led the Bells ultimately to move to fiber-based, fiber to the home, fiber to the neighborhood, FiOS or U-Verse or other Bell products that are like U-Verse.

That led us to invest more and increase speeds. Those new speed announcements that I announced today, 13 speed increases in 12 years, are competitive responses to the Bells offering faster and faster Internet service.

As Professor Yoo pointed out, that led the Bells to put to the side old DSL and invest in modern DSL technology to have more speeds. We announced this transaction, and the CEO of AT&T immediately said that this is going to create a heightened sense of urgency for us to invest even more in being able to respond to this particular transaction.

So in the end, consumers are the big winners. In the broadband space or in the video space, it is really good to be a consumer today because of this investment cycle.

Senator HATCH. Well, thank you.

Mr. MINSON. What I would add is that in my opening remarks I noted that we have spent billions of dollars over the last several years in capital expenditures, and a very high percentage of that goes to increasing capacity in our broadband plant. We have increased speeds from 3 Mbps to 100 Mbps across our footprint, and we have pockets of our footprint we offer a 300 Mbps service. So obviously on a price-per-meg basis, we offer much more value to consumers today than we did 10 years ago.

In addition, that investment has allowed us to offer different tiers of service. We offer over six different tiers of service. For example, earlier this year, we offered an everyday low price offer of $14.95 so that customers, for that part of the population, was priced very effectively. All in response to a very competitive marketplace.

Senator HATCH. Thanks, Mr. Chairman. Thank you. Thank you for your testimony.

Senator KLOBUCHAR [presiding]. Senator Hirono.

Senator HIRONO. Thank you, Madam Chair.

Thank you for all of your testimony. I realize that following some of the line of questioning of my colleagues, I think it is difficult to apply traditional antitrust analysis to a market where so much is changing so fast. And, Professor Yoo, you said that what the antitrust law should look to is what happens not today but in the future, which brings me to Mr. Kimmelman's suggestion, I think it was—no, Mr. Bosworth's suggestion that perhaps what should be happening is that the DOJ and the FCC should engage in basically continuing oversight to make sure that new, independent networks, others who want to come into the marketplace to provide choices for consumers will have a fair opportunity to compete.

Would you agree that that would be something to consider in this market that is changing so rapidly?

Mr. YOO. I would agree entirely. The FCC should engage in ongoing oversight, and, in fact, it does. There is a very well-developed set of program access rules and carriage access rules to make sure that independent programmers have the ability to be carried and to make sure that people who have content must share it with other cable operators and other satellite operators.

There are some complaints. As always, there are people who do not get what they want out of the process, and the FCC has consistently said the correct solution is to fix that process so it is available for everyone, instead of using a merger to do a company-specific solution that will only affect the merging party.

Senator HIRONO. For Mr. Cohen, your basic cable package is about $75 a month. Is that about right?

Mr. COHEN. Senator, we actually have many basic cable packages, so we would start with a lifeline-type service, which would be, you know, broadcast channels and a few other channels that more typically would be around $20 a month. We have a digital economy package which——

Senator HIRONO. What is kind of your median amount that your subscribers pay for your services?

Mr. COHEN. So median, I am not sure I know that. I can provide that to the Committee. And, remember, it is hard because we have—half of our customers are in bundles and are getting a bundle of services for $99 a month or $129 a month, and that includes video, high-speed data, and telephone.

Senator HIRONO. It is that group that I want to address, the people who have the bundled package.

Mr. COHEN. Okay.

Senator HIRONO. And there are consumers who might want to have more of a say in what kind of programming they want to pay for. So do you have any—in the group that gets the bundled product, do you have any initiatives in mind that would create more of a choice, provide more of a choice for consumers to get the kind of programming they actually want and not have to pay for—in my case, for example, it would be, no offense, some sports programming.

Mr. COHEN. Right. So the answer is we do offer a variety of video bundles, all of which or most of which are available in bundles with high-speed data and with telephone service. The whole issue of so-called a la carte programs where people can assemble their own packages is a very complicated question, and I would note that in every independent study that has ever been done of a la carte programming, the study has concluded that the result of an a la carte regime would be less choice for consumers and higher costs. And the reason for that is that the economics of cable programming involves both advertising and affiliation fees.

Senator HIRONO. I think, Mr. Cohen—I hate to interrupt you. My time is running out. I think it just illustrates how dynamic this marketplace is and——

Mr. COHEN. I would agree with that.

Senator HIRONO [continuing]. How many different offerings and why perhaps the DOJ and FCC should continue to monitor to make sure that competition is actually occurring.

I have a question about Hawaii. Now, Hawaii is not served by Comcast at all, and Oceanic has about 90 percent of all the cable subscribers, and they have Internet service where they have a particular Internet address. Should this merger occur, my specific question: Would they be able to continue to use their same Internet address? Or do they have to completely change what is happening with them?

Mr. COHEN. So we have not gotten to that level of detail on transition planning. When we have done other transitions relating to other transactions, we have tended to have a long phase-in period for changes of Internet addresses. And I think some people are still using their AT&T Internet addresses which was a transaction that was done in 2001. But we really have not gotten to that level of transition planning yet.

Senator HIRONO. So I take it the idea would be to be as accommodating to your customers all across the country.

Mr. COHEN. We are totally focused on the customer experience and have a lot of experience in doing these types of transitions, and that is exactly what the concern is and what the planning process would be.

Senator HIRONO. Thank you. I have run out of time.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much.

Senator Graham.

Senator GRAHAM. Thank you, Madam Chairman.

Mr. Cohen, how would this potential merger affect the South Carolina market?

Mr. COHEN. So, Senator, good morning. South Carolina is one of the States actually where Comcast and Time Warner Cable both have a presence. It is a State that actually demonstrates the lack of competitive overlap between the two. Although we are both in the State, we are in different parts of the State. So I think that South Carolinians would gain the benefits of the transaction that I had a chance to run through before: more investment, faster Internet, better video experience, roll out of the X1 platform, better TV Everywhere experience. And I think South Carolina is a State where bringing the two cable operators together will provide a more unified experience in the State, although we will continue to compete—and you know the State well. We will continue to compete with DIRECTV, DISH, and AT&T as major wireline providers in the State of South Carolina.

Senator GRAHAM. Mr. Minson, you do not compete with Comcast in South Carolina. Is that correct?

Mr. MINSON. That is correct.

Senator GRAHAM. Do you agree with what he just said about the potential merger affecting South Carolina?

Mr. MINSON. I do.

Senator GRAHAM. Okay. Now, I am a DIRECTV subscriber, so—I had problems with cable.

[Laughter.]

Mr. COHEN. If I can say, you are proof of the point that I am making.

Senator GRAHAM. And I have got problems with DIRECTV when the weather is bad, so I am trying to revisit this. I really am. I do not know what to do. I am trying to figure out what is the best—I think most consumers want as much as they can get as cheap as they can get it, right? At least I do. And the details kind of cloud us over.

So the bottom line is this merger, you are not taking two people who compete in the same marketplace. Am I right about that?

Mr. COHEN. That is correct.

Senator GRAHAM. So my choices would be, if the merger comes about, to stay with DIRECTV, go with DISH, go with you all. Who else could I choose from?

Mr. COHEN. You could go with AT&T as a wireline competitor.

Senator GRAHAM. So I have got four choices?

Mr. COHEN. You have got four choices, and, again, depending on where you live, other wireline competitors in broadband and cable are Charter, Cogeco Cable, Home Telecom, and WOW in various places in South Carolina.

Senator GRAHAM. So it could be up to seven or eight to ten choices, depending on where you live.

Mr. COHEN. Right, on a statewide basis. But to be fair, so Mr. Kimmelman does not jump in and correct me, just like we do not compete with Time Warner Cable, we do not compete with Charter either. So it really depends where you live as to whether one of those cable competitors——

Senator GRAHAM. So basically cable companies do not compete with each other, generally speaking? Is that what we are saying?

Mr. COHEN. Right, that is a result—that is correct, and it is really because of the way in which cable grew up as a matter of local franchising, that local franchises were granted—originally when Congress authorized them, they actually were exclusive. Ultimately Congress got rid of exclusive franchises, but the cable business grew up community by community by community.

Senator GRAHAM. So in my case, I would not be losing a choice. The theory would be I could have a new choice with more services through the merger. Is that correct?

Mr. COHEN. I should let you take the witness seat. That is exactly what I have been trying to say.

Senator GRAHAM. Okay. So somebody can sell me a product at this hearing, because I am really—does anybody represent DIRECTV?

[Laughter.]

Senator GRAHAM. Because I really do not know—you know, I am thinking about changing because I have had the satellite signal knocked out twice. I have had to move the satellite twice. But before that, the cable went out right in the fourth quarter of a ball game.

[Laughter.]

Senator GRAHAM. So from a content provider's point of view, if I am a content provider, am I at a disadvantage from this merger, in your view?

Mr. COHEN. So I believe that you are not. As a combined company, we would have under 30 percent of the market. And I do not think that that is a sufficient share of the market to create problems for programmers. And maybe more importantly than my opinion, the Federal courts and the DC Circuit have ruled on two occasions that having under 30 percent of the market does not create an undue risk of monopsony power or bottleneck authority. And I will agree with something Mr. Kimmelman said beforehand. That was a different time when the court made those rulings, but the way in which I think it is different is that the multichannel video marketplace today is even more competitive than it was in 2001 and 2009 when the DC Circuit made those decisions.

Senator GRAHAM. In 20 seconds, tell me why I should switch back to cable.

Mr. COHEN. So I am going to give you the Comcast pitch, even though we are not there yet. I think Comcast provides the best-in-class video viewing experience in the country. Our X1 operating system changes the way people watch TV—better search, voice control, disabilities access, and our TV Everywhere experience; 50,000 choices on demand, which nobody comes close to; and TV Everywhere gives you the ability to watch 50 live channels anywhere, inside or outside the home now, and tens of thousands of video choices on demand.

Senator KLOBUCHAR. Thank you very much.

Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Madam Chairwoman, and thank you for your leadership in the antitrust area and for participating and leading on this hearing.

First, let me say how delighted I am to see two Connecticut residents here, the morning after another great triumph by our team. And if you are around long enough, you will see me present to Senator Rand Paul my Huskies tie because he is obligated to wear it as part of the bet we made. So that may be the best entertainment of the whole day in Washington, DC—not to take away anything from this panel.

And let me just say how much respect I have for Mr. Cohen and Mr. Minson—thank you for being here—and for your companies, who do so much to enrich and enliven our lives. And to all of our witnesses, thank you on this very, very consequential, even historic issue that is before us.

And let me just say that I think what we have heard among some of our colleagues is a general sense of skepticism, which is reflected in the general public about how this deal will really help consumers. Prices will not go down. We have already heard that from the proponents. So where is the beef? Where is the "there" there for consumers? And apart from the fairly vague potential promises of good things happening, I think the case has yet to be made that consumers will really benefit in a tangible, real, substantial way.

In my experience as Attorney General and here in Washington, I have witnessed how excessive consolidation in any market can sharply increase prices and reduce consumer choices in the markets for broadband and pay-TV services. I am especially concerned that the bulwarks of a competitive marketplace—choice and aggressive rivalry, not just competition but aggressive head-to-head rivalry—have been diminished over the years, and these markets are plagued with anticompetitive conduct, industry agreements to limit consumer choice, and skyrocketing monthly bills at triple the rate of inflation. That is the reason why I think you are hearing a high degree of skepticism here.

So I think the Department of Justice has to conduct a very comprehensive and thorough review of this merger, paying careful attention to the potential abuse of power. And since I opened about sports, let me focus for the moment on regional sports networks, also known as RSNs.

The most recent information I have details Comcast owning 11 RSNs in the country's largest markets and Time Warner Cable owning five RSNs, along with 16 local sports channels. Combined, the merged entity would own the rights to a very formidable amount of local sports programming in the largest media markets in the country. These are unique products of tremendous value. Access to them is crucial to a pay-TV provider's ability to remain competitive. And the cost of sports programming continues to rise with no end in sight. The *L.A. Times* reported last week that cable bills are expected to rise to $125 a month from $90 a month in the next few years, almost entirely due to sports programming.

Any competitors that will not pay your increased costs for sports programming get denied access. And that has led to some serious, high-profile disputes, as you well know, between Comcast, Time Warner, and your satellite and telco companies. In fact, I think there are still several outstanding disputes right now where regional sports programs continues to be withheld from competitors by both Comcast- and Time Warner-owned RSNs.

So I am really concerned that the increased ownership of high-value programming like regional sports networks will give your companies, soon to be one company, both the means and incentive to overcharge your rivals. I think that is a practical, hard fact of life—means and incentive to overcharge for an economically crucial element of programming involving sports.

So, Mr. Cohen and Mr. Minson, I wonder if you would address these concerns.

Mr. MINSON. Do you want to go first and I will go second?

Mr. COHEN. I will go first. Good morning, Senator. I was wondering, when you did not come in here, if you were still celebrating from last night. Actually, I will say I think everyone in the country shares your joy, and particularly if I can say there is something unique about women's basketball, and the sheer joy of the end of the game was last night something I think everyone in America can get a lot of pleasure out of.

I will point out, by the way, that in the diversity of programming and the way in which we are bringing this, that, of course, the men's championship was on CBS or broadcast network, and the women's was on ESPN, a cable network, and that is part of what cable has been able to enable in America to be able to have these diversity of outlets to show really exciting and incredible content like that.

So in the RSN world, my numbers are a little different than yours, but I think the point is essentially well taken. I had said earlier that one of the reasons why I could not make a commitment that cable pricing was going to go down as a result of this transaction was because the number one driver of our cost structure is programming costs, and the biggest factor in programming costs is sports programming. So we are in total agreement on that.

In the RSN context, though, RSNs are not national networks. And as you point out, they are regional; they are offered in a particular market. And so there is really nothing in this transaction that changes the competitive dynamic in any market in the country.

So we already own, as you said, a bunch of regional sports networks. Time Warner Cable has a few. But let us take the L.A. Lakers regional sports network in Los Angeles. Comcast is not in Los Angeles. Time Warner Cable is. Whatever the competitive dynamic is today, for Time Warner Cable negotiating regional sports network deals for multichannel video distributors in the L.A. market for the Lakers regional sports net will be exactly the same. We are not going to have any more power in the L.A. market to negotiate different deals because we also own regional sports nets in Chicago and Philadelphia and the Washington area.

So those markets, the impact of regional sports net bargaining power is tied to the structure of the local markets where the regional sports nets are offered, and there is nothing in this transaction that changes the competitive balance or competitive equilibrium in those particular markets.

Senator BLUMENTHAL. There may be nothing in this deal that changes the configuration locally, but it increases the bargaining power on one side.

Mr. COHEN. The bargaining power for who? I mean, I am trying to figure out——

Senator BLUMENTHAL. The bargaining power for the entity that controls the programming. It is a bigger entity with more economic power and potentially more power over other programming in other markets and increases its strength, its ability to withstand potential hostile negotiations. I think that——

Mr. COHEN. So it is the collection——

Senator BLUMENTHAL [continuing]. You are right if you view it only through the prism of the local configuration. But even there it may have an impact.

Mr. COHEN. So I will just end with really short—and I apologize—to say that in the Comcast case, of course, under the NBCUniversal conditions, multichannel video distributors actually have the right to demand arbitration for regional sports nets on a stand-alone basis, along with no other channels, just the sports net. Now, no one has done that. No one has availed themselves of the arbitration rights because we have been able to reach deals with people without the need for arbitration. But there is that extra protection that is present in the NBCUniversal order.

Senator BLUMENTHAL. Why not——

Senator KLOBUCHAR. Senator Blumenthal, do you want to go on a second round? Because——

Senator BLUMENTHAL. Okay. I apologize, Madam Chair.

Senator KLOBUCHAR. Senator Coons. Thank you.

Senator COONS. Thank you, Senator Klobuchar. Thank you to our entire panel and to the Members of the Committee who have dedicated significant time today to reviewing this substantial transaction.

Mr. Cohen, if I might, I would just like to start with a few questions about service, employment, and diversity. First, the main concerns I have heard from my constituents in Delaware have to do with customer service, future price and employment. Comcast is a major employer in the Philadelphia region, and there are some real concerns among my constituents that this merger, if it goes forward, will not achieve significant improvement in customer service levels, may lead to increase in price, and may lead to a loss of jobs. Are there any assurances that you could give us today about how the significant benefits that you have described, both in writing and in testimony, to this merger will inure in some ways not just to shareholders but also to customers who, frankly, more than not have contacted me with concerns about price and customer service?

Mr. COHEN. So let me do—service, price, and jobs. Let me do price first because I have already addressed that. I am not sure you were here. I will make—again, you know how careful I am. I will make my one firm commitment that there is absolutely nothing in this transaction that will result in an increase in prices for Comcast customers. Nothing. Whatever economic benefits we can derive, whether it is through synergies or whatever marginal additional leverage we might receive for programming negotiations and equipment negotiations, ultimately those inure to the benefit of consumers. So that is my response on price.

On service, so service, I am glad you raised the question. Senator Franken has talked about this, and, you know, Senator Franken, I actually appreciate what you have said about service, because I want to tell you, at our company this is—we have an incredible focus on this, and it bothers us that we have so much trouble delivering a really high-quality service level to our customers on a consistent basis. It is not something we are ignoring. It is not something that we are not serious about.

We have spent billions of dollars over the past five years improving our networks to try and make them more reliable, on additional training for technicians and for our call center employees. We have created new call center Centers of Excellence, one of which is in Delaware, where we have specially trained call center representatives, with a design of trying to enhance the level of customer service.

We have focused on a whole host of customer service improvements, including creating one- and two-hour appointment windows across most of our footprint, which we actually meet now 97 percent of the time statistically. And we are not happy that we do not meet it three percent of the time.

So this is a place where we are having issues, and we are—I can just tell you that as a company we are laser focused on trying to improve the customer experience and do the very best we can to be the best—to offer the best customer service and best customer experience in the country, internally and externally. And there are a lot of surveys around, and some of them are very difficult for us to read. But I will tell you that over the last three years in J.D. Power and Associates, which I think is viewed as the Cadillac survey of customer attitudes and customer value, Comcast's service, Comcast's score in J.D. Power has gone up about 100 points in video and about 80 points in broadband, and those are the largest increases for anyone in our industry. So the investments that we are making and the commitment that we have internally to improving the customer experience are beginning to bear fruits. But we are deeply disappointed as to where we are, and all I can tell you is that the scores that we receive, the comments that people like Senator Franken have made, the conversations that I have had with you, they just spur us to do even better and to really try and enhance the customer experience.

In terms of jobs——

Senator FRANKEN. You are welcome.

Mr. COHEN. I really mean that. It is a good way to focus us, and we are totally open to the fact that sometimes we need a kick in the butt to focus us on things that are important, and this is a place where external voices have absolutely had that impact. And we think in the end we are going to be a better company as a result of it. So thank you.

In terms of jobs, obviously unlike the NBCUniversal transaction, where we could stand up and say this is a vertical transaction and there is not any overlap in jobs and we are not going to be laying people off, in fact, we expect to grow jobs, this is a transaction where there is some overlap of jobs, but it is headquarters and shared services jobs. It is not the basic operations of the cable system. And so, you know, the State of Delaware, we do not have headquarters or shared services jobs in the State of Delaware. We do not have them in the State of Connecticut. We do not have them in the State of Minnesota. And we do not have them in the State of Utah. So for the Members of the Committee who are here now, I can comment on that. We have not gotten deeply enough into looking at where the potential overlap is for me to be more specific than that. But cable, because cable is such a local business, most of our jobs are the customer-facing jobs of technicians and call centers and local management of our systems, and we do not anticipate any reductions in those jobs.

Senator COONS. Thank you. I see I am about to run out of time. Let me ask one more question, if I might, about sort of terms and conditions as you have referenced in the previous merger with NBCUniversal.

Some commitments were made, and there has been a significant rollout of the Internet Essentials program, which is a very promising program to provide low-cost, high-speed Internet access for low-income households to help address the achievement gap, to help improve access and deal with the digital divide. There were also commitments made about diversity of programming, and I am interested in both diversity in the work force and diversity in programming and the accessibility of your service platform to a wide variety of content providers.

Let me focus you as an example on TV One, an African American-focused channel, if you would speak briefly in closing to both of those. And then, Mr. Kimmelman, if you might on whether terms and conditions really are the appropriate way to address concerns that some might have about this merger.

So, Mr. Cohen, if you would, on your progress toward delivery of Internet Essentials, your progress toward meeting commitments made about diversity and programming, and then Mr. Kimmelman.

Mr. COHEN. So Internet Essentials, at the time we proposed it in 2010, was an experiment. We had no idea if it would work. We had a concept for a program based on research, and as we have rolled it out, it is now the most important community investment initiative of Comcast Corporation, and it is a program that I think not only the executives in the company but rank-and-file employees have an enormous amount of pride in. In 30 months, we have successfully connected about 300,000 families, 1.2 million low-income Americans to the Internet, most of them for the first time in their lives. Eighty percent of those families are minority, and when we survey those customers and say, “What do you do with the Internet?” the number one answer is, “Our kids do homework on it.” Ninety-four percent of the families say that their kids do homework on it, and of those 94 percent of the families, 90 percent of them say they think their kids are doing better in school as a result of having the Internet at home.

So it is a program that is an amazing success. We, together with thousands of community partners—it is not just us—are really making a difference in closing the digital divide, and we are incredibly proud and enthusiastic of being able to extend that program throughout the Time Warner Cable footprint.

So there have been multiple references to the size of this company being in 19 of the 20 largest cities in America and 37 of 40 and whatever all the numbers are. I look at those numbers, and when I think about Internet Essentials, I am excited, because we are bringing the Nation's largest and most comprehensive broadband adoption program for low-income Americans to 19 of the 20 largest cities in America, 37 of the 40 largest cities, and I really think we are going to make a difference in moving the needle.

In terms of diversity of programming, we are very proud of our record there, too. We agreed to launch 10 new, independent networks, at least eight of which would be minority owned and controlled, on a schedule. Consistent with that schedule, we have launched five, including four networks that are minority owned and controlled. TV One, by the way, which we referenced, was a network that we originally helped to launch after the TV One transaction, being an investor, and giving it its first carriage deal. And so we are enormously proud of our record for enhancing minority-owned and minority-focused networks, both in terms of creating wealth creation opportunities for minority entrepreneurs and in terms of making sure that we have programming that is being designed by and run by diverse ownership and management teams to be able to provide that type of programming to the particular ethnic communities and diverse communities that are represented.

Senator COONS. Thank you, Mr. Cohen.

Could Mr. Kimmelman comment as well.

Mr. KIMMELMAN. Thank you, Senator Klobuchar. I will try to be very brief, Senator Coons. I will only address the competitive kinds of conditions that I think are important here to customers, users, consumers.

In the kinds of regulations that have been cited in this hearing and the kinds of benchmarks that have been there and used in the past that some are trying to rely on, the difficulty here is none of them are absolute. None of them are "you may absolutely do X and you may absolutely not do Y." They all have to rely upon reasonable business practices, common practices of the lead companies in the industry. And the difficulty here is with the size of Comcast combined with Time Warner. They could drive what those practices are. And it becomes a bit of a circular reasoning of what is reasonable is what they do, what is acceptable in the industry is what they decide. The standards are determined by them. So that is the concern.

My suggestion, Senator, would be that for all conditions in a transaction like this, the oversight agency should go back and review whether they work and have worked in the past and whether they can work given the factors involved in the transaction.

Senator COONS. Thank you. Thank you for your testimony.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you.

Senator Lee.

Senator LEE. Thank you, Madam Chair.

Professor Yoo, I would like to get back to you to follow up on a question that Senator Blumenthal asked earlier about regional sports networks. How do you respond to this question, this concern that has been expressed about the RSNs that the merged entity may own and the potential for this ownership to be used in an anti-competitive manner? Do you see a risk of this?

Mr. YOO. I do not, for the most part. For example, to use the L.A. Lakers, right now the fact that previously Time Warner had owned the L.A. original sports network and they are bargaining with other L.A.-oriented video providers, and that company is now co-owned by Comcast, it does not really change the bargaining leverage of the L.A. Lakers network against any of those other L.A.-based video distributors.

And so this is, again, because L.A. programming is only primarily of interest to people in L.A., the fact that it is now co-owned by a person who also owns a regional sports network in Philadelphia does not really change their bargaining power in the L.A. market.

On a broader scale——

Senator LEE. I suppose you are presupposing that most or all RSNs would have a regional fan base——

Mr. YOO. That is correct, because——

Senator LEE [continuing]. And that will not always be the case.

Mr. YOO. For the most part it is, because if they do not, the programming tends to migrate to the national sports networks as opposed to the regionals, and that, in fact, companies have a choice about where they are going to place that programming.

Senator LEE. Okay.

Mr. YOO. On a much broader level, we have been fighting about RSNs before this transaction. We are going to be fighting about it after this transaction. And this is a classic example of a problem that I believe is not merger specific, which is why we are working on a dispute resolution mechanism as part of the program access provisions that is overseen by the FCC and has been around for a very long time, and that, in fact, is believed to be a reasonably effective means for resolving disputes that have been very high profile. And if there is a problem, the real solution lies in fixing that process, because then all programmers, regardless of whether they are operating in areas currently served by Time Warner Cable or Comcast will gain the benefit of it, because this is a bigger problem that precedes and goes beyond what the merger requires.

Senator LEE. Okay. Thank you.

Mr. Kimmelman, shifting gears, I want to talk for a minute about the advertising spot market. I understand that Comcast has been saying that its acquisition will provide something of a one-stop shop for cable advertising. Do you have any concerns with regard to the market for cable advertising and how the merger might impact that market?

Mr. KIMMELMAN. Yes, Senator Lee. I think it is a very important area to look at because this, after all, is all about eyeballs and all about viewership. And I think it ought to be looked at very carefully through antitrust review as to whether this consolidates. One-stop shopping is great on one level. On the other level, if it leads to market power and the ability to dominate in the market, it may strip off advertising opportunities for potential competitors to Comcast, particularly on the programming side.

Senator LEE. Okay. And is this concern higher with regard to local advertising? Is that the concern?

Mr. KIMMELMAN. I think a lot of the local advertising is very, very important. I would have to think more about how much national—I mean, the importance here is that for every one of—whether it is regional sports or you are talking local advertising and local cable systems, keep in mind that the kind of competitors we are talking about on some level are satellite companies that are nationwide competitors. Or if we are talking about Internet-provided services, those may also be increasingly marketed nationwide. And so there are some national implications here, but it would all be driven by the levels of concentration and looking at those specific markets.

Senator LEE. Levels of concentration which could lead some to have fewer options for local advertising——

Mr. KIMMELMAN. Correct, Senator, yes.

Senator LEE. Professor Yoo, let us get back to you on a different issue. As you note in your testimony, markets related to cable and the Internet have tended to change rapidly, particularly in recent years, as a result of changes in technology. And at the same time, I think history has shown that large incumbents will at times take actions that are designed to protect their incumbency and sometimes when they do that, that tends to prevent or slow rapid changes in technology that might otherwise bring about a more robust competitive environment.

There are those who have expressed concerns that this merger might have that effect, and some of those who make this point will point to relatively new offerings such as Netflix, Roku, Amazon Fire TV. These are products that compete, arguably, with Comcast's cable video offering. And those who have expressed this concern have been concerned that perhaps, you know, because some of these services that I just mentioned can be accessed only through high-speed Internet, they are worried about the fact that that market, the market for high-speed Internet, is a market in which the merged company would have a very significant share. So does that cause you any concern?

Mr. YOO. It does not, for reasons I will explain. I did want to make one comment about local advertising. Cable represents seven percent of the local advertising market. It is a relatively small part, and the level of concentration there really is not a material impact.

In response to your specific question——

Senator LEE. Seven percent of the local——

Mr. YOO. Advertising revenue is on cable. If you are a local advertiser, 93 percent of your money is going elsewhere, and a seven percent concentration level under any antitrust standard is irrelevant.

Senator LEE. Okay. Got you.

Mr. YOO. There is a tendency to think about the Internet-based video distribution world as just an extension of the cable world and that we take the intuitions and the knowledge we have from cable and just move them over. It is just not true.

In the cable world, the kinds of carriage agreements that the independent cable networks are trying to cut, well, if they cannot come to an agreement with a cable provider, that is it; they do not get carriage.

That is just not the case with the Internet. One of the realities is every Internet provider maintains thousands of connections. There are thousands of ways in. Comcast itself has 40 settlement-free and 8,000 transit arrangements, and if one of those connections does not negotiate well on terms, there is actually a multitude of options elsewhere, and the leverage is not yes or no. The leverage is the difference of the price I get through this connection versus my next best connection. And when you start to look at it that way, the amount of leverage that they have over individual providers becomes very, very narrow.

The only way they could stop that is by monitoring all 8,000 of their connections and with thousands of different kinds of streams, and I am going to pick out this content provider's stream out of that stream, and discriminate against that.

Senator LEE. You are saying that would not make sense as a business proposition and would be technologically difficult——

Mr. YOO. And barred by law under Comcast agreement under the NBC——

Senator LEE. Yes, there is that.

Mr. YOO [continuing]. NBC merger. But, yes, absolutely. Technically very hard to do, really bad idea from the business sense, and, in fact, Cablevision said publicly in the *Wall Street Journal* they may get out of the programming business and just carry over-the-top players because the program costs are so high, why should they be squeezed in the middle? Why not allow over-the-top providers to negotiate on a much broader basis? That is part of the dynamic changing world we are living in.

Senator LEE. Okay. Thank you. My time has expired.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you.

Senator Blumenthal had one follow-up question, and then Senator Franken, and I will leave my questions to the end. Senator Blumenthal.

Senator BLUMENTHAL. I very much appreciate that, Madam Chairman, and thanks also to Senator Franken.

Just a quick question for Mr. Kimmelman. As you heard, Mr. Cohen and I agree that the costs of sports programming are rising. In fact, they are rising astronomically and should better reflect consumer demand. So my question to you is: Really aren't consumers the best judge of what a fair price for programming should be? And wouldn't prices come down if they had more choice? Specifically the way to break this cycle of ever increasing costs for sports programming is to give consumers some more choice through a la carte programming. And I wonder if you could comment on the potential effects of disciplining the market and bringing down the costs of cable as a result of a la carte?

Mr. KIMMELMAN. Senator Blumenthal, thank you. I truly believe you are correct. I think one of the concerns that was not addressed earlier was that we have numerous studies that show with vertical integration we end up with higher prices on the regional sports channels that are integrated than on the ones that are independent. And one of the related concerns there is that competitors who want sports programming in that market have had a very difficult time negotiating a reasonable price for that, even if the price is higher than it should be.

So it seems to me one of the things to look at, as you have recommended legislatively, more broadly is to offer channels a la carte, offer more programs a la carte, give consumers the choice as to whether they really want to pay the price that is being passed through.

Senator BLUMENTHAL. Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much.

Senator Franken.

Senator FRANKEN. Thank you, Madam Chair, and I have three questions to get through, and I know you are chairing. I have been in that position, and is it okay if I go over a little bit? Okay.

Senator KLOBUCHAR. You would not be alone.

Senator FRANKEN. Mr. Cohen, I am worried that this deal simply continues a trend of media consolidation, a trend that has led to increasing prices for consumers who have seen their bills go up at more than twice the rate of inflation since the mid-1990s. Earlier this week, news broke out about a JPMorgan report in which Wall Street analysts apparently recommended that cable companies continue to raise prices on consumers. And as you have admitted, prices might go up even faster, and we have talked about your comment.

Mr. Cohen, don't your investors, people who invest in Comcast, expect Comcast to leverage its market share by getting as much money as it can out of consumers?

Mr. COHEN. I think our investors want us to have the best multichannel video and broadband business in the country, and I think that includes getting whatever prices the market will bear, but it also includes providing an extraordinarily high-quality video and broadband experience. And I think we have made—and you can look at our analyst calls. We have made it a point of significant discussion not only for us but for the entire cable industry about our need to continue to invest to be able to compete better against national and global competitors who are increasingly coming into this space.

So yes to your question, but I think also to be fair, yes to the business reasoning underlying this transaction, which is to provide us with the opportunity to create a better experience for consumers.

Senator FRANKEN. Well, my concern is that as Comcast continues to get bigger, it will have even more power to exercise that leverage, to squeeze consumers. And part of the reason I am concerned about this is because Comcast's own CFO has pretty much told Wall Street that that is what Comcast does.

During a fall 2012 conference call, an analyst from Goldman Sachs noted that cable had a big share of the broadband market and asked Comcast CFO, "Is there a way to exercise pricing leverage to a greater extent?" And Comcast's CFO said, "I think that we have actually exercised some pricing leverage. We have increased the cost of the service by roughly $4 to $5 per customer per month over the last few years."

It is understandable that Comcast has a responsibility to look out for its investors. But I am concerned that the bigger and more dominant the company becomes, the less incentive they have to look out for consumers, and the more power they have to squeeze them.

Mr. Kimmelman—and I think this goes to bundling, too, because I know that in some of those talks, right after the talk of this acquisition, there were pledges to push bundling, to upsell your product.

Mr. Kimmelman, won't this give Comcast more leverage?

Mr. KIMMELMAN. Absolutely, Senator Franken. Even though who are arguing about these other competitors, mostly they are giving us examples of things either that just show the market is highly concentrated but not monopolistic, or they are quite futuristic and we did use the Huberis numbers, Professor Yoo, in our analysis. There is enormous market power here that could be leveraged, and on top of that, there is the very popular NBCU programming that could be leveraged. And that understandably maximizes profits for Comcast to keep it in a big bundle, to charge as much as possible, and the increasing trend for consumers is to buy at least two services, broadband and video, if not three. And so they know that they can drive up prices to competitors and benefit from raising their rivals' costs, and if some people want to drop those rival services, it is most likely going to be business going to them. That is where their financial incentive lies, and then we would expect them to follow through on that. Those are the kinds of concerns that on the public record were in the FCC ruling on NBCU and Comcast and in the DOJ, and I imagine they will be relevant here as well.

Mr. BOSWORTH. Senator Franken, could I jump in on that?

Senator FRANKEN. Sure.

Mr. BOSWORTH. Thank you. Understandably, this is a really complicated matter, but I think if we boil it down, the folks at home that bills keep going up are expecting more, and they are not getting more channels, and they are not getting more choice. And so, you know, Mr. Cohen pointed out that, you know, content costs are up 98 percent while the subscription fees are only up 50. Well, that is an extreme pressure on their gross margins, and any business owner would know that why would—what is the incentive to add more product when it is your highest gross margin product and it is your number one cost?

So I think there have to be effective ways to encourage new competition in the marketplace. I mean, the marketplace that we are going into is a $170 billion marketplace. It is larger than all four major sports combined. There are 60 networks that are fighting over that space in the sports area. Your lifestyle, golf lifestyle market has won, and the only channel is that of Golf Channel, which is owned by Mr. Cohen.

Now, a good real-world example that I think everybody ought to know how hard it is for original programmers is that we understood that Golf Channel was owned by Comcast, so we did not start there. You know, they did not have a huge incentive to launch us. But what we did is we started with Time Warner Cable and some other folks, and Time Warner Cable from the CEO to the programming people could not have been more constructive in their help to help us get our programming on the air.

As soon as this merger was announced, that definitely softened quite a bit, and, you know, I am here to say that there are—Time Warner Cable did a wonderful job trying to get more product to the consumer, and since that time, when this was announced, it has become a lot more difficult for us. And the only thing I can think about is because they own the only competitor in the space.

Senator FRANKEN. And thank you for your indulgence, Madam Chair.

You looked surprised, Mr. Cohen, when I talked about upselling and bundling. Neil Smit, an executive at Comcast who went on the phone call with Wall Street analysts, said this: "As I said, I think the revenue synergies are greater than the cost synergies. On the revenue synergy side, the first would be in the residential area where we would seek to bundle more, and that is call center training. That is teaching people to sell another RTU on a call, on a service call, fix the billing problem, upsell a third product."

So just bundling better. That is what I was talking about. You looked kind of puzzled when I brought it up.

Mr. COHEN. I am sorry. I was not sure what you were referring to. But I think that obviously for us and for others in the cable industry, it has been a very effective strategy and one that consumers like, to purchase multiple products from a single provider, getting a single bill.

Senator FRANKEN. You were told by the FCC to actually stop that and to stop pushing bundles. But I have got other questions.

Mr. COHEN. Okay. Well, I want to be very short, and I know sometimes I am too long. But all I will say is the FCC did not tell us to stop bundling and pushing bundles. They simply asked us to have a stand-alone broadband offering, which we did have and which we continue to have.

Senator FRANKEN. The FCC sent you a letter saying that, "A consent decree imposes a detailed compliance plan requiring Comcast to undertake numerous activities, training its customer service representatives and retail sales personnel to reinforce their awareness and familiarity with the performance starter service."

Mr. COHEN. That is the single—the deal was that we would create a new broadband service which was a stand-alone service, 6 meg down, for $49.95 a month. And we did create that tier, and the Commission raised concerns about how we were marketing the tier, whether our call center employees knew about it. We quickly resolved the matter. We may have had a difference of opinion. We quickly resolved the matter——

Senator FRANKEN. You paid a fine.

Mr. COHEN [continuing]. Extended the commitment for another year, so——

Senator FRANKEN. You paid a fine.

Mr. COHEN. We did. We did make—we did pay a fine. But all I am saying is there was no prohibition——

Senator FRANKEN. And then you were told——

Mr. COHEN. No prohibition against——

Senator FRANKEN [continuing]. To tell your——

Mr. COHEN [continuing]. Bundling.

Senator FRANKEN [continuing]. Tell your call center people to emphasize these stand-alone, not to upsell.

Mr. COHEN. Not to emphasize it——

Senator FRANKEN. Not to push upselling, which is very different——

Mr. COHEN [continuing]. To offer it.

Senator FRANKEN [continuing]. Than the condition——

Mr. COHEN. To offer it. We were not—there is nothing in the FCC order to prevent us from bundling. I just want to say that. We agreed in addition to our bundling strategy for somebody who called and said, "I only want to buy broadband," to have an option, a stand-alone broadband option.

Senator FRANKEN. When you train people to upsell, you are not training them to make people want to go for the stand-alone broadband, something that you were fined for not doing.

Mr. COHEN. We are allowed to train people to upsell. All we have to do is when somebody says, "I want to buy broadband alone," that our call center employees have to be aware of the stand-alone product and sell it to people.

Senator FRANKEN. Okay. You seem like a pretty good salesman. I know how people in call centers can emphasize certain things over others. And I think that is my fear here.

I want to talk about two other things. I am so sorry, Madam Chair, but, Mr. Kimmelman, Comcast has argued that this deal will not jeopardize the open nature of the Internet. In the public interest statement that it filed with the FCC yesterday, Comcast promised regulators that it has no incentive to interfere with Internet traffic. I am not convinced. If this deal goes through, Comcast will control about 40 percent or more of the broadband market. And it will not just own all those pipes. It will also own a bunch of content, because it bought NBCUniversal a few years ago and the 20 or so cable networks that came with it.

Mr. Kimmelman, doesn't that give Comcast both the power and the incentive to manipulate Internet traffic in its favor? And didn't we see a preview of that with the recent deal Comcast struck with Netflix?

Mr. KIMMELMAN. Senator Franken, if you go back to all the big numbers Mr. Cohen had and Professor Yoo had about the many myriad interconnections of the Internet all around, all accurate in that space. But when you get close to the home, to the customer, the last mile, the ports that have to bring in the video traffic, one player, two players; sometimes more, hardly ever; and one of them is Comcast combining with Time Warner. So that part of the market is quite concentrated.

There are, as Professor Yoo says, a lot of changes going on in the Internet. There are a lot of different kind of interconnection relationships. What we also see is a lot more proposals for usage-based pricing that was not there before, data caps.

Senator FRANKEN. Can you explain what those are?

Mr. KIMMELMAN. Just that instead of getting a flat fee for eat as much as you want for your Internet usage, that above a certain level your prices go up, or that you pay per certain amount of usage, and there is no flat——

Senator FRANKEN. Unless it is a Comcast product, like XFINITY.

Mr. KIMMELMAN. So there are some products that are dealt differently with by cable companies, and under a different set of standards and, arguably, preferential to what a competitor has. So there are dangers when the market is concentrated at that point of interconnection of ways to manipulate. And this is where I go back to my analogy of an octopus that has all these tentacles out there. There is net neutrality. There is the last-mile connection. But then there are the different pricing schemes, and then there are the different interconnection and peering arrangements. There are many ways in which a number of tentacles could be used to favor one product over another if it is financially advantageous to that broadband provider with market power, which would be Comcast-Time Warner.

Senator FRANKEN. Thank you. I have one last question, and it is going to be short, I think.

Mr. Cohen, on page 34 of your testimony, you have a section called "Promises Made and Promises Kept—Our Record." And you say, "When Comcast makes promises, it keeps them." Then you talk about the conditions that the FCC imposed on Comcast when it acquired NBCUniversal, and here is what I found puzzling. You say, "Out of these conditions, the FCC has only found it necessary to look at one issue," and that was the issue we just talked about, on stand-alone broadband. But isn't it true that the FCC had to look at the neighborhooding condition? That is the condition that prohibited you from favoring NBC content. CNBC is neighborhooded. You were neighborhooding it with all the other 24-hour cable news channels with CNBC—or CNBC with MSNBC, with Fox, with CNN, but you put Bloomberg way out in the nosebleed seats so people could not find Bloomberg. And because they could not find Bloomberg, they would not go to Bloomberg, and Bloomberg could charge less for its advertising. And NBC would get more eyeballs for people who were interested in 24-hour business news, and you could charge more. Isn't that another condition that they looked at?

Mr. COHEN. So, generally speaking, that characterization is just not accurate. What we had in the Bloomberg neighborhooding area were interpretive differences between Bloomberg and Comcast as to what the condition met. And I do not—I can go through as much detail as you want, but——

Senator FRANKEN. The FCC certainly looked at it, didn't it?

Mr. COHEN. Ultimately there was a complaint filed, and when we lost the complaint at the FCC, we have resolved the matter with Bloomberg. We are in compliance with that condition.

Senator FRANKEN. Okay. But let me ask you: Is this true, then, that out of these conditions, the FCC has only found it necessary to look at one issue? Is that still true?

Mr. COHEN. It is. What is true is that we were—we only had a compliance issue with one condition. That Bloomberg issue was not a compliance issue. It was an interpretive issue. And when the interpretation was resolved, we were able to resolve our differences and our partnership with Bloomberg. We remain Bloomberg's largest distributor, and we have an excellent relationship——

Senator FRANKEN. Here is the FCC's order: "In this Memorandum Opinion and Order, we affirm Media Bureau orders that direct Comcast to place Bloomberg Television in news neighborhoods, consistent with a condition of the Comcast-NBCUniversal order." That is looking at that, and you right here in your testimony, and you are sworn under oath here, you say, "Out of these"—and then brackets "conditions"—that is what we are referring to—"the FCC has only found it necessary to look at one issue." And you are saying they did not look at this issue?

Mr. COHEN. What I am saying is it was not a compliance issue. It was in interpretation issue.

Senator FRANKEN. Okay. Well, I——

Mr. COHEN. You have to go back to the Media Bureau order because—let me just—I will give you an example, because the ultimate order of the Media Bureau was that we had to neighborhood Bloomberg where, I believe, it was five or—either four or more or five or more other news channels. The FCC order did not have that definitional issue. We did not know what a news neighborhood was. And we tend not to neighborhood our news channels the way you described in your question where all the news channels are together.

So one of the interpretive issues that we needed to have resolved was what was a news neighborhood, and that is what the dispute in front of the Commission was.

Senator FRANKEN. I think—and, Madam Chair, this is the end, my friend.

Senator KLOBUCHAR. And, by the way, if any of the witnesses have to use the restroom, you really can come back, and we will take you back. I know it has been going on a couple hours.

Senator FRANKEN. You really undercut my big conclusion.

[Laughter.]

Senator FRANKEN. I was going to——

Senator KLOBUCHAR. Senator Franken, please continue. I really meant that. I was just going to let them know.

Senator FRANKEN. I was going to say that I think the interpretation here is on what the word "look" means. And I think everyone knows what the word "look" means.

Thank you.

Mr. COHEN. And, Madam Chair, if I can, I will acknowledge that the word "look" may not have been the best-chosen word. But the point I was trying to get at was whether there were compliance issues. And I do not think that was a compliance issue. So I will acknowledge that we should have had a better use of words in the written testimony, and I apologize for that.

Senator FRANKEN. Accepted.

Mr. COHEN. Thank you.

Senator KLOBUCHAR. Okay. Well, I have a few more questions. I wanted to follow up on what some of the other Senators have asked about, and the first thing was about what Senator Graham was asking about, about the wireless competition. And I guess I will start with you on this, Mr. Kimmelman.

You know, in the Antitrust Subcommittee hearing that Senator Lee and I recently had on wireless competition, witnesses agreed that wireless is out there, but it is not yet a substitute for wireline. So when there was discussion about, well, you can have these alternatives with wireless, do you think that is really true in a big way?

Mr. KIMMELMAN. I would like that to be the case, Senator Klobuchar. I do not see it now. Professor Yoo has indicated that the speeds are increasing, the service is better. The technology is better, but when you look at the price for the major wireless providers with their data cap for wireless compared to a Comcast price, for example, the price for the same amount is about 10 times higher. That is not what I would usually think of as a good consumer——

Senator KLOBUCHAR. You mean to get that kind of high speed with that kind of data?

Mr. KIMMELMAN. Yes, to get that—yes, exactly. So we are hopeful, and maybe that will be the future. But, again, as Professor Yoo has admonished us to be more careful about what conditions we put in transactions with predictions of the future, I will just say that we have to also be careful about Pollyannaish predictions about levels of competition. Fifteen years ago, we all thought there would be video over energy company wires, and we have a few of them—there is RCN out there—but not very much.

So some of the predictions can be wrong going the other way as well, and maybe this is the kind of thing where, for wireless to be a real competitor, we ought to wait a few years and see if it really develops that way.

Senator KLOBUCHAR. Mr. Sherwin, you have not been able to talk very much here. You look like you want to say something.

Mr. SHERWIN. I do. First of all, most of the discussion has been about programming, and that is out of my bailiwick. But when it comes to wireless, that is in my bailiwick. And the technology is such today that if fiber—if any kind of fiber or some kind of backhaul is brought to a building, especially a multifamily building, then the resident can have speeds of in excess of 100 megabits per second wirelessly. And I think that is a very important point, because what that says is that the technology has caught up. It is not the cellular wireless as you know it, and that I think is what Professor Yoo was referring to. It is WiFi wireless, and that is a big difference. And——

Senator KLOBUCHAR. So it would not be capable of carrying the—or it would cost more? I am trying to figure out—I understand the difference between WiFi and cellular, but are you saying that it would not have the same capabilities as the cable?

Mr. SHERWIN. I am sorry.

Senator KLOBUCHAR. I am asking, are you saying one of the points that Mr. Kimmelman made was that it is a lot more expensive if you are going to get that kind of data coverage and you——

Mr. SHERWIN. That is actually not the case. In most cases, wireless is 30 percent less than wired. In most cases. If the backhaul is reasonably priced to the building in a multifamily residential situation, wireless is 30 percent less expensive than wired. That is number one.

Number two, it offers much more capability, much more functionality. So not only is it less expensive, it has greater functionality, and there is no need for cap if the backhaul is done correctly.

Senator KLOBUCHAR. Mr. Kimmelman, do you want to respond.

Mr. KIMMELMAN. I cannot disagree with Mr. Sherwin for a specific set of circumstances he is describing. And he is also describing circumstances where he faces a bottleneck of being able to get the wholesale product so that he can deliver that service at a lower cost. Also a lot——

Mr. SHERWIN. Only in Comcast areas.

Mr. KIMMELMAN. The other interesting issue, if you go down this path, with all the increased need for WiFi downloading because of limits of spectrum, all the wireless carriers also ultimately very much need a wired service to connect themselves to get closer to the customer. Many of those are owned by Comcast and Time Warner or by some of the phone companies. And so there are other choke points here that need to be looked at in terms of cost.

Mr. SHERWIN. I agree with that.

Senator KLOBUCHAR. All right. One follow-up on the advertising questions that were asked, because I know that Professor Yoo talked about, what, you said eight percent?

Mr. YOO. Seven percent.

Senator KLOBUCHAR. Seven percent of the market was cable. And so there was a *Wall Street Journal article*, I am quoting, on SNL Kagan Comcast—SNL Kagan, and they said that small local advertisers are worried about facing higher prices because they would have roughly—Comcast would have roughly half of the local ad sales market. So what is this about, half compared to eight percent? Is it just a different market you are looking at? Are you including everything?

Mr. YOO. I am looking at the FCC's video competition report where they do an assessment of the different sectors, both on a national level and a local level. And they have nationwide numbers. What they are looking at is that the total local advertising budget for cable is seven percent.

Now, I do not know where this SNL Kagan number comes from, and as you know, with advertising, different advertisers want different segments because they want different characteristics, and there are possibilities of submarkets where they do not have as much choice.

Senator KLOBUCHAR. Okay.

Mr. YOO. If I can add one fact——

Senator KLOBUCHAR. Did everyone agree with that? I will get back to you.

Mr. MINSON. All I would add is that the revenue breakdown in our ad sales business tends to be about a third local, a third regional, and a third national in terms of how we sell. And clearly on the national front there are a number of competitors, and on the local and regional front, we have actually been the competitors who have gone in and competed against broadcast stations, et cetera. There are also additional competitors online given the online companies' ability to target. So, to be clear, there are lots of different avenues to reach customers from an advertising perspective.

Senator KLOBUCHAR. Okay. Mr. Kimmelman?

Mr. BOSWORTH. It makes—I am sorry.

Senator KLOBUCHAR. Yes.

Mr. BOSWORTH. It makes it difficult when the quasi-public utility also has 50 percent of the ad market space and also controls the content.

Senator KLOBUCHAR. So that will make for higher prices and——

Mr. BOSWORTH. Higher prices, less competition, less choice.

Senator KLOBUCHAR. Okay. One thing that is a little off on this, Professor Yoo, a different topic, but in your testimony you talk about how the merger does not pose competitive concerns because there is no geographic overlap—there has been a lot of discussion about this—between the two cable systems. Under this theory, would consolidating all—all-nonoverlapping cable systems into only one or two companies be of concern to you if that happened in the country?

Mr. YOO. To be specific in the testimony, cable operators basically serve three purposes: They sign up subscribers and deliver programs to individual households; they contract with cable networks; and they sell advertising. The point about the lack of overlap refers to the transactions between cable companies and users, and in that sense, mergers in different areas do not have an impact.

You do have to do the separate analysis of the markets in which you do local advertising, which is the same, from these with respect to programming. If you did merge to monopoly, you would see an adverse competitive impact in that market, there is no question. Then you have to do the antitrust analysis to look at the various concentration levels.

To pick up the conversation before, one of the interesting questions is: What is a real competitor to cable broadband? And we have heard this defined different ways. One of the interesting things is Mr. Kimmelman says we should not speculate too much about the future, let us think about facts. One of the interesting facts is 10 percent of American citizens now rely entirely on their wireless connection for broadband. What you are seeing is, in fact, in other countries they now regard wireless and fixed line as the same market for antitrust purposes, because there is so much substitution. And if you look at the direction where all these are going and the bets that companies and countries are making, it is quite likely that wireless is, for an increasing number of Americans every year, a real substitute for fixed-line broadband.

Senator KLOBUCHAR. Okay. Now I have a few specific questions here. Comcast has experimented with data caps and usage-based pricing for its broadband service and is reportedly testing new usage-based pricing in a few markets. And this is for you, Mr. Minson. Time Warner Cable tried using similar caps but quickly abandoned them. Why?

Mr. MINSON. The approach we have taken as it relates to usage-based pricing actually gives people the ability to reduce their bill if they will agree to a cap. So we actually took the approach that it is an unlimited service unless you would like to reduce your bill by $5 a month if you agree to a cap.

I think what is—and I will let Mr. Cohen jump in, but I think, you know, the market is very much a test-and-learn mentality right now. We have had our usage-based caps out there for a while. We have seen some uptake in them, but where we have landed is the unlimited tier, giving people the ability to have an unlimited tier, with a right to reduce the bill if they agree to a cap.

Senator KLOBUCHAR. Okay. Prior to the merger, Time Warner Cable also spoke positively about giving its consumers complete access to their channel line-up without requiring a set-top box rental. Consumers would then have their choice to watch all the channels using either Apple TV, Xbox, or any of the other Internet-connected devices, and it would create a far more competitive system.

In contrast, Comcast's new Internet-connected X1 set-top box seems to create a more closed ecosystem where only Comcast-approved apps and content are allowed in.

I thought it was interesting that you guys were willing to give up that cable box, and what motivated it? How does the decision benefit consumers, and what is going to happen if the merger is approved?

Mr. MINSON. Sure. I think what you are seeing in the marketplace are lots of different approaches to delivering the video experience in the home. I think you will always have the set-top box experience for that portion of the population who likes to have the two-way interactivity of the set-top box, and there are certain features, like the next generation guides, et cetera, that work best or only work, in some instances, on the new set-top box.

That being said, we do recognize as you get——

Senator KLOBUCHAR. But you did not require—you announced you were not going to require it.

Mr. MINSON. Well, as the home evolves and there are often multiple TV rooms in a home, what we have been comfortable with is allowing our customers to bring their own device, whether it be, to your point, a Roku or a similar device, and let them consume their content on that device. What we have found is often what you have is one room in the house has a set-top box, two-way interactivity, and then you may have another room where people are running the video experience, for example, off a Roku. Again, this is a portion of the market that continues to evolve with really new devices coming out, it feels, almost monthly at this point.

Mr. COHEN. Senator, if I could say two sentences, just to be clear, Comcast is offering the same experience, maybe on different devices. So part of the excellent platform is the ability to watch in the home the content that is available—the content that is available, all the live channels, anywhere in the home, on an iPad——

Senator KLOBUCHAR. Is it more of a closed system with just the common——

Mr. COHEN. I think it is the same system, and a lot of this is programming rights issues.

Senator KLOBUCHAR. Okay. Well, we will do some follow-up questions on it.

Mr. COHEN. So I think we are actually doing the same thing, just on different devices.

Senator KLOBUCHAR. We are going to have some follow-up questions on it on the record later on.

Comcast and Netflix, Mr. Cohen, reportedly announced a paid peering agreement earlier this year where, for the first time, Netflix will pay for a direct connection to Comcast's network that provides more reliable delivery of Netflix content to Comcast subscribers. I know Netflix's CEO called this an "arbitrary toll" that his company was forced to pay. Comcast called it a 11commercially necessary agreement." Why charge both Netflix and your consumers for this service? And then I want to ask Mr. Kimmelman about this paid peering.

Mr. COHEN. Okay. So your statement is 100 percent correct. For the first time, Netflix is paying for connection to our Internet backbone directly to us. But Netflix has always paid for connection to our Internet backbone. All edge providers pay for connection to the backbone. This is not net neutrality. It does not deal with the part of our service that goes to the last mile. This is how Internet edge providers connect to the Internet backbones of ISPs. And since the Internet was born, those are paid transit relationships. And as Professor Yoo said, in the Comcast case, Comcast has 40—has agreements with 40 companies for settlement-free peering. They, by the way, go out and sell access to their networks to connect to the Internet. So even though they are not paying us anything, they are charging Internet edge providers to be able to connect to our ISP as well as everyone else's.

We have over 8,000 free peering and paid arrangements, and that market is intensely, intensely competitive. In the Netflix case, this was—I hate to say this. This was Netflix's idea. Netflix is responsible for 32 percent of the traffic on the Internet, and they woke up one day and they said, "Wait a minute. We have 32 percent of the traffic on the Internet. Why do we have to pay a middleman to get access to Comcast, Time Warner Cable, AT&T, Verizon? Why don't we cut out the middleman, have a direct relationship, and potentially save ourselves some money?"

That is where that agreement came from: That is, the Netflix desire to pay us directly and cut out a middle man.

Now, as it turns out, that was a smart thing, I think, for Netflix to do and for us, because having the direct relationship gives us a better ability to work together to manage the traffic and make sure that Netflix customers who are our customers are getting an optimal viewing experience.

So once again, the customers are the winners here, because you have got this intensely competitive backbone market. We talked about price a lot. Pricing in that market, which, again, has existed since the birth of the Internet, pricing has dropped 99 percent in the last 15 years.

So this is a market that is working. It is not a market that is dysfunctional. It is not a market that is impacted by this transaction. And I think consumers end up being the big winners when we let markets like this function the way they were intended to do.

Senator KLOBUCHAR. Well, whoever's idea it was, Mr. Kimmelman, does this kind of paid peering exist in other parts of the world? And how do you think it could impact innovation?

Mr. KIMMELMAN. Well, it certainly has—peering is a form of interconnection, and it is a barter exchange. So these are forms of interconnection, and it is absolutely right, some have been paid, some have been just a barter because of traffic arrangements. And the world is changing as more video streaming is occurring. What happened with Netflix was an enormous success for them. As they went to original programming, it became increasingly popular.

But without getting into—they do not seem to be too happy in the way Mr. Cohen is, but leaving aside the companies, here is the point that I think is important related to the transaction and for the Committee to consider longer term. As you have vertically integrated companies that have their own programming and have their own desire to bundle the channels and charge as much as possible, as others come in with Internet-delivered programming that could compete, what are the ways in which they might want to advantage their own versus their competitors, drive up their competitors' costs, make it more complicated and reduce quality for their competitors?

I am not saying any one arrangement necessarily does it, but these are the kinds of competitive concerns we think oversight officials should look at.

Senator KLOBUCHAR. You are talking about what I referred to earlier as the next Netflix, which is still a dream in a garage, and just that we have a structure that works to promote this kind of innovation.

Mr. KIMMELMAN. Exactly, Senator.

Senator KLOBUCHAR. One last thing. Mr. Minson, I understand that Time Warner Cable has a business service called "Ethernet"—is that right?—for which it offers wholesale access to its competitors. Competition like this is critical. I know we have said this many times up here just because we believe it creates a market that provides best prices and best services. High-quality and competitive Internet services are especially important for small businesses in our economy. Can you explain why offering wholesale access is good for Time Warner and good for consumers? And I guess I would ask you if Comcast has a similar offering, and would the combined company continue to offer this?

Mr. MINSON. Our Ethernet service is part of our overall business services offering. To date, our business services get the vast majority of its revenue from small businesses with less than 25 employees. As we have expanded in the marketplace, we have entered the mid-market and enterprise market where you will see these wholesale arrangements happening more. Our entry allows competitors and peers to come into the marketplace. And it is certainly something that we find provides a return for our investors and something we continue to plan on doing.

Senator KLOBUCHAR. Thank you.

Mr. COHEN. So, Senator, we—actually, if I can, a few sentences just to say it is the first time small and medium-sized businesses have come up in this hearing, and when you talk about the benefits of competition—or the benefits of this transaction, the scale and the investment, as Mr. Minson said in his opening statement, the impact on the market for small and medium-sized businesses to get telephone and high-speed data services will be substantial as a result of this transaction. It is one of the big procompetitive benefits that I just want to underline and put a yellow highlighting through.

In terms of Ethernet, we have a product we call "Metro Ethernet," which we have also started to roll out. Again, it is a product we market to larger, medium-sized businesses. We also have within that product a managed service which does permit wholesaling of that service, and we have got a few dozen customers in that space. Frankly, it is a service that we talked to Spot On about about a year ago and never reached an agreement with them to be able to offer that service. So it is a market that we are just beginning to be in. I do not know that we have as fully developed an opinion as Time Warner Cable might have about that. And this is not something we discuss during the pendency of the transaction, so I think my answer to your question is that we do not have an answer yet about how extensive we think a managed—what we would call a managed service under our Metro Ethernet service would be something that we would make available on the market.

Senator KLOBUCHAR. Okay. Mr. Sherwin.

Mr. SHERWIN. We are a customer of Time Warner's Metro Ethernet service as well as their cable service. We buy a lot of services from Time Warner Telecom. We buy it wholesale, and we buy almost all of our services from Time Warner wholesale. I think that may be largely due to the conditions that were placed on the AOL-Time Warner merger by the Federal Trade Commission and the Federal Communications Commission back when that occurred.

Our big concern is that that has been very advantageous for us, and we think it has been advantageous for Time Warner. We are hopeful that when this merger occurs that there is a condition placed that the conditions will continue to be enforced and monitored because it is helpful for us to provide a competitive service in buildings where the bigger providers are.

Senator KLOBUCHAR. Thank you. I was thinking, when Mr. Cohen was referring to small businesses, you probably consider yourself not a huge business there, Mr. Bosworth.

Mr. BOSWORTH. No, we are not.

Senator KLOBUCHAR. There are a lot of independent programmers that are a focus of this hearing as well. Do you want to respond?

Mr. BOSWORTH. Yes, thank you. We have raised $30 million from individuals, a little bit over that, and one of our only remedies right now is to go out and try to raise another $30 million to litigate. And that just should not be the avenue in order to provide consumers with a choice. And I have heard litigation mentioned a bunch, and I have heard a lot of—and I am not an attorney, but that does not seem like a fair and competitive marketplace.

Another thing I wanted to address is in the NBCUniversal merger, none of the independent networks that were launched—and we applaud the diversity angle. Back9 is bringing many more people into the game, people that have been excluded in the past. So we want to bring them into the game. So we applaud that. However, none of the channels, independent channels that were launched were in direct competition with any of the channels that they own.

The last point I wanted to make is that the 160 independent networks that they referenced, if you strip away all the different networks that either have affiliations with distributors, channels, indoor media conglomerates, it is less than 20. So truly——

Mr. COHEN. That is simply untrue, Senator.

Senator KLOBUCHAR. Okay. Let us—Mr. Cohen and Mr. Minson, if you could have a chance to respond when you are done.

Mr. BOSWORTH. Thank you.

Senator KLOBUCHAR. Okay. And then we are going to turn over to Senator Lee for some closing——

Mr. BOSWORTH. Thank you. In the productive meeting that Mr. Cohen referenced that we had two days ago, we were given nothing, with zero promises, and the only thing that went on was they said, "We would like to keep an eye on you for the next 24 months."

Now, potentially that may be our fault. Maybe we did not do a good job. But the constructive conversations that we have had with other distributors that give you specific feedback, when you are market maker and you own the toll, you give zero feedback as to how to be successful, and then you say, "Let us keep an eye on you."

When you know for a fact there is what was called, I guess, in the last hearing a "ripple effect," they are essentially market makers. So people look at you to see where the market leader goes. And so when you are given zero feedback and perhaps, you know, "Let us just keep an eye on you," for a small business that has raised independent dollars, it puts you in a very tough spot.

Senator KLOBUCHAR. Okay. Mr. Cohen.

Mr. COHEN. I think, look, all I would say is the statistic of 160 independent networks is 160 channels that are unaffiliated with any of the broadcasters, major media companies, et cetera. And, again, I am going to stand by our record of support of independent programmers because I do not think there is a company—I do not think there is a distributor in the industry that has done more to support the launch and ultimate growth of independent programmers than Comcast has. As I mentioned, we have increased distribution for 120 independent programmers in the last three years alone.

And, by the way, I am very proud of our networks, and I have a lot of respect for Mr. Bosworth. And, frankly, my—I do not participate in program affiliation negotiations, you will all be pleased to hear. But my folks are telling me these are productive discussions. This is a network we might end up wanting to launch and might want to be part of our system. They, however, are not in competition with the Golf Channel.

Senator KLOBUCHAR. Okay. I am going to let you guys negotiate after the hearing.

Mr. BOSWORTH. Can I just mention one important thing?

Senator KLOBUCHAR. I am going to just finish up here with Mr. Minson, and I really appreciate your testimony, and I think that if, in fact, the negotiations are productive or not, we will see if we can get the channel. Right, Mr. Lee? And I think you two should talk about it later.

Mr. Minson.

Mr. MINSON. Thank you. I just wanted to respond to a couple of comments made by Mr. Sherwin and Mr. Bosworth. In terms of us providing services to Mr. Sherwin's company, that does not have to do with any terms and conditions from the AOL-Time Warner merger. If it makes business sense for us to do it, we have done it, provided they are in compliance with our overall terms and conditions as a reseller.

One point I just wanted to address as well is Mr. Sherwin's reference to buying services from Time Warner Telecom. Not to overly complicate things, but Time Warner Telecom is actually a separate publicly traded company headquartered in Denver.

As it relates to the Back9Network, a couple things I just want to address. Previously Mr. Bosworth had indicated that conversations with us stalled—with "us" being Time Warner Cable—as a result of the Comcast transaction, and I can tell you that could not be further from the truth. Between signing and ultimate closing of the transaction, we are obviously acting on our own to make all of those such decisions. It would be inappropriate for us to be consulting at all with Comcast. So any decisions we make, we will make on our own, and it will be made on a price/value relationship for our customers, taking into consideration things like overall programming costs and bandwidth constraints that we have.

Senator KLOBUCHAR. All right. I am going to let Senator—I am sure we are going to have more questions here for the record, but I am going to let Senator Lee say some closing comments.

Senator LEE. I have got about 30 or 40 questions that I would like to ask.

[Laughter.]

Senator LEE. But given that the Eighth Amendment does have some application here——

[Laughter.]

Senator LEE [continuing]. I am going to forgo those.

I want to thank our witnesses for coming today. Neither Chairwoman Klobuchar nor I had any expectation that by the end of this hearing we would have everyone singing on the same page, and so that part is not surprising. But your testimony has been helpful, and I appreciate your willingness to be here and to endure our questions.

Thank you very much, and thank you, Madam Chair.

Senator KLOBUCHAR. Well, thank you. And I think as all of the questions and the testimony has shown us, there are a lot of very important issues here: the issue of consumers and how they will be protected going forward. We have the issue clearly of independent programmers, and as the merger is considered and if it is considered for approval, what kind of conditions would be placed on that? And I think while this is one specific example, I think both Senator Lee and I are aware of other examples of people that would not go public but are concerned about that. And it is not just about the independent programmers. It is about what the price then is and what that does to the market, whether we are talking about that, whether we are talking about advertising, whether we are talking about the wholesale pricing that Mr. Sherwin has mentioned. And then, finally, of course, the issue of the Internet and making sure that that is done in a fair way so it is available to everyone.

We are looking forward to getting more information. I know that, Mr. Cohen and Mr. Minson, your companies filed their—was it 180 pages?—report yesterday so we will be reviewing that. And I just want to thank the witnesses.

The Committee has received a number of letters from parties raising concerns about the merger, including Consumers Union, the American Antitrust Institute, and others, which I will be placing in the record.

[The information referred to appears as a submission for the record.]

Senator KLOBUCHAR. The hearing record will remain open for one week for any additional submissions and questions from Senators.

Thank you. You can go get some lunch. The hearing is adjourned.

[Whereupon, at 1:08 p.m., the Committee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Wednesday, April 9, 2014
Hart Senate Office Building, Room 216
10:00 a.m.

David Cohen
Executive Vice President
Comcast Corporation
Philadelphia, PA

Arthur T. Minson, Jr.
Executive Vice President and Chief Financial Officer
Time Warner Cable Inc.
New York, NY

Gene Kimmelman
President and CEO
Public Knowledge
Washington, DC

James L. Bosworth, Jr.
Chairman and CEO
Back9Network
Hartford, CT

Richard Sherwin
Chief Executive Officer
Spot On Networks
New Haven, CT

Christopher S. Yoo
John H. Chestnut Professor of Law, Communication, and Computer & Information Science
University of Pennsylvania Law School
Philadelphia, PA

PREPARED STATEMENT OF CHAIRMAN PATRICK LEAHY

Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing on "Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
April 9, 2014

The original business of the cable industry – delivering television programming – is migrating to the Internet, and the industry has been changing in response. Consumers can now watch what they want, when they want. When companies like Comcast and Time Warner Cable were founded, the term "binge watching" was unheard of; now it describes how many Americans watch their favorite shows. Cable companies have moved beyond delivering television, adapting their networks to provide broadband. They are now the sole source of this service for millions of Americans. As a result, cable companies play a dominant role in how many people in this country get their information. Consumers deserve to know how a merger between two of the largest companies in this industry will impact them.

Today's hearing will cover the current state of the video and broadband markets. We will hear discussion of vertical integration, relevant markets, and public interest standards. These are important issues to consider when analyzing the merger, but consumers do not want to hear complex legal jargon or obscure regulatory terms. They want to know why their cable bills are going up. They want to know why they do not have more choice of providers. Consumers are trying to find out whether and how this merger is good for them. I want to find out the same things.

In 1996, I voted against the Telecommunications Act in part because of concerns I had about the lack of competition in the cable TV market. Along with many consumers, I continue to be concerned. Similar questions are now being raised about the broadband industry, where consumers feel like they face large bills and inadequate choices.

In Vermont, we care deeply about net neutrality, but we do not simply want lip service paid to the phrase. We want meaningful rules of the road to protect an open Internet so that anyone with an idea can have a chance to succeed in the online marketplace. Vermonters are not alone. Thousands of Americans have flooded the FCC in recent weeks with comments supporting the restoration of open Internet rules. Their voices on this issue should be heard.

I appreciate that Comcast agreed to be bound by the FCC's Open Internet rules as part of the NBC/Universal transaction. This was an important commitment, especially now that core elements of the Open Internet Order have been struck down. The conditions that currently apply to Comcast should not be seen as the end point, but rather the minimum level of protection that should apply to promote competition online. Regardless of the outcome of this latest merger, I hope that Comcast will accept an extension of these rules beyond 2018. Better still, I urge Comcast to support stronger rules that will protect consumers and drive innovation.

The recent interconnection deal between Comcast and Netflix also raises important questions for advocates of net neutrality. When ISPs can charge tolls or block access to their networks, net neutrality policies alone may no longer be enough to protect consumers and promote an open

Internet. If companies must enter special agreements to ensure adequate quality for their streaming video service, I worry about the potential impact on other bandwidth-intensive services, such as telemedicine. It is an annoyance for consumers when they cannot stream the most recent season of *House of Cards* due to an interconnection dispute. But in the future, it could be a matter of life or death for patients who cannot reach healthcare services for the same reason.

This proposed transaction touches on a range of critical policy issues that extend beyond just the broadband space. This merger also raises important questions about diverse and independent video programming, and promoting a vibrant marketplace for online video. Our primary focus throughout should be on how this merger would impact consumers. I urge the FCC and Justice Department to consider just as carefully the impact on consumers as they review the pending merger.

I thank the witnesses for coming, and I look forward to hearing your testimony.

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PREPARED STATEMENT OF RANKING MEMBER CHUCK GRASSLEY

Prepared Statement of Senator Chuck Grassley of Iowa
Ranking Member, Senate Judiciary Committee
Hearing on the Proposed Comcast-Time Warner Merger
Wednesday, April 9, 2014

Good morning and welcome to all of the witnesses. Thank you for being here. I'm looking forward to hearing your testimony on what impacts, both positive and negative, the proposed Comcast-Time Warner transaction could have on competition in the telecommunications market and Americans' access to cable television and internet.

Comcast and Time Warner are the two largest cable companies in the country. They serve tens of millions of Americans and provide services ranging from home phone, to internet, to television. Comcast also develops some of its own content, especially after its acquisition of NBC Universal. So a combined Comcast-Time Warner could significantly affect the markets for television programming, high-speed internet access and program access.

We're not here today to decide whether, or on what conditions, Comcast and Time Warner will be permitted to merge – that's not the Judiciary Committee's role. The Federal Communications Commission and the Justice Department have the responsibility to determine whether there are any issues with this transaction. But this hearing does present the Committee with an excellent opportunity to conduct its oversight responsibility and examine the current state of the television and internet markets. It's a chance for us to see how well our laws are working in an area that has a direct impact on the lives of Americans.

Every year we're seeing new and exciting innovations in technology and communications. I remember a time when I used a black clunky telephone that was attached to the wall – everyone had the same one if you wanted telephone service. When I first came to Congress, I didn't carry a phone around in my pocket like I do now. And I would have never expected that one day I'd have an enthusiastic Twitter following. Innovations like these have radically changed the way Americans—and people throughout the world— communicate and interact with each other, learn, get news, conduct business, and access entertainment.

Possibly the most central feature of these technological innovations is the internet. Access to the internet is quickly becoming an absolute necessity for more and more Americans. They need it to compete in a fast-paced and globalized economy. They need it to stay in touch with family and friends. And they need it to access the content of their choice.

Right now we're experiencing a bit of a revolution in internet technology. Products like Verizon FiOS and Google Fiber are changing the internet's infrastructure by delivering faster access through fiber optic cables. And on the content side, companies like Netflix and Hulu are leading more and more people to "cut the cord" and access most of their media through the internet and their handheld devices rather than on traditional television.

Comcast and Time Warner control a significant amount of the cable infrastructure that Americans use to access high-speed internet. They control the cable lines that go directly into people's homes. So there's a lot of interest in what will happen if the two companies merge. Consumers want to know whether a combined Comcast-Time Warner will be in a better position to expand high-speed internet access. What will Comcast-Time Warner do to their cable bills? Are prices going to increase? Will they have more content choices? People want to know what this will do to the industry. Will the merger inhibit growth and deployment of broadband services? Will it enhance competition with companies like DISH Network and Google Fiber? What are the downstream effects of the merger? What are the implications of the merger for open access and peering? Consumers care about their options, the quality of their cable access, and the price that they pay.

Aside from simply accessing the internet, another question is whether a combined Comcast-Time Warner will impact television or internet content in a detrimental way. For example, will Comcast be able to block consumers' access to content, or will the merger allow Comcast to negotiate for better licensing arrangements from popular broadcasters like ESPN and Disney? Comcast creates some of its own programming. Some have suggested that this will put independent programmers at a disadvantage. Most people would agree that we're better off when Americans have a wide variety of programming options to choose from – so all these are valid questions.

Today we have an opportunity to learn more about how these markets actually work and what the transaction could mean to competition and consumers. To be sure, there's been no shortage of opinions expressed in the media since Comcast and Time Warner announced that they planned to merge. But I'm here to ask some tough questions. I'm especially interested to hear what this merger might mean for Americans who live in rural areas.

I look forward to hearing what you all have to say.

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PREPARED JOINT STATEMENT OF DAVID L. COHEN AND ARTHUR T. MINSON, JR.

JOINT WRITTEN STATEMENT BY

DAVID L. COHEN
EXECUTIVE VICE PRESIDENT
COMCAST CORPORATION

AND

ARTHUR T. MINSON, JR.
EXECUTIVE VICE PRESIDENT & CHIEF FINANCIAL OFFICER
TIME WARNER CABLE INC.

TO THE
U.S. SENATE COMMITTEE ON THE JUDICIARY

HEARING ON
"THE IMPACT OF THE COMCAST-TIME WARNER CABLE MERGER ON AMERICAN CONSUMERS"

APRIL 9, 2014

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Mr. Chairman, Ranking Member Grassley, Antitrust Subcommittee Chair Klobuchar, Ranking Member Lee, and Members of the Committee, 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 substantial and multiple pro-consumer, pro-competitive, and public interest benefits that it will generate, including through competitive entry in segments neither company today can meaningfully serve on its own.

Introduction

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, workplaees, 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, 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; and Apple has extended its platform into the full range of wired and wireless devices to compete in the delivery of content and services.

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, local news, 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, post-transaction, Comcast is prepared to divest systems totaling approximately 3 million subscribers, leaving it with about 30 million managed subscribers – which is essentially equivalent to Comcast's subscriber share after both the AT&T Broadband and Adelphia transactions in 2002 and 2006, respectively, and *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. 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. MVPD competition has *increased significantly* since these court rulings. Still, Comcast is prepared to divest sufficient subscribers to come in under the historical cap anyway.

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. That is a highly desirable outcome for the

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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 more 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.

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.

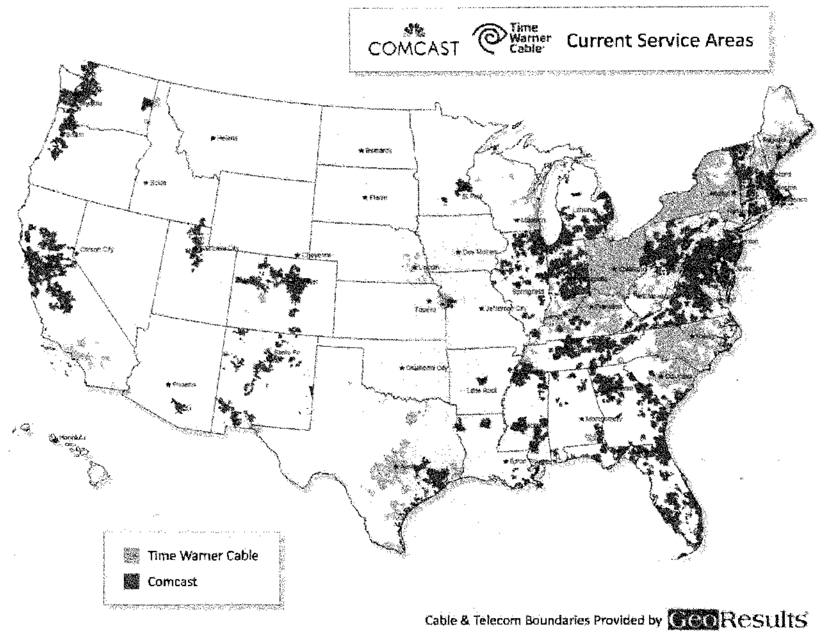
And fifth, access by competitors to the combined company's programming will remain unchanged. The limited number of TWC-owned programming networks that Comcast will acquire will be subject to well-established FCC rules and antitrust laws, along with the relevant terms of the NBCUniversal Order, to ensure 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.

I. Overview Of The Transaction

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.[3]



Consumers in Comcast's territories cannot subscribe to TWC for broadband, video, or phone services. And TWC customers cannot switch to Comcast. *For that reason, this is not a horizontal transaction under merger review standards, and there will be no reduction in competition or consumer choice.*[4] 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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3 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).

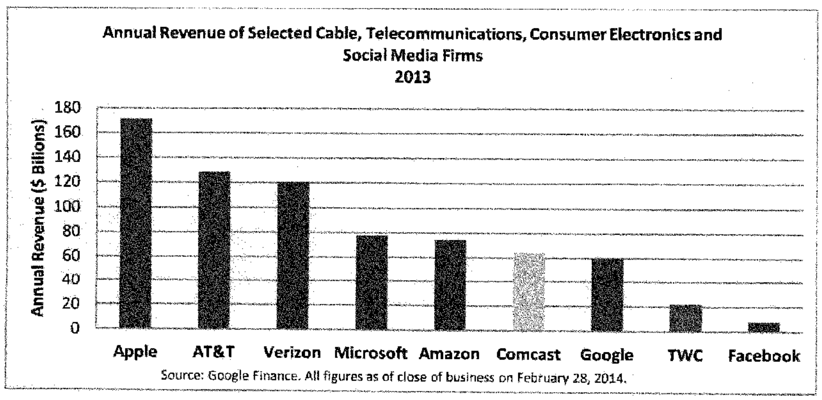
4 The Department of Justice and Federal Trade Commission define "horizontal transactions" as those between "actual or potential competitors." *See* U.S. Dep't of Justice & FTC, *Horizontal Merger Guidelines*, at 1 (Aug. 19, 2010).

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

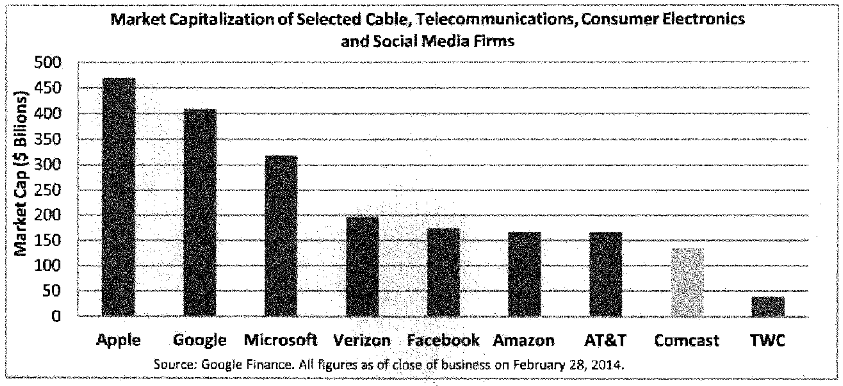
The combination of Comcast and TWC will create a world-class communications, media, and technology company that can provide consumers and businesses the advanced services they want now and will need in the future. The transaction will also spur other companies to innovate and invest in new technologies 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.[5] 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:



5 *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.[6] Direct satellite providers are likewise evolving and aggressively expanding their national services and product offerings.[7]

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."[8]

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[6] *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."). As Verizon's CFO recently observed, "I am the fifth largest Cable Company now. I also have something that cable doesn't have, which is 100 million eyeballs on wireless devices." Fran Shammo, EVP & CFO, Verizon, Deutsche Bank Media, Internet and Telecom Conference, Tr. at 15 (Mar. 10, 2014). 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* http://www.washingtonpost.com/business/technology/verizon-buys-intels-cloud-tv-service/2014/01/21/67e94336-82a5-11e3-9dd4-e7278db80d86_print.html.

[7] *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.

[8] *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

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. And 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.[9]

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.[10]

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.[11] Building on the investments TWC has made in its broadband

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.").

9 *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.

10 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.

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

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 12 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 year, Comcast showed that its residential network is capable of delivering 3 Gigabits per second (or "Gigs").[12] And Comcast successfully trialed the first One Terabit[13] connection on a network segment from Ashburn, Va. to Charlotte, N.C.[14] To our knowledge, this was the first time live data traffic has ever been carried at Terabit speeds on an existing commercial network.[15]

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.[16]

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 nnmber of systems.[17]

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

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12 *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.

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

14 *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.

15 *Id.*

16 *See* Exhibit 1 (chart showing increasing speeds/decreasing per megabit costs).

17 *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.

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 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).[18] In less than three years, Comcast has deployed over 870,000 Xfinity WiFi access points in its footprint – and seen a significant spike in usage. In comparison, TWC has deployed only 29,000 Wi-Fi access points in its footprint.

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[18] 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.

Comcast customers now transmit nearly 2 million gigabytes (or nearly 2 petabytes[19]) 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.

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.[20] In its Open Internet Order, the FCC described this dynamic as:

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19 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.

20 *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. 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

> 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.[21]

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.[22] Families with children eligible to receive free or reduced-price school lunches through the National School Lunch Program can qualify for this program.

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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).

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

22 *See Getting Started with the Internet*, Internet Essentials, http://learning.internetessentials.com/tour/getting-started-internet (last visited Apr. 5, 2014).

Internet Essentials is achieving real results.[23] 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.[24]

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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23 *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 Apr. 5, 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.").

24 *See* Exhibit 2 (*Internet Essentials* graphic).

- Providing IE customers with more than 23,000 subsidized computers at less than $150 each.[25]

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.[26] More than 4,300 new low-income families have been connected to the Internet under this promotional offer.[27]

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 nearly 25 percent from the original eligible base.

- 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

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25 *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.

26 *Id.*

27 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.

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.[28] 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

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[28] *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*.[29]

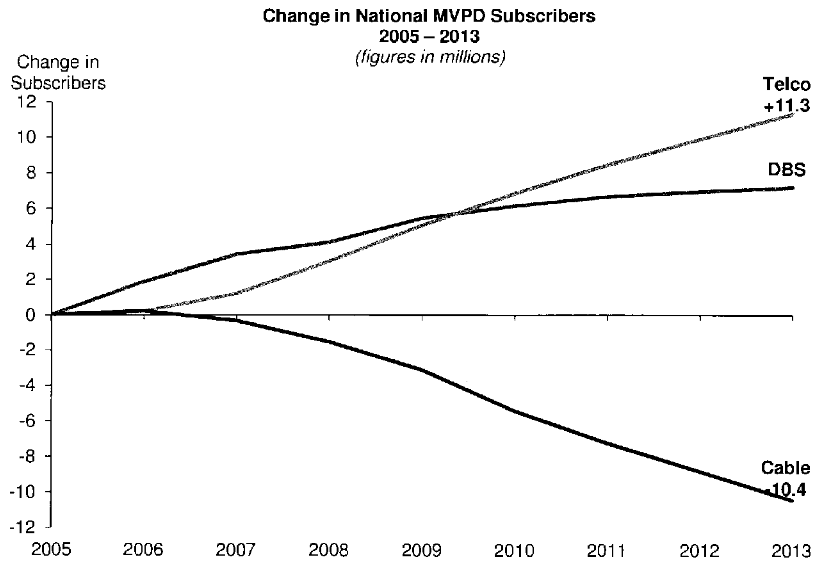
When this transaction is approved, this program will apply to all the communities in the TWC markets, thereby extending *Internet Essentials*' reach into 19 out of 20 of the nation's largest cities. Thus, a tangible and far-reaching benefit of this transaction will be to make the power of broadband and the Internet available to many more low-income families and 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.[30] And if one goes back to 2005, as shown in the graph below, the increase in MVPD competition is even more pronounced.

[29] *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.

[30] 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.[31]

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, and a host of smaller companies, have also entered the online video space, putting additional competitive pressures on cable and other MVPDs.[32]

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:

> *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

[31] *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).

[32] 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.

> 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.[33]

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."[34]

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.[35] 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."[36]

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.[37]

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

34 *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).

35 *Id.* (quoting IHS analyst Erik Brannon).

36 *Id.*

37 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,[38] 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.[39]

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 50,000 programming choices, including the most current TV shows and movies (80 percent of this content is free of charge).[40] Xfinity On Demand also has the best new release movies from all the major studios, and one of the broadest selections of independent films.

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.

[38] *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."

[39] 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.").

[40] 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.

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,[41] that can be watched anytime, anywhere,[42] 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."[43]

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

- 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;[44]

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

42 *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.

43 *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).

44 *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),

- 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 localism; 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.[45]

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.[46] Our voice 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

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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.").

45 *See* Exhibit 3 (Day One Undertakings Memorandum, dated Feb. 13, 2014).

46 *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).

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.[47] 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.[48] 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.[49] But for many small businesses and institutions, their existing choices for broadband are limited to expensive T1 services with download speeds of only 1.54 Mbps, or even slower services.[50] 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

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

[48] 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.

[49] *See Small Business Trends*, U.S. Small Business Administration, http://www.sba.gov/content/small-business-trends (last visited Apr. 5, 2014).

[50] *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/.

adding value for customers.[51] 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*.[52]

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.[53] This includes offering better, lower-cost broadband services to schools and school districts, which will advance the goals of the ConnectED initiative.[54] And Comcast has also brought to thousands of pharmacies, barber

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51 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 Apr. 5, 2014).

52 *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.").

53 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.

54 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 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.

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.[55]

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.[56]

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.

Medium-Sized, Regional, and "Super-Regional" Businesses Will Especially Benefit from the Transaction: The transaction will create a substantial opportunity for the 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

[55] *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.

[56] 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 Apr. 5, 2014).

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.[57] This has impeded Comcast's and TWC's ability to compete for some business customers in their current footprints.

After the transaction, the combined company will have operations in 19 of the 20 largest U.S. cities (excluding only Phoenix). This greater coverage will encompass significantly more multiple-regional business locations, allowing Comcast to compete more aggressively for these customers. For example, TWC currently provides business services to the Cleveland Clinic and is partnering with the clinic to provide an in-home health solution to reduce the rate of readmissions. The Cleveland Clinic has a couple of large campuses located in Florida in the Comcast footprint, so TWC has not been able to offer those campuses its services or extend the in-home health solution trial to patients of the Cleveland Clinic who live in Florida or are there from Cleveland for part of the year. Approval of the transaction would change that for the first time, allowing the company to offer a unified solution to the Cleveland Clinic.

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 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.

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[57] 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).

But in 2013, even when added together, Comcast and TWC had only an estimated 2.8 percent market share in these services.[58] 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.[59] 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).[60]

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 30 million consumers and a broad geographic scope, the combined company will be able to unlock the real potential for next-generation VOD and online advertising.[61] Being able to spread the costs for the service over an

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58 *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/.

59 *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.

60 *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.

61 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.*

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.[62] 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.[63] 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 TWC systems. This will provide greater geographic coverage – and, in particular, key advertising markets like New York, Los Angeles, and Dallas – that will create attractive new options for advertisers to reach video audiences efficiently.[64]

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62 *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/.

63 *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/.

64 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.* 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.

The enhanced value and benefits of addressable advertising will be particularly significant when combined with dynamic ad insertion capabilities.[65] 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.[66]

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.[67]

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

65 *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/.

66 *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).

67 *See* Exhibit 4 ("Investing in the Customer Experience – Innovating to Drive Change – Generating Measurably Improved Results").

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*."[68]

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.[69] 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 memorialized in three Memoranda of Understanding with diverse leadership organizations in 2010 in connection with the NBCUniversal transaction. Those voluntary undertakings span five

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

[69] *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.

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.[70]

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.[71]

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.[72] 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.[73]

In addition, for the past three years, Comcast has received advice and guidance from the 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 through rigorous benchmarking and reporting processes, including regular reports to the Board, Internal Diversity Councils, and external Joint Council.

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70 *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).

71 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.

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

73 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.

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. Within 120 days of the close of the transaction, 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,[74] voice-to-text features for its phone services,[75] and large-button remote controls.[76]

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,[77] as

[74] *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 Apr. 5, 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.

[75] *See VoiceZone from Time Warner Cable*, Time Warner Cable, http://www.timewarnercable.com/content/twc/en/residential-home/phone/features/voicezone.html (last visited Apr. 5, 2014).

[76] *See Solutions for Everyone*, Time Warner Cable, http://www.timewarnercable.com/en/residential-home/support/accessibility.html (last visited Apr. 5, 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.

[77] 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.[78]

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.[79] 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.[80]

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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78 *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).

79 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).

80 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.[81] And Comcast is the largest ISP to deploy native IPv6 support, the next generation of IP addressing, to 100 percent of its network.[82] 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.[83] 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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81 *See* Jason Livingood, *Comcast Completes DNSSEC Deployment*, Comcast Voices (Jan. 10, 2012), http://corporate.comcast.com/comcast-voices/comcast-completes-dnssec-deployment.

82 *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.

83 *See Constant Guard - Our Safe Network*, Comcast Corp., http://constantguard.comcast.net/our-safe-network (last visited Apr. 5, 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.[84]

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.[85]

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

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[84] *See* Exhibit 5 (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 look at 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.

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

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.[86]

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.[87]

Comcast has similarly met or exceeded each of its investment and upgrade commitments in the AT&T Broadband (2002) and Adelphia (2006) transactions.[88] And, both in connection

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86 *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.

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

88 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

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.

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.

1. Broadband Ecosystem

a. Comcast Has A Long Record Of Improving Consumers' Online Experiences And Working Cooperatively With Other Companies On Interconnection, Peering, And Transit.

It bears repeating that Comcast and TWC have enabled the development of online video and many other innovative services by providing ever-faster broadband speeds and higher bandwidth services. We have no interest in degrading our broadband services to disadvantage OVDs or other edge providers. That would only harm the attractiveness of our fastest-growing business – high-speed data – and simply makes no sense.

For over two decades, Comcast and TWC have worked cooperatively with other companies to interconnect our networks in mutually beneficial ways, such as through peering and transit arrangements. The hyper-interconnectedness of the Internet backbone means that any major player, such as Comcast or TWC, has dozens of paths into its network on which huge volumes of undifferentiated traffic from millions of sources travel at any given moment.

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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.

Comcast has over 40 settlement-free peering agreements, and thousands of commercial (*i.e.*, paid) connecting arrangements, which include several dozen substantial peering and transit agreements (*e.g.*, with content delivery networks ("CDNs"), ISPs, or larger edge providers). Altogether, the structure of, and competition in, interconnection eliminates any potential ability for the combined entity to raise prices or degrade service for edge providers. No peering or transit provider or CDN allows Comcast or TWC to decide which edge provider's traffic to accept from among the millions of bits being transmitted on any individual route.

Further, maintaining a wide variety of open routes into its networks is critical to Comcast's business: Comcast needs to maintain connectivity to many Internet end points it does not serve directly, both to deliver its customers' traffic to *others* (since Comcast not only serves residential "eyeball" customers, but also serves businesses, content providers, CDNs, and others as a transit provider, and sends such traffic off-net to other providers) and to receive traffic from other Internet end points destined for *Comcast's customers*. Comcast's business is in offering this "ubiquitous Internet connectivity" to customers; otherwise, it will lose them. There will always, necessarily, be many "open" routes into Comcast's network provided by third parties – which ensures that the overwhelming majority of edge providers' traffic flows into Comcast's last-mile network without the edge provider having to interact with Comcast directly.

The market dynamics that have governed these arrangements have spurred new Internet technologies and edge provider services, as part of the "virtuous cycle" of innovation that we previously described, making the Internet an unparalleled success. Nothing about the transaction will change these marketplace conditions, or Comcast's incentives, so there is no need for government intervention into this aspect of the vibrant, yet stable broadband ecosystem.

Furthermore, as we said earlier, the FCC's original Open Internet rules apply to Comcast and will apply to the acquired TWC systems post-transaction. The only "last mile" control Comcast has is when traffic is, finally, delivered to its network, and it is at this point – on the Comcast last-mile network – that the "no-blocking" and non-discrimination protections of the Open Internet rules apply. Comcast shares policymakers' objective of preserving an open Internet, and Comcast's commitment to abide by the Open Internet rules through 2018 will give the FCC ample time to develop a new, industry-wide approach.[89]

b. The Transaction Will Spur Competition For Broadband Services.

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.

[89] Similarly, the Comcast-BitTorrent agreement from 2008 provided for mutual disclosure by broadband ISPs and Internet application and service developers and providers – among other things, moving to a disclosed protocol-agnostic congestion management practice with BitTorrent's agreement "to work with [ISPs], other technology companies, and the Internet Engineering Task Force, a nonprofit standards body, to develop ways to optimize file swapping on networks like Comcast's." Anne Broache, *Comcast and BitTorrent Agree to 'Collaborate,'* CNET, Mar. 27, 2008, http://news.cnet.com/8301-10784_3-9904494-7.html?tag=mncol;txt. Comcast does not block or degrade P2P traffic or applications like BitTorrent, Gnutella, or others as part of its current network congestion management technique.

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.[90]

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 Mbps, and CenturyLink offers speeds up to 40 Mbps.[91] 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.[92]

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.[93] And even as this growth is occurring, the next

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[90] The relevant market for broadband services is *local* – namely, what choices does a consumer have for broadband where he or she lives. 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. FCC, *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. Because TWC and Comcast provide broadband services in different geographic areas, the transaction leads to no reduction in the competitive choices available in any relevant market. It is thus *irrelevant that, post-transaction, Comcast will be present in 20 of the top 25 markets.*

Further, recognizing that "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 has said it is prepared to make. If one were to include wireless broadband in the calculation (which are about half of all broadband connections), the combined share drops to as low as 20 percent, after the divestitures.

[91] *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).

[92] *See How Fast Should My Internet Connection Be to Watch Netflix?*, Netflix, https://help.netflix.com/en/node/306 (last visited Apr. 5, 2014).

[93] *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).

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.[94]

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.[95] 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.[96] 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.[97]

CenturyLink is also on the same path with network investments that include "gigabit fiber, VDSL2, and pair bonding deployments to efficiently enable higher speeds."[98]

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.[99] 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

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94 *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.

95 *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.

96 *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.

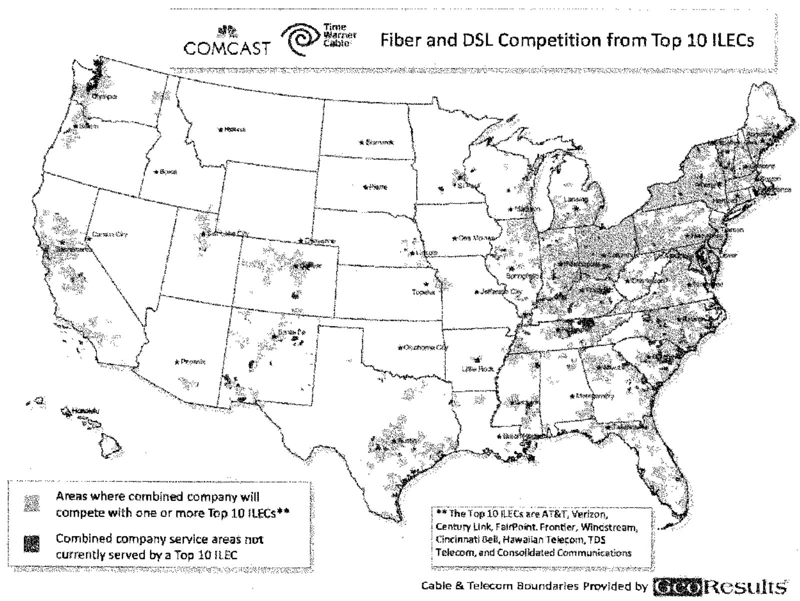
97 *See* Press Release, AT&T, AT&T Reports 20 Percent Adjusted EPS Growth, Record-Low Fourth-Quarter Postpaid Churn, Solid Smartphone Gains and Continued Strong U-verse Momentum in Fourth-Quarter Results (Jan. 28, 2014), http://www.att.com/gen/press-room?pid=25228&cdvn=news&newsarticleid=37405&mapcode=corporatelfinancial.

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

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

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.[100] 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] . . . ."[101]

The map below illustrates the ubiquitous fiber and DSL competition that the combined company will face from the top 10 ILECs:



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.

100 *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).

101 *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).

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.[102] Comcast or TWC has a significant presence in eight of those nine areas (which are already served by multiple other MVPDs and broadband providers). And Google unquestionably has the financial and technical wherewithal to expand Google Fiber to additional markets.[103]

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.[104]

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.[105] Even edge providers that require substantial bandwidth now expect wireless to be an increasingly effective broadband competitor.[106]

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[102] 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.

[103] *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/.

[104] *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.

[105] *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.

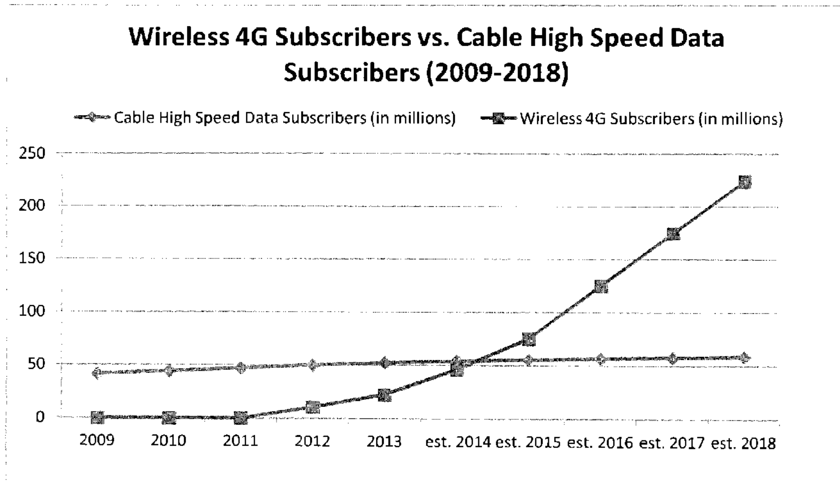
[106] As the head of MLB Advanced Media recently stated, in response to the claim that "[t]he cable guys pretty much control broadband":

> 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, 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.[107] 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.

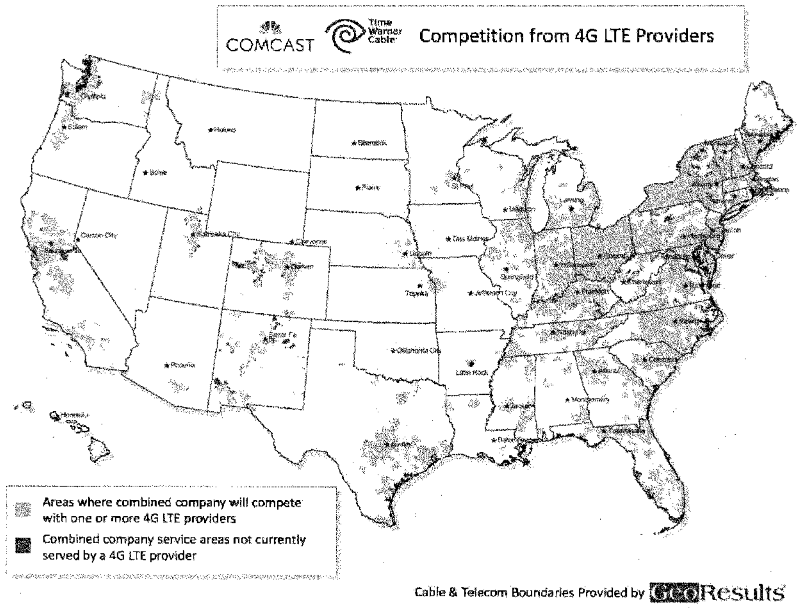
The chart below shows the significant increase in wireless 4G subscribers since 2009 and the projected increases through 2018, as forecasted by SNL Kagan:



https://help.netflix.com/en/node/306 (last visited Apr. 5, 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).

107 *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 the combined company will face increasing competition from one or more 4G LTE providers:



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."[108]

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.

[108] *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 some divestures, with 30 million subscribers in systems it manages. Comcast's share of the MVPD market will be about 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*."[109] 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.[110]

Nor should there be any concern that the combined company's presence in 19 of the top 20 DMAs creates a bottleneck for programmers. DMAs are just Nielsen constructs for rating measurement purposes and do not constitute relevant antitrust markets. Nevertheless, programmers have access in all DMAs to two nationwide DBS distributors, and increasingly, online video distributors. Comcast will face significant competition in *all* these DMAs. As shown in the map below, there will be *11 or more video competitors* in most of these 19 DMAs where the combined company will have a presence and *at least six competitors* in all of them, as the map and chart below indicate.[111]

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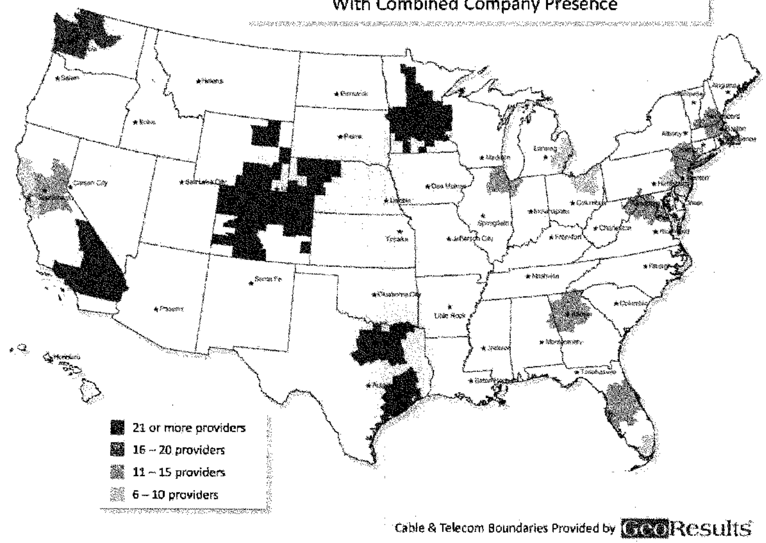
109 *See Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009) (emphasis added).

110 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).

111 In fact, the transaction only adds a presence that Comcast did not previously have in three DMAs (Los Angeles, Dallas/Fort Worth, and Charlotte). TWC's share of video customers in the first two DMAs is less than one-third, and is less than 40 percent in the last.

Video Service Providers in the 19 of the Top 20 DMAs
With Combined Company Presence



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)*	---	13	No Change
12	**Detroit, MI**	Dish, DirecTV, AT&T, WOW!, Charter, and 5 others	10	No Change
13	**Seattle-Tacoma, WA**	Dish, DirecTV, Frontier, Coast Communications, Wave, and 11 others	16	No Change
14	**Minneapolis-St. Paul, MN**	Dish, DirecTV, WOW!, CenturyLink, Consolidated Communications, and 36 others	41	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**	Dish, DirecTV, AT&T, WOW!, Fairpoint, and 4 others	9	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.[112] 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") 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.[113]

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); 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.[114] 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.[115] And, because TWC has no ownership

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112 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).

113 *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.

114 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.

115 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.

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 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.[116]

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.[117] 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. And, of course, the FCC's program carriage rules provide a backstop against any wrongful denials of carriage.[118]

116 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).

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

118 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. For local advertising, New York is the only DMA where Comcast and TWC both sell cable spot 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 Commission and DOJ have 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.[119]

Advertisers will continue to enjoy a great many alternative outlets in the DMAs where the combined company operates, including broadcast television, other MVPDs, radio, newspapers, outdoor display advertising, and Internet media. As TWC has stated publicly, it "faces intense competition for advertising revenue across many different platforms and from a wide range of local and national competitors. Competition has increased and will likely continue to increase as new formats for advertising seek to attract the same advertisers. TWC competes for advertising revenue against, among others, local broadcast stations, national cable and broadcast networks, radio stations, print media and online advertising companies and content providers."[120]

As we previously described, by providing greater coverage and scale, 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.

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119 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 . . . .").

120 *See* Time Warner Cable, Annual Report (10-K), at 8 (Feb. 18, 2014).

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 just 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.

PREPARED STATEMENT OF GENE KIMMELMAN

Public Knowledge

Testimony of Gene Kimmelman
President and CEO
Public Knowledge

Before the
U.S. Senate
Committee on the Judiciary

Hearing On:
Examining the Comcast-Time Warner Cable Merger
and the
Impact on Consumers

Washington, DC

April 9, 2014

Testimony of Gene Kimmelman
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Before the
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Hearing On
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

April 9, 2014

After years of suffering from enormous rate increases and poor service from Comcast and other providers,[2] a vibrant broadband economy is just beginning to bring exciting new alternatives to subscription television.[3] Everything from new devices -- like Roku, Xbox, Amazon's Fire, and AppleTV -- to new video services -- like Amazon Prime, YouTube, Netflix, and Aereo -- are demonstrating that online video can compete with some elements of traditional cable TV.

These new competitors may begin to help consumers avoid overpriced large "tiers" or bundles of channels, many of which force customers to purchase access to channels they do not want simply to access the channels they do want.

However, Public Knowledge believes the proposed acquisition of Time Warner Cable,

[1] Public Knowledge is a public interest nonprofit dedicated to the openness of the Internet and open access for consumers to lawful content and innovative technology. Public Knowledge has a long history of opposing mergers and other transactions that reduce choice and competition in the telecommunications sphere, including those between Comcast and NBCU-Universal, AT&T and T-Mobile, and Verizon and SpectrumCo.

[2] *See* Free Press, *Comcast Gets Bigger, You Get Poorer*, http://www.freepress.net/sites/default/files/resources/Free_%20Press_Comcast-TWC%20Infographic_Video_Price_Hikes_0.pdf; *see also* Bureau of Labor Statistics, Consumer Price Index.

[3] While some consumers have the option to choose between cable and satellite providers, very few have viable options if they wish to bundle both television and broadband services. At one time, Verizon appeared to be a potential competitor in the combined subscription TV and broadband space, but its FiOS service is offered in only 15% of Comcast's markets and Verizon has no plans to expand that service. Satellite continues to lack a meaningful broadband option to make it a competitor to cable broadband. It appears that AT&T has no plans to devote significant additional resources to expanding U-Verse in the residential broadband space. Google has only committed to a limited number of small experiments. Finally, mobile broadband is a complement, not a substitute.

the nation's second largest cable company, by Comcast, the nation's largest cable company and owner of all NBCU content, will threaten the continued viability of nascent competitors and endanger the continued emergence of innovative new video and other types of services delivered over the Internet. The proposed transaction is inconsistent with antitrust policy, the goals of the Communications Act, and the broader public interest. Therefore, it should not be approved.

As a result of the merger, Comcast will control nearly 50 percent of high speed Internet access in this country, over 30 percent of Multi-Channel Video Programming Distributor (MVPD) subscribers and almost 60 percent of cable subscribers.[4] Comcast will also have a significant presence in 19 out of 20 of the largest DMAs in the country.[5] This unprecedented accumulation of market power, combined with Comcast's vertical integration into content, creates the incentive and enormous leverage for Comcast to:

(1) stifle slowly emerging competition from rivals such as Netflix and Amazon that require high speed Internet access to deliver quality service to their customers, thwarting not only competition from existing rivals but discouraging investment in new innovative services delivered over the Internet;

(2) slow the pace and dictate the direction of equipment, device, and service innovation to lock in maximum revenue for Comcast's own infrastructure and business model;

(3) pay content suppliers less than the market value of their products and services, driving up the cost of programming to other distributors and increasing prices to consumers;

(4) artificially raise the prices of Comcast-owned programming to Comcast rivals hampering their ability to compete and raising prices to consumers; and

(5) position itself as the dominant gatekeeper for all new services (both video and non-video) that rely on fast, reliable broadband connections to reach customers.

The Department of Justice (DOJ) recognized the competitive dangers inherent in Comcast's vertical integration into content with its merger with NBC-Universal:

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[4] 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.

[5] Filing by Comcast Corporation, SEC File No. 001-32871, at 5 (Feb. 13, 2014), *available at* http://www.sec.gov/Archives/edgar/data/1166691/000095010314001082/dp44005_425-it.htm ("Comcast SEC Filing").

> Comcast has an incentive to encumber, through its control of the [Joint Venture], 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 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.[6]

That transaction proceeded after Comcast committed not to unfairly discriminate against either traditional video distributors or emerging online competitors. The proposed merger of Comcast and Time Warner Cable, however, presents competitive dangers that far exceed traditional regulatory policing practices. As new threats arise to Comcast's business interests, it has at its disposal myriad ways of slowing down its competitors, degrading their services, and increasing their costs in ways that cannot be effectively monitored and prevented.

By expanding its customer base to control almost one-third of all subscription TV households in the country and almost one-half of all the high speed broadband customers in the U.S., Comcast would position itself to dictate how much consumers must pay, determine what packages of services customers must buy, and influence what devices people can use to receive the type of video content they want. Through vertical control of NBCU's "must have programming" and its enormous customer base, a combined Comcast-Time Warner Cable could become the dominant Internet gatekeeper and choke point for innovative video services and products, inflating prices and preventing millions of consumers from receiving these services and products at competitive market prices.[7]

The Numbers Tell a Story of National Dominance

If this merger takes place, Comcast would accumulate unprecedented market power. Comcast would have a significant presence in 19 of 20 top media markets.[8] It would have nearly 50 percent of the critically important market for the provision of high speed

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[6] *United States v. Comcast*, Case No. 11-cv-00106, Compl. at ¶ 54 (D.D.C. Jan 18, 2011), *available at* http://www.justice.gov/atr/cases/f266100/266164.htm.

[7] *See* Cooper, *supra* note 4, at 6 (HHI analysis showing Comcast-Time Warner Cable firm share of True Broadband at 49 percent, Wireline Cable of 54 percent, and MVPD of 35 percent).

[8] Comcast SEC Filing, *supra* note 5, at 5.

Internet access[9] and dwarf the closest in size cable system by a factor of nearly eight times.[10] It would have about 35 percent of the MVPD market.[11] This increased size would magnify its status of gatekeeper for both new and emerging Internet services and conventional distribution of content to consumers.

The merged company would be a vertically-integrated powerhouse. Comcast owns or partially owns eleven regional sports networks.[12] It owns Universal Pictures, one of the major film studios.[13] It owns well-known cable networks like USA, Syfy, Oxygen, E!, MSNBC, CNBC, Golf Channel, and Bravo.[14] It owns two broadcast networks, Telemundo and NBC, and 26 broadcast stations.[15] The Department of Justice has already recognized the value of Comcast's content businesses and the competitive dangers of this vertical integration between Comcast's distribution and programming businesses.[16]

Time Warner Cable is a vertically-integrated company itself. Time Warner Cable controls three major sports networks in Los Angeles alone (Time Warner Cable SportsNet, Time Warner Cable Deportes, and SportsNet LA), manages 26 local news channels, 16 local sports channels, and ten "lifestyle" channels.[17] If Comcast is allowed to buy Time Warner Cable, these new properties will add to its ability to drive up the prices of programming to other program distributors and impede the development of new competition.

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[9] Free Press, *Comcast-Time Warnet Cable: Too Much Control*, http://freepress.net/comcast-time-warner-cable-too-much-control.

[10] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report ¶ 137, Table 9 (rel. July 22, 2013) ("MVPD Competition Report").

[11] *See* Cooper, *supra* note 4, at 6.

[12] MVPD Competition Report, App. D.

[13] Filmed Entertainment, Comcast (last visited Apr. 7, 2014), http://corporate.comcast.com/our-company/businesses/nbcuniversal#accordion-2.

[14] NBCUniversal Cable Networks, Comcast (last visited Apr. 7, 2014), http://corporate.comcast.com/our-company/businesses/nbcuniversal#accordion-0.

[15] About NBCUniversal Owned Television Stations, NBCUniversal (last visited Apr. 7, 2014), http://www.nbcuni.com/broadcast/nbc-owned-television-stations/.

[16] *United States v. Comcast*, Case No. 11-cv-00106, Competitive Impact Statement § II.D.1 (D.D.C. Jan. 18, 2011), *available at* http://www.justice.gov/atr/cases/f266100/266158.htm ("Competitive Impact Statement").

[17] Time Warner Cable, *Form 10-K* at 5 (Feb. 18, 2014).

The Merger Will Allow Comcast to Stifle Internet Competition

Comcast and its supporters claim this merger cannot harm competition because Comcast and Time Warner Cable service territories do not overlap. Mergers between horizontal competitors are just one type of concern under the antitrust laws. Another, equally problematic form of merger is one that involves vertical integration of a firm with market power at one stage of the industry in a competitive or potentially competitive adjacent market. Comcast has market power as a distributor of content and provider of high speed Internet access. Comcast already owns NBCU and thus has an incentive to leverage its cable and Internet access operations to protect its content business. Similarly, Comcast has an incentive to leverage its control over NBCU to protect its cable and Internet distribution interests.

The Department of Justice recognized this competitive concern in the NBCU merger when it found that online video providers "are dependent upon ISPs' access networks to deliver content to their subscribers," and there is a danger that Comcast could "adversely affect [ ] the quality of [online] services that compete with Comcast's own" video service.[18]

The scope of the market power at issue then -- and thus the scope of the competitive harm from its exercise -- will increase dramatically with the merger with Time Warner Cable. The merger will give Comcast almost 50 percent of the market for high speed Internet access. This unprecedented degree of control over a critical resource for innovation by a single company is reason enough to block the transaction. No new service that requires high speed Internet access can hope to achieve the necessary critical mass for success without being able to reach the 50 percent of high speed Internet subscribers controlled by Comcast. Post-merger, Comcast will have the ability to impede the quality of services offered by new competitors, artificially raise the costs of doing business for such competitors, or both.

Comcast's dominance in broadband access would position it as more than just the gatekeeper for online video innovation. Any innovative new technology provider that relies on reliable, high speed Internet access would be wary of doing anything that could expose it to retaliation by Comcast. Control of 50 percent of high speed Internet subscribers would mean that Comcast's discrimination against any new service could be the difference between its failure and success. As the Federal Communications Commission (FCC) has recognized, had such discrimination occurred earlier "some innovative edge providers that have today become major Internet businesses might not

[18] Competitive Impact Statement § III.A.5.

have been able to survive."[19]

A Merged Comcast-Time Warner Cable Would Be Able to Exercise Market Power Over Suppliers

The merger will also give Comcast market power as a purchaser of programming (monopsony power). After the merger, programming suppliers will be faced with a single large buyer and a fringe of smaller buyers. No program supplier will be able to obtain the critical mass of "eyeballs" necessary to successfully launch or sustain a program or channel without placement on the post-merger Comcast systems. This enables Comcast to demand less than market prices for programming. Programmers will seek to make up lost revenues by increasing prices to other distributors, harming the ability of smaller distributors to compete and raising prices to consumers.

Monopsony power also gives Comcast enormous control over how independent programming is seen by subscribers. In the past, Comcast has exercised its existing influence to prevent independent programming such as HBO from being accessed on devices Comcast does not control such as the Roku and Playstation 3.[20]

Post-merger, Comcast's monopsony power will harm consumers outside of its geographic footprint as well. After the merger, Comcast's infrastructure will serve almost 60 percent of all cable subscribers along with its large share of high speed broadband customers. This will give Comcast an enormous degree of leverage over equipment manufacturers and standard setting organizations that establish the cost-effective business opportunities for offering cable and broadband customers new wireless, cloud storage, and in-home viewing options. No innovation in cable services or infrastructure will be adopted unless it is in Comcast's interest to do so.

Post-Merger Comcast Will Artificially Raise the Price of its Programming to Rivals

In addition to being the nation's largest cable operator, Comcast also provides its rivals with programming. Post-merger, Comcast will have an incentive to increase the prices

[19] *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Report and Order, ¶ 23 (Dec. 23, 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-201A1.pdf.

[20] Karl Bode, *Comcast Still Blocking HBO Go On Roku (And Now Playstation 3), Incapable Of Explaining Why*, Techdirt (Mar 7, 2014) http://www.techdirt.com/articles/20140-3-incapable-explaining-why.shtml;

[20]Chris Welch, *Comcast isn't letting customers watch HBO Go on Playstation 3*, The Verge (Mar 5, 2014).

its rivals pay for that programming since doing so would give Comcast a competitive advantage in providing MVPD services. For example, recent economic analysis shows that the prices for regional sports channels owned by cable companies are higher than those charged by independent sports channels.[21] By increasing programming prices for competitors, Comcast can make its own pay-television service more attractive when compared to rivals.[22]

A Dominant Distributor Damages Internet Content and Services

A merged Comcast and Time Warner Cable would be positioned to act as the dominant gatekeeper for all types of online services.

For an Internet service to reach Comcast's customers, at some point either its data network or a third-party network must interconnect with Comcast's network. However, after a merger Comcast may have the means to use these interconnection relationships anticompetitively.[23] No matter how competitive the transit market may be, at some point all transit providers must face the reality that there is no way to reach Comcast's

[21] 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). ("We find that, all else equal, when an RSN is owned by a cable or satellite operator, the RSN charges rival distributors a significantly higher license fee. Most significantly for our purposes, the vertical integration premium increases significantly with the local down-stream market share of the RSN's affiliated distributor.") *Id.* at 69 ("According to the FCC, Comcast's refusal to license its affiliated regional sports network in Philadelphia, Comcast SportsNet Philadelphia, to DirecTV and Dish Network caused 'the percentage of television households that subscribe to DBS in Philadelphia [to be] 40% below what would otherwise be expected.' The FCC also concluded that Comcast's foreclosure of its DBS rivals in Philadelphia 'had a material adverse impact on competition in the video distribution market" (footnotes omitted.).

[22] Cooper, *supra* note 4, at 5 ("The regional sports and news networks that Comcast and Time Warner control would enhance the market power of the post-merger firms both as a bottleneck (withholding access to marquee content) and a buyer (reaching high value regional sports audiences). Comcast has used access to this marquee content to weaken competition in the past."). Generally, Cooper notes the dangers of buyer market power ("when a firm becomes so large a buyer of goods or services that it can use its market power to dictate prices, terms and conditions that hurt the firms from which it buys those goods and services") and bottleneck market power ("When a firm has a large market share for an input that is necessary for other firms to compete with it, then it can use its control over that bottleneck to undermine competition...."). *Id.* at 2.

[23] Indeed, there is some indication that it already has. *See*, e.g. Reed Hastings, *Internet Trolls and the Case for Strong Net Neutrality*, Netflix Blog (Mar. 20, 2014), http://blog.netflix.com/2014/03/Internet-tolls-and-case-for-strong-net.html; Comments of Level 3, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, *Preserving the Open Internet*, GN Docket No. 09-191 (Mar. 21, 2014). However, a merger would only increase Comcast's ability to demand interconnection fees that bear no relationship to actual network costs by substantially adding to its captive customer base.

customers except through Comcast. Because of the size of the combined Comcast and Time Warner Cable's customer base, if Comcast decides to begin charging popular Internet services for access to its customer base, those large Internet services would have no choice but to acquiesce.[24]

Furthermore, given the leverage Comcast would have over Internet content and service companies, many of the same problems that manifest in the video space today could spread to the Internet market. If Internet service companies are forced to pay a toll to access Comcast's customers, they may have to raise their prices, and the entire industry could suffer reduced investment. Similarly, popular Internet companies and content providers may decide to offset interconnection fees paid to Comcast by charging smaller ISPs for interconnection themselves. This is a path towards introducing today's "TV-style" blackouts to the Internet.

Conclusion

Claims that Comcast and Time Warner Cable systems do not overlap geographically in no way eliminate antitrust and communications policy concerns about the proposed transaction. Comcast's vertical integration of its programming interests into additional bottleneck monopolies is as much in the mainstream of antitrust as the concerns that led to the Microsoft and AT&T cases.

The merger will even more firmly entrench Comcast as the gatekeeper at the crossroads of Internet, television, and communications innovation. Because the merged company will have both the incentive and ability to thwart development of innovative Internet services that threaten Comcast's excessively priced offerings across a much broader swath of the market than is true today, this merger must be rejected.

[24] *See* Competitive Impact Statement § III.A.5.

PREPARED STATEMENT OF JAMES L. BOSWORTH, JR.

Hearing on

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

United States Senate Committee on the Judiciary

April 9, 2014

Written Statement of James Bosworth
CEO
Back9Network Inc.

Testimony of James Bosworth
CEO of Back9Network Inc.
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
April 9, 2014

Introduction and Summary

Good morning Chairman Leahy, Ranking Member Grassley, and Members of the Committee. My name is Jamie Bosworth, and I am CEO of Back9Network, a new golf and lifestyle cable network. Thank you for the opportunity to testify today on what the Comcast-Time Warner Cable deal means for independent cable networks like ours.

Based in Hartford, Connecticut, Back9Network is an independent cable network focused on golf-lifestyle programming, and on expanding the game's audience into new and diverse markets. We have built state-of-the-art facilities in Hartford, where we have created jobs and built the fastest-growing online audience in golf. We have acquired quality programming and signed up sponsors and investors. While focusing on the lifestyle and not live golf tournaments, we will compete directly with the Comcast-owned Golf Channel for audience, advertisers, and talent. I am concerned that this merger will make a bad situation near-impossible for independent programmers — particularly those that compete with channels owned by a vertically-integrated powerhouse with unparalleled control over distribution.

Every new network focuses on two things for a successful launch: (1) the ability to produce or acquire quality programming, and (2) distribution to a critical mass of subscribers. Today, the four biggest carriers — Comcast, DirecTV, DISH Network, and Time Warner Cable — dwarf every other provider in their number of video subscribers. Even if a programmer were able to successfully negotiate affiliation agreements with nearly every single other small and midsize operator (which would result in geographically disparate distribution in approximately one-third of U.S. multichannel homes), a programmer that is shut out of distribution from all four of the largest distributors will struggle to compete for enough advertising and audience to succeed. Someday we may get to the point where a Netflix or another over-the-top service changes this marketplace reality, but that is not the case today. Television advertising still dwarfs online video advertising by a factor of 20-to-1.[1]

Despite the structural challenges before this announced merger, we were well positioned to succeed and optimistic about a launch on Time Warner Cable's systems sometime this year. The merger, however, makes us concerned that this will not happen because, notwithstanding the commitments Comcast made to independent programmers to secure approval of its NBCU merger, the incentive is for the merged company not to carry us. I hope Comcast will remain true to its commitments and not discriminate based on its ownership of the Golf Channel, and I hope Comcast will judge us on the merits of our business plan. But, so far, that has not been our experience. If the structural problems in the distribution system get worse through mergers, it will not only be bad for those of us trying to launch new networks, but consumers will not have the programming choice — or diversity of viewpoints — they want.

I. Back9Network: Filling A Niche In Sports And Lifestyle Programming

The Back9Network was formed in 2010 to provide original lifestyle and entertainment programming to golf-oriented consumers and advertisers. The golf lifestyle industry is a $177 billion market that includes spending on travel, equipment, apparel, real estate, and golf courses.[2]

[1] *The TV Landscape*, Multichannel News, Jan. 6, 2014.

[2] Per the most recent Golf Industry Report by SRI International and Bloomberg, only 1 percent of the $177 billion golf economy is spent on golf endorsements, tournaments, and associations. Approximately 99 percent is spent on the lifestyle activities (e.g., travel, course play, fashion, equipment, etc.) on which Back9Network content will focus. Per Bloomberg, this $69 billion core golf economy tops such professional spectator sports such as baseball, basketball, football (continued...)

At approximately 26 million golfers, golf has the second-largest participant base in American sports, behind only bowling.[3] But it has only one home on cable — the Golf Channel, owned by Comcast. The Golf Channel focuses on airing live professional golf tournaments, but largely ignores the golf lifestyle market and therefore misses a large segment of the potential audience and ad revenue. Golf Channel's audience (total-day-viewership averaged 110,000 in 2013) does not even attract one-half percent (0.5%) of the approximately 26 million active golfers in the U.S.[4]

That's where the Back9Network comes in. We are a lifestyle and entertainment channel with character-driven and compelling original programming that covers all aspects of the golf world, including golf personalities, golf courses, fashion, health and wellness, and golf equipment and apparel. Our leadership team includes executives from Disney/ESPN, Callaway Golf, NBC, Time Warner/CNN, and AOL. We know the golf lifestyle, and we know television. And we know that golfers and golfer-focused advertisers are ready for a network that's about not just the professional game of golf, but about everyone who loves the sport. For more than three years now, we've been building our network to appeal to a broad base of consumers.

Independent market research has shown that our programs — such as *Ball Hogs*, *Golf Wives*, *Of Course*, and *Golf Treasures* — appeal to a young, diverse audience of frequent golfers

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and hockey combined, according to the Census Bureau. The golf economy expands to $177 billion, when one includes the spillover effect on industries such as tourism.

[3] Sporting Goods Manufacturing Association (SGMA), 2012 Sports Participation Report.

[4] Austin Karp, *ESPN Audience In '13 Lowest Since '08; MLB Net, NFL Net See Record Viewership*, Sports Business Daily, Jan. 9, 2014, at http://www.sportsbusinessdaily.com/Daily/Issues/2014/01/09/Research-and-Ratings/cable-nets.aspx.

and other cable viewers.[5] While the Back9Network may compete with the Golf Channel for advertisers and viewers, it will also present unique golf-related programming that cannot be found anywhere else —documentaries, scripted programming, character- and story-driven reality programming, and fresh takes on pro tour coverage. Our market research has found that 38 million American adults aged 25-54 would probably or definitely watch our programming.[6]

We have negotiated and continue to negotiate several co-production agreements with some of the top Hollywood production houses, many of which have created the highest-rated shows on cable television today. We have signed up on-air talent and brand ambassadors including Padraig Harrington, Cheyenne Woods, Audrina Patridge, and Ahmad Rashad. We have created an online media site that features golf news, players profiles, information on golf travel destinations, reviews of golf courses and equipment, documentaries, videos, and clips from our original programming. And we've raised nearly $30 million from individual investors (including a loan from the State of Connecticut) who are committed to the game, to our network's mission, and to our management team.

Furthermore, our creative mix of programming dovetails with PGA of America's efforts to make the game more user-friendly and appealing to a broader audience. The PGA initiative, called Golf 2.0, aims to expand golf's audience by re-engaging those who have tried golf but left the sport and by creating new players amid youth, minorities, and women.[7] The Boston Consulting Group found that more than 90 million Americans have played golf and enjoyed the

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[5] Commissioned online survey of 1,250 U.S. adults 25-54 by Back9Network using Frank N. Magid Associates, Inc. in April 2013. Twenty-three percent of participants were Comcast subscribers, and 13 percent were subscribers of Time Warner Cable.

[6] *Id.*

[7] *See PGA of America to drive growth with Golf 2.0*, GolfWeek (Feb. 20, 2012), at http://golfweek.com/news/2012/feb/20/pga-america-touts-golf-20-means-grow-golf/.

experience, and some 70 percent of them have an interest in playing again.[8] Approximately 26 million Americans actively golf. And another 20 million aspire to play golf. That's nearly one-half of all Americans who either play golf, have played golf before, or aspire to play the game. The Back9Nework can help the PGA expand beyond the core golf audience with our original mix of programming focusing on the casual player's experiences and stories around the game.

II. Carriage Negotiations Began Well But Sputtered After The Comcast-Time Warner Cable Merger Announcement

To attract the national advertising necessary to support a new, national cable network, the network relies on carriage in the nation's top markets. Advertisers want to see carriage in most of the top 25 markets, and the success of a network requires distribution to a critical mass of subscribers. Only four cable and satellite providers reach more than 10 million subscribers: Comcast (22 million), DirecTV (20 million); DISH Network (14 million); and Time Warner Cable (11 million).[9] No other provider comes close.

Moreover, the major satellite providers — DISH Network and DirecTV — are hesitant to launch a new, independent network because of unique bandwidth constraints related to satellite delivery. As a practical matter, the satellite providers require new programmers to demonstrate that subscribers will migrate from a rival pay TV provider to receive their new programming, in order to launch as part of the regular television lineup. That is hard to demonstrate for mature networks, much less new networks, and providers tend not to trust survey data that shows the likelihood of this effect, even if it exists. As a result, Comcast and Time Warner Cable —

[8] *Id.*

[9] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, MB Docket No. 12-203, at ¶ 130, Table 7 (rel. July 22, 2013).

traditional facilities-based cable systems that do not have the same bandwidth limitations — are truly the gatekeepers of new, national cable networks.

We initiated carriage negotiations with both Comcast and Time Warner Cable. Comcast turned us down when we approached Comcast in the fall of 2012. We continued to approach Comcast again last summer and fall, and again this year, but, while we were told our offer was creative, we have not had any real, productive and substantive discussions that are leading toward carriage.

So we focused our efforts on Time Warner Cable, which was not biased by incentives to favor the Golf Channel and discriminate against competing networks. We had at least five productive, high-level meetings with Time Warner Cable executives in 2013. These discussions made us believe that our programming strategy and proposal were unique and compelling. They also allowed us to evolve our proposal's terms to ensure that Time Warner Cable possessed little-to-no financial risk in launching our network.

The announcement of the Comcast-Time Warner Cable deal has and will continue to hurt our ability to get carriage with Time Warner Cable. We are concerned that we will not have an opportunity (not a right, but an opportunity) to compete for distribution in light of Comcast's financial stake in the Golf Channel.

Lastly, I cannot emphasize enough how attractive and creative our carriage proposal is for Comcast and Time Warner Cable (in the absence of incentives to favor Comcast's affiliated programming interests). I possess a 20-year track record in golf sales and marketing. But no matter what the industry, when you approach any customer, you listen to his or her issues or problems, and you go back with your team and create a solution. We have listened to our potential pay TV partners and understand that their programming costs are escalating. We have listened to their desire to have channel carriage fees tied directly to channels' audience metrics. Our proposal addresses their industry concerns; yet, neither operator has launched us. The only logical conclusion is that Comcast is discriminating against us because of its ownership of a golf-focused channel (and potentially its other lifestyle channels).

III. As A Vertically-Integrated Powerhouse, Comcast Has The Incentive And Ability To Foreclose Programming Competition

For many years, Congress and federal agencies have been concerned about the power that media distribution gatekeepers have to discriminate in favor of, or against, content developers on the basis of financial interests. In fact, a key driver of the anti-discrimination provisions that were included in the 1992 Cable Act was concern about the inherent competitive problem raised when cable and satellite operators own both cable programming networks and the distribution platforms for these channels (so-called "vertical integration").[10] The proposed merger of Comcast and Time Warner Cable magnifies these competitive problems considerably, as the combined entity will not only be a vertically integrated powerhouse with the *incentive* to discriminate against competitive programming channels, but it will have unprecedented control over the cable distribution platform and therefore the ability to profitably restrict competition. As described below, a combined Comcast/Time Warner Cable will have more than 30 million

[10] 1992 Cable Act § 2(a)(5) ("The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems."); *see also* S. Rep. No. 102-92 (1991), at 25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 ("vertical integration gives cable operators the incentive and ability to favor their affiliated programming services"); *see id.* ("For example, the cable operator might give its affiliated programmer a more desirable channel position than another programmer, or even refuse to carry other programmers."); H.R. Rep. No. 102-628 (1992), at 41 ("Submissions to the Committee allege that some cable operators favor programming services in which they have an interest, denying system access to programmers affiliated with rival MSOs and discriminating against rival programming services with regard to price, channel positioning, and promotion.").

subscribers, and it will be the dominant pay TV provider in nearly every single major television market.

A. Comcast Is A Vertically Integrated Powerhouse With A Track Record Of Favoring Affiliated Programming Channels

Today, Comcast has a financial stake in 50 different national cable networks, including such channels as Bravo, CNBC, E! Entertainment TV, Golf Channel, MLB Network, MSNBC, NBC Sports Network, NHL Network, Oxygen Network, SyFy, The Style Network (now changed to Esquire Network due to Style Network's underperformance), The Weather Channel, and USA Network, as well as numerous regional news and sports networks.[11] (During prior years, it had ownership interests in *more than 75 national networks*.[12]) These cable network holdings are in addition to its ownership interest in two national broadcast networks, NBC Television Network and Telemundo Television Network, as well as a major movie studio, Universal Pictures, and additional studio and cable production interests. Its holdings also include ten NBC owned and operated television stations and 15 Telemundo owned and operated stations.[13]

While Comcast is already a vertically integrated powerhouse, its proposed acquisition of Time Warner Cable would further expand its content portfolio. Today, Time Warner Cable has ownership interests in national cable networks such as MLS Direct Kick, NBA League Pass, NHL Center Ice, MLB Network, and Team HD, as well as numerous regional news and sports networks, including two of the top regional sports networks in Los Angeles, the second largest U.S. television advertising market and a region where Comcast's presence is currently non-existent.

[11] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 28 FCC Rcd 10496, Appendix B, Table B-1 (2013).

[12] *Id.* at ¶ 39.

[13] *Id.* at ¶ 96.

These programming and content interests combine to provide Comcast and Time Warner Cable strong incentives to discriminate against unaffiliated content. As Congress anticipated in 1992, "vertical integration gives cable operators the incentive and ability to favor their affiliated programming services."[14] By "foreclosing or disadvantaging rival programming networks," Comcast can increase audience, competitiveness for programming rights, and advertising revenues for its affiliated networks.[15] And much more recently, federal agencies have echoed this concern, finding that Comcast has an "ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks."[16]

Unfortunately, Comcast has a track record of doing just that. Both NFL Network and Tennis Channel have filed discrimination complaints against Comcast alleging that it discriminated against them in the terms of carriage and in favor of its affiliated networks, including NBC Sports Network and Golf Channel.[17] And Bloomberg had to file a complaint against Comcast to enforce Federal Communications Commission ("FCC")-imposed conditions intended to address Comcast's ability to discriminate against unaffiliated news channels, like Bloomberg, in favor of its affiliated news networks.[18] Indeed, Comcast's own executives have acknowledged that Comcast treats its affiliated programming "like siblings as opposed to like

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[14] S. Rep. No. 102-92 (1991), at 25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158.

[15] *Applications of Comcast Corp., General Electronic Co., and NBC Universal, Inc.* ¶ 119.

[16] *Applications of Comcast Corp., General Electronic Co., and NBC Universal, Inc.* ¶ 116

[17] *See In the Matter of Tennis Channel, Inc.*, MB Docket No. 10-204 (rel. July 24, 2012); Press Release, NFL, NFL Network files FCC complaint against Comcast (May 6, 2008), at http://www.nfl.com/news/story/09000d5d80830a76/article/nfl-network-files-fcc-complaint-against-comcast.

[18] *See In the Matter of Bloomberg L.P.*, MB Docket No. 11-104 (MB rel. May 2, 2012).

strangers."[19] In connection with its review of the Comcast/NBC Universal merger, the FCC's Chief Economist found evidence that Comcast discriminated in program carriage in favor of affiliated networks for anticompetitive reasons.[20]

In sum, Comcast clearly has the incentive to act in an anticompetitive manner based on its vertical integration. That incentive alone is not concerning; what is problematic is that it has — and with Time Warner Cable will certainly have — not only the incentive but the ability to profit over the long term by thwarting competition in the programming market.

B. The Horizontal Integration That Would Result From A Combined Comcast/Time Warner Cable Would Foreclose Opportunities.

The combination of Comcast and Time Warner Cable would consolidate under one entity more than 30 million cable subscriber homes (including homes in nearly all the major television markets). This unprecedented horizontal integration would truly provide the combined entity "make or break" power over programming channels. As described above, Comcast/Time Warner Cable has the incentive to shut out independent programmers, like the Back9Network, that compete with its affiliated networks, and this horizontal aspect of the merger would give it the ability to do so. (Ironically, the stronger and more competitive the programming and content, the stronger Comcast's incentives to foreclose such competition.)

If the merger takes place, the combined entity would be the dominant pay TV provider in all ten of the top-ten television markets, including New York and Los Angeles (which are disproportionately important to the ability of a cable network to attract advertisers and compete

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[19] *Tennis Channel, Inc. v. Comcast Cable Commc'ns, LLC*, 27 FCC Rcd 9274, ¶ 4 (2012), rev. sub nom. *Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982 (D.C. Cir. 2013), cert. denied 134 S. Ct. 1287 (2014).

[20] *Id.* at ¶ 117 & Technical Appendix. Even when Comcast committed to launch new, independent channels, it has affiliations with the channels it did launch, as described in Appendix A.

for programming rights). Indeed, the combined company would be in 23 of the top 25 television markets and 37 of the top 40 television markets.[21] In support of the merger, Comcast has pointed to the fact that it does not today compete in the same coverage areas as Time Warner Cable. While that is true, it is also true that, today, neither entity on its own has the ability to foreclose independent programming channels from the video marketplace. Following the acquisition, the combined entity will be able to unilaterally foreclose an independent programmer from accessing *approximately half of all cable subscribers (a third of all MVPD subscribers)* and from reaching eyeballs in New York, Los Angeles and *nearly all other major television media markets*. With DirecTV and DISH's bandwidth constraints, the ability of a new independent network to launch will essentially require negotiation for carriage from a combined Comcast/Time Warner Cable.

C. Comcast/Time Warner Cable's Foreclosure of Independent Programmers Will Result In Fewer Choices For Consumers And Advertisers.

If the combined Comcast/Time Warner Cable is not prevented from exercising such a foreclosure strategy, the result would plainly harm consumers and advertisers, as well as competing content holders. When Congress considered the need for anti-discrimination provisions in adopting the 1992 Cable Act, it understood that independent cable networks add diversity and competition to the video marketplace that benefit consumers.[22] That remains true today, although innovative new voices like the Back9Network simply will not have a chance of

[21] Comcast and Time Warner Cable have a presence in 23 of the top 25 markets. That does not include Phoenix, the 12th largest DMA, where Comcast has 1,200 subscribers and Time Warner Cable has none. SNL Kagan, Comcast and TWC Combined - Top 50 DMA Analysis.

[22] *See* H.R. Rep. No. 102-628 (1992), at 41 ("The Committee received testimony that vertically integrated companies reduce diversity in programming by threatening the viability of rival cable programming services.").

competing with Comcast's affiliated networks if Comcast is permitted to use its control over distribution platforms to disadvantage its competitors.

No doubt, the most well-established and well-funded legacy networks will be able to continue to secure carriage on Comcast systems. (Even there, there is a question about whether Comcast will be able to exact an anti-competitive price for such carriage.) However, true independent programmers simply will not be able to survive in the absence of a chance to compete. That means that Comcast's affiliated networks will have successfully foreclosed competition for audience, programming and advertising dollars, and consumers will have fewer choices available to them.

CONCLUSION

I thank the Committee for the opportunity to add my voice today to those concerned about the prospects for anti-competitive behavior posed by the Comcast-Time Warner Cable merger. While I remain optimistic that Comcast will not discriminate against independent networks that compete with Comcast-owned networks, I am also a realist. I urge the Committee to use its oversight authority to ensure that, if the deal is approved, the Department of Justice and the FCC require effective, enforceable conditions so that new, independent networks will be given a fair hearing and a fair chance to show they are worthy of carriage based on the quality of their programming and the audience they attract. Competition should determine who succeeds -- mergers should not be allowed to lessen competition.

Appendix A

Comcast's "Independent" Networks Have an Affiliation with Comcast

Comcast pledged to add 10 new "independently-owned and -operated" networks to its systems to secure FCC approval of its merger with NBCUniversal. In 2012, Comcast announced the first four of those networks.[23] At least two of the networks, however, are affiliated with Comcast.

ASPiRE: Comcast states that it developed this channel "in partnership with" Magic Johnson to deliver "enlightening, entertaining, and positive programming to African American families."[24] Financial terms of the deal were not disclosed, but Comcast describes itself as a "partner" in the network and states that it provides "the platform" to help Johnson launch the network.[25] The network is carried by Comcast and Time Warner Cable, giving it carriage in 21 of the top 25 African-American markets and to 15 million homes.

Revolt TV: This new music network from Sean Combs was one of four that Comcast announced it would carry under its agreement with the FCC. Comcast has been described as Combs' "production partner" in the venture.[26] And while terms of the partnership have not been made public, Bloomberg Businessweek reported that Revolt TV "has backing from Comcast."[27] The music-oriented network, which features music videos, live performances, news and interviews, is carried on Comcast and Time Warner Cable systems.

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[23] *See* Press Release, Comcast, Comcast Announces Agreements with Four New Minority-Owned Independent Networks (Feb. 21, 2012) *at* http://corporate.comcast.com/news-information/news-feed/comcast-announces-agreements-with-four-new-minority-owned-independent-networks.

[24] *See* Aspire Network Seeks to Inspire, Comcast NBCUniversal, http://corporate.comcast.com/csr2012/aspire-network-seeks-to-inspire.

[25] *Id.*

[26] Liz Elfman, *Revolt TV and Sean Combs: The Revolution Will Be Televised*, Huff. Post, Dec. 4, 2013, *at* http://www.huffingtonpost.com/fueled/revolt-tv-and-sean-combs-_b_4371800.html.

[27] Andy Fixmer & Alex Sherman, *Sean Combs Said to Bid $200 Million for Fude TV Network*, Bloomberg Businessweek, Mar. 11, 2014, at http://www.businessweek.com/news/2014-03-10/sean-combs-said-to-bid-200-million-for-fuse-tv-network.

PREPARED STATEMENT OF RICHARD J. SHERWIN

Testimony
Richard J. Sherwin
Chief Executive Officer
Spot On Networks, LLC
April 9, 2014

I have been Chief Executive Officer of Spot On Networks, LLC ("SON") since its founding in 2004. SON has been serving the multifamily residential community since 2005 as a WiFi service provider. The multifamily residential community currently represents nearly 35% of the population of the United States, which includes a large percentage of affordable housing.

The stakeholders in SON represent some of the founders of the United States cellular telephone industry as well as being pioneers in developing wireless communications services in such foreign markets as the Former Soviet Union and states of Eastern Europe. We, as a group, have always believed that we could do well by doing good.

SON has been involved in providing WiFi services since 2005, serving multifamily residential communities with wireless services. The young demographic population residing in these communities use wireless communications almost exclusively for their data needs, thus creating huge demand on wireless services. These communities are a challenging environment for wireless services because of the interaction of their dense population of wireless devices so close to each other and the burgeoning demand on the one side and the limitations of the cellular system capacity on the other. Managed WiFi services are capable of resolving these issues.

SON has been in the forefront of innovative design approaches, new technologies and more efficient ways to serve these communities. Our services – and those of our WiFi competitors- are generally 30% less costly than services provided by the dominant cable providers in the areas SON serves, and SON provides unique features not otherwise found in other wired or wireless access technologies that enable us to satisfy the needs of these residents in this challenging environment.

As an example, we provide an apartment building in New York City with wireless internet access as well a secure wireless service for building staff. We also provide, in the same building, as part of the same physical network, a wireless backbone that helps monitor and control energy usage in each apartment. Our ability to "bolt on" applications like energy monitoring and access control, and completely monitor and control all components on the network, 24/7, makes our service not only innovative but cost effective. These facilities are not a "dream" application but are available today.

Although large, the multifamily residential community has long been a "step-child" of the industry as a whole because telecommunications service providers gear their offereings toward single family households. The problem of serving these communities is further exacerbated by "green initiatives" for energy conservation in buildings which dictate the choice of building materials. These materials prevent cellular signals from penetrating inside these buildings and decrease the effectiveness of wireless to reach these segments of the population. These problems even present public safety concerns because not only are normal voice calls deterred and data access limited but 9-1-1 calls are "sketchy" at best.

Community-wide managed WiFi services can not only resolve these service issues, but also deliver significantly large capacity to residents inside these buildings as a result of the. Federal Communications Commission ("FCC") issuance of large swaths of frequency in the WiFi frequency bands. WiFi providers such as SON provide innovative approaches to design and integration of hardware and software that enhance the ability to provide such services. These approaches enable building owners to take advantage of cost efficient services to serve their residents better at a lower cost.

This is how we work. We bring broadband to a building relying on a big broadband supplier, often a cable operator, sometimes a fiber operator, as the source of that broadband backhaul. Most often that cable provider also provides retail cable services and content in a particular area – sometimes as the only supplier to that area. Then we build our own, facilities-based network inside the building, making use of the FCC allocated radio spectrum, to deliver the kinds of services that are needed by residents of multifamily residential communities and those building owners providing such housing.

But here is the rub. To do this, SON, like other WiFi providers, needs access to bandwidth owned or controlled by companies such as Verizon FiOS, Comcast Business, Time Warner Telecom, Charter Business, and others. In many parts of the country only one company controls most or all of the broadband available in a significant market and geographic area – a city or a suburb or even a region. I direct your attention to the Wall Street Journal article of March 12, 2014 in which the serving areas of competitive broadband access are depicted on the map of the United States that highlights this situation.

If SON could not acquire such bandwidth from a large broadband provider, say because that large broadband provider chose not to sell to WiFi providers for whatever reason, including that some of the WiFi providers may also offer some competitive services, then that unilateral decision, which would be entirely the decision of the sole provider of broadband backhaul in an area, would eliminate the possibility of our providing such innovative services, and would squelch any competition in the marketplace controlled by such broadband providers.

Fortunately, up until recently, WiFi providers have usually been able to obtain such access to broadband backhaul and SON, for example, has access agreements in place with companies such as Verizon, ATT, Charter and Time Warner, as well as fiber providers such Cogent, Fiberlight, XO and others. This access is what has permitted unfettered and unlimited expansion of access, innovative services and competition. In fact, I would say that the willingness of broadband providers to give WiFi providers access to this broadband has become the industry norm.

I believe the development of this norm is due in part to a condition the FCC placed in its approval of the Time Warner/ AOL merger which required that the merged entity provide wholesale internet access to an entity such as ours, at a reasonable price and with reasonable terms. Although that condition may have expired legally, its spirit is still honored in practice and such price and terms exist today through Time Warner as well as the other service providers that I have mentioned.

Because the merger of Time Warner and Comcast would create the largest broadband service provider in the country, essentially controlling broadband access to approximately 40% of the United States population, with an even larger percentage in multifamily residential communities, I believe it is essential to condition such a merger with strict rules requiring that the merged entity be required to sell access to companies such as SON so that we would be able to buy any available high speed broadband access at reasonable rates. Not to do so would squelch an existing market practice that fosters competition, innovation and increased access for consumers.

The absence of such a condition would reward any entity's anticompetitive sub-industry standard conduct, metastasize such anticompetitive practices and serve to reduce broadband choice and access and decrease innovation and competition. On the other hand to place such a condition on the approval of this transaction – that is, a requirement to provide wholesale broadband access services on reasonable terms- is a modest means to ensure that a pro-competitive and pro-innovation market condition will continue. It only seems sensible to extend the legacy of the reasonable and successful condition which the FCC placed on the AOL Time Warner acquisition to the assets that were created by that merger – the very assets Comcast now seeks to acquire.

If there is any question why the United States is 17^{th} in the developed nations in broadband capabilities, and 2^{nd} in cost of this facility, the Wall Street Journal map I have previously cited graphically illustrates the reasons. When a service provider controls an area, with little or no competition, the service provider is incentivized to extract maximum profit for minimum investment to satisfy its shareholders with little regard for innovation or improvement in services.

My view is that there are compromises available that make it a "win-win" situation for shareholders and for the citizens of this country. **We could all do well by doing good.**

PREPARED STATEMENT OF CHRISTOPHER S. YOO

CTIC
Center for Technology, Innovation and Competition

Penn Law
http://www.law.upenn.edu/academics/institutes/ctic/

University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, PA 19104-6204

TESTIMONY OF CHRISTOPHER S. YOO

John H. Chestnut Professor of Law, Communication, and Computer & Information Science and Founding Director, Center for Technology, Innovation and Competition, University of Pennsylvania

Hearing on "Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Before the United States Senate Committee on the Judiciary

April 9, 2014

Mr. Chairman, Ranking Member Grassley, and Members of the Committee, I am grateful for the opportunity to offer my views on the impact that the proposed merger between Comcast and Time Warner Cable would have on consumers. Concerns focus on two distinct markets: (1) the market for the distribution of traditional cable television and (2) the market for broadband Internet access. In short, established principles of antitrust and communications law dictate that the merger is unlikely to harm consumers in either market. In fact, technological and economic changes are transforming the markets in ways that should make the prospect of anticompetitive harms even more remote.

I. Traditional Multichannel Video

The first relevant market involves the distribution of traditional cable networks. In this market, cable operators enter into three types of transactions. First, they pay television networks such as ESPN, Nickelodeon, and the Disney Channel for the rights to retransmit video programming. Second, they collect subscription fees from consumers who wish to view that programming. Third, they receive revenue from local advertisers who wish to reach local subscribers. Although each market should be analyzed separate, the end conclusion is the same in each case, that is, none of these markets is structured so that the merger is likely to harm consumers.

A. End-User Subscriptions

With respect to subscribers, cable operators in different cities serve different geographic markets and as a result do not compete with one another. In short, consumers would have the same number of choices of multichannel video providers the day after merger that they did the day before. Thus, a merger between cable operators serving different cities should not affect the prices that subscribers pay for cable television subscriptions.[1]

B. Video Programmers

The geographic scope of the market in which cable operators contract with video programmers is very different from the one in which cable operators contract with subscribers. As both the Federal Communications Commission (FCC) and the U.S. Court of Appeals for the D.C. Circuit have recognized, video programmers do not really care if they reach viewers in any particular metropolitan area. Instead, their primary concern is whether they can reach a sufficient number of customers to achieve minimum viable scale.[2] The proper geographic scope of this market is thus national. For them, it is national reach, not local reach that matters.[3]

Any arguments that that the merger would create anticompetitive harms to video programmers must overcome one potentially insuperable obstacle. On two occasions, the FCC attempted to institute rules prohibiting cable operators from controlling more than 30% of the nation's multichannel video subscribers in order to protect the interests of video programmers. On both occasions, the courts invalidated the rules because the FCC's rationale for imposing the 30% limit was arbitrary and capricious. In both cases, the court indicated that the available evidence suggested that cable operators could control much larger shares of the national market without harming video programmers, driven largely by the advent of competition from direct broadcast satellite (DBS) providers, such as DirecTV and the Dish Network.[4]

Given that the merging parties have committed to reduce their holdings so that the resulting company will control no more than 30% of the national market, these court decisions essentially foreclose arguments that anticompetitive harms to video programmers would justify blocking the merger. Indeed, the courts' analyses were based on the competitive environments that existed in 2001 and 2009. Since that time, these markets have become even more competitive. The number of multichannel video subscribers has increased from 96 million to 101 million by 2012.[5] Thus, even under the specious justification for the 30% threshold rejected by the courts, the percentage of the national market that one cable operator can control should rise above 30% without causing any harm to video programmers. Since that time, Verizon's FiOS and AT&T's U-verse networks have expanded their customer bases. Internet-based video platforms such as Netflix, Amazon, Hulu, Google, Roku, and Apple have emerged as significant market players. In addition, the costs of program acquisition have risen sharply, as program providers have increased their bargaining power.

These considerations suggest that the merger would not create an industry structure that would raise concerns about anticompetitive harms to video programmers under established principles of antitrust and communications law. Even if such concerns had merit, however, they

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1 *See* Christopher S. Yoo, *Vertical Integration and Media Regulation in the New Economy*, 19 YALE J. ON REG. 171, 222 (2002).

2 *See* Comcast Corp. v. FCC, 579 F.3d 1, 4, 7 (D.C. Cir. 2009) (citing Commission's Cable Horizontal and Vertical Ownership Limits, Fourth Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 2134, 2162 (2008)); Time Warner Entm't Co. v. FCC, 240 F.3d 1126, 1131 (D.C. Cir. 2001) (citing Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Third Report and Order, 14 FCC Rcd. 19098, 19114–16 ¶¶ 40 41 (1999)).

3 Yoo, *supra* note 1, at 227.

4 *See Comcast*, 579 F.3d at 6–8; *Time Warner Entm't*, 240 F.3d at 1132.

5 *See* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fifteenth Report, 28 FCC Rcd. 10496, 10499 ¶ 3 (2013) [hereinafter Fifteenth Video Competition Report].

are properly addressed by the program carriage and access rules that the FCC has developed to address just these problems. Commissioners of the Federal Communications Commission (FCC) and commentators have long criticized the use of merger conditions as a mechanism for making policy.[6] Traditional notice-and-comment rulemaking promotes public participation. By their nature, merger conditions restrict conduct permitted by the existing rules (otherwise the restriction would be imposed by general regulation rather than by the order clearing the merger). The problem is that they are imposed outside of the normal regulatory processes, and even when orders clearing the merger are subject to notice and comment, the resolution of the issues is more likely to be driven by the issues raised by a particular transaction and less likely to yield a clear statement of agency policy.

In many cases, merger conditions address conduct that is not the result of the merger, and in most, if not all, cases, these issues addressed by the merger conditions are the subject of ongoing proceedings before the FCC. The use of company-specific adjudications to address issues that confront the entire industry threatens to skew the competitive landscape and raises serious issues of fairness. Moreover, merger conditions often cannot be appealed, because the voluntariness of the commitment may well immunize it from meaningful judicial review.

At best, the use of the merger review process to impose conditions represents a source of delay and uncertainty that reduces the industry's ability to adjust to a rapidly changing and increasingly challenging technological and economic landscape. At worst, it represents a form of backdoor regulation that hurts consumers, singles out individual companies for restrictions that could not necessarily withstand the rigors of normal regulatory processes, and undermines democratic values as well as the integrity of agency processes.

C. Local Advertising

Finally, the merger is unlikely to harm the market for local advertising. The reason is simple: although cable television *networks* receive significant amounts of national advertising, the limited reach of local cable *operators* limits them to local advertising. The fact that local advertising occurs in different geographic markets means that, as was the case with cable

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[6] *See, e.g.*, Applications of AT&T Inc. and Centennial Communications Corp., Memorandum Opinion and Order, 24 FCC Rcd. 13915, 13972 ¶ 141 (2009); Verizon Communications Inc. and MCI, Inc., Memorandum Opinion and Order, 20 F.C.C.R. 18433, 18573 (2005) (separate statement of Abernathy, Comm'r); Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, Memorandum Report and Order, 16 F.C.C.R. 6547, 6713 (2001) (Powell, Comm'r, concurring in part and dissenting in part); Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, Memorandum Opinion and Order, 14 F.C.C.R. 14712, 15197-200 (1999) (Powell, Comm'r, concurring in part and dissenting in part); *id.* at 15174-96 (Furchtgott-Roth, Comm'r, concurring in part and dissenting in part); Application of Worldcom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to Worldcom, Inc., Memorandum Report and Order, 13 F.C.C.R. 18025, 18166 (1998) (separate statement of Powell, Comm'r); id. at 18159 (separate statement of Furchtgott-Roth, Comm'r). For commentators' criticisms of the merger conditions, see Rachel Barkow & Peter Huber, *A Tale of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers*, 2000 U. CHI. LEGAL F. 29, 54, 62-66, 69-81; Harold Furchtgott-Roth, *The FCC Racket*, WALL ST. J., Nov. 5, 1999, at A18; Bryan Tramont, *Too Much Power, Too Little Restraint: How the FCC Expands Its Reach Through Unenforceable and Unwieldy "Voluntary Agreements,"* 53 FED. COMM. L.J. 49, 51-59 (2000); Daniel E. Troy, *Advice to the New President on the FCC and Communications Policy*, 24 HARV. J.L. & PUB. POL'Y 503, 505-09 (2001); Philip J. Weiser, *Institutional Design FCC Reform and the Hidden Side of the Administrative State*, 61 ADMIN. L. REV. 675, 708-11 (2009); Christopher S. Yoo, *New Models of Regulation and Interagency Governance*, 2003 MICH. ST. DCL L. REV. 701, 704.

television and broadband Internet subscribership, the merger will not cause any reduction in competition. FCC data indicates that cable television represents a minor share of local advertising revenues.

Figure 1: Local Advertising Revenues by Sector (\$million)

Sector	2011 act.	Share	2012 proj.	Share
Broadcast television	10,308	15%	11,802	17%
Cable television	4,164	6%	4,867	7%
Radio	11,264	16%	11,405	16%
Internet	11,602	17%	12,274	17%
Daily newspaper	16,915	25%	15,720	22%
Regional sports networks	842	1%	925	1%
Mobile	974	1%	2,064	3%
Telco	161	0%	230	0%
Other	12,313	18%	11,061	16%
Total	63,543	100%	70,348	100%

Source: Fifteenth Video Competition Report, *supra* note 5, at 10597 tbl.20.

Given the minor role that cable television plays in local advertising markets, it is hard to see how the merger could lead to anticompetitive harms. Moreover, the large amount of innovation that is occurring is likely to make the market for local advertising increasingly competitive in the near future.

II. Broadband Internet Access

With respect to broadband Internet access, the merged company would engage in two types of transactions. First, it would collect subscription fees from consumers who wish to access the Internet. Second, it would contract to interconnect with other Internet service providers to receive traffic that other end users and edge providers would like to send to current Comcast and Time Warner Cable subscribers and to terminate the off-network traffic that Comcast and Time Warner Cable subscribers generate. For reasons, I discuss below, the proposed merger is even less likely to create anticompetitive harms in the market for broadband Internet access than in the market for traditional multichannel video.

A. End-User Subscriptions

As was the case with traditional multichannel video, the lack of any overlap in the areas served by Comcast and Time Warner Cable again makes it unlikely that the merger would affect the prices charged to subscribers.

In addition, for reasons I detail in my recent article in the *Harvard Law Review*, the number of options that end users enjoy is increasing rapidly. Take digital subscriber lines (DSL), for example. Although many commentators have written DSL off for dead, a number of new technologies, including IP DSLAMs, pair bonding, and vectoring, are increasing the bandwidth that DSL can deliver. AT&T's Velocity IP initiative is expanding the reach of its

DSL network and increasing download speeds to 45 Mbps, with 90% receiving 75 Mbps and 70% receiving 100 Mbps.[7] CenturyLink is following a similar strategy.

Those who have pointed to Verizon's decision not to expand its FiOS coverage any further to suggest that fiber-to-the-home (FTTH) is moribund outside of its current service area did not count on Google Fiber. After beginning in Kansas City and expanding to Provo and Austin, Google recently announced its intention to extend FTTH coverage to thirty-four additional cities.

In addition, wireless broadband providers are in a race to buildout LTE. Although some commentators have questioned whether LTE can deliver the speeds needed to become viable substitute to fixed-line broadband, industry studies indicate that LTE achieves an average download speed of 12 Mbps and peak download speeds of 50 Mbps when viewers only need 8 Mbps to view high-definition television (HDTV). In addition, the LTE market allows for competition among multiple providers. Verizon completed its LTE buildout in mid-2013 and now serves 96% of the U.S. population. AT&T's LTE network reached 85% of the U.S. population by the end of 2013 and plans to reach 96% by the end of 2014. Sprint and T-Mobile each reached roughly two-thirds of the U.S. population by the end of 2013 and are hurrying to finish their deployments. And waiting in the wings is the next-generation technology known as LTE Advanced, which is already delivering of 150 to 300 Mbps in South Korea and Australia. It thus comes as no surprise that 10% of U.S. households have abandoned fixed-line service and rely entirely on mobile devices for their Internet access. This number is only likely to increase in the future.[8]

B. Peering and Transit

Cable operators also enter into contracts with other Internet service providers (ISPs) to exchange traffic originating or terminating on other networks. Typically, the originating ISP is the only one to receive direct payment from end users. Because the terminating ISPs also incur costs, the traditional rule was that the originating ISP would make what is known as a transit payment to compensate the terminating ISP for the costs it incurs serving the originating ISPs customers. If traffic is roughly symmetrical, ISPs can reduce costs by foregoing monitoring and billing for the exchange of traffic and instead calling it a wash, a practice commonly known as settlement-free peering. Such arrangements make economic sense only if the traffic exchanged is symmetrical. If traffic becomes out of ratio, peering contracts typically call for transit-style payments. Thus, although peering is often misrepresented as zero-price interconnection, it is more properly regarded as a form of barter and is conditional on an even exchange.

Consider what would happen if one of the parties to a peering contract suddenly increased the amount of traffic that it was handing off to the other party for termination. The terminating ISP would have to incur significant costs to terminate the traffic. Certainly, the originating ISP would like the terminating ISP to bear all of the costs of doing so. Conversely, the terminating ISP would like the originating ISP to pay for the costs, as required by the typical peering contract. Both parties benefit from delivering greater value to the end users. The usual solution would be for both parties to bear part of the costs.

Indeed, this is exactly what appears to be occurring in the recent interconnection agreement between Comcast and Netflix. Netflix has been a spectacular success, growing to

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7 Christopher S. Yoo, *Technological Determinism and Its Discontents*, 127 HARV. L. REV. 915, 919 (2014).
8 *Id.* at 923–26.

roughly one-third of all primetime Internet traffic in the U.S. Like any for-profit company, it would prefer it if the ISPs bore as much of the burden of the additional costs of carrying this traffic as possible. Indeed, that is the gist of its Open Connect program, which requires ISPs to terminate Netflix traffic for free. Some ISPs have embraced Open Connect. Others have resisted. All of this is a natural part of healthy bargaining process. As in the typical case, both sides reached an interconnection agreement that divides the costs. The terms represent nothing more than a garden-variety bargain over price that characterizes every arms-length economic transaction.

Although some have suggested that such interconnection agreements represent network neutrality violations, network neutrality only applies to how traffic is handled *within* an ISP's network. It does not apply to how the traffic arrives at an ISP, which inevitably travels by paths of different lengths and incurs different costs as it traverses a system composed of 30,000 separate networks tied together through arms-length interconnection agreements. Indeed, this is why the Open Internet Order specified that it does not apply to interconnection agreements[9] and why FCC Chairman Julius Genachowski made clear that the Open Internet Order does not apply to interconnection disputes, such as the prior dispute between Comcast and Level 3.[10]

The Comcast-Netflix interconnection agreement appears to be nothing more than a typical case of such bargaining. The agreement reduces Comcast's costs. The impact on Netflix is ambiguous: while it now must pay Comcast to terminate its traffic, it no longer needs to pay the third-party ISP on which it previously relied to reach Comcast in a classic case of efficiencies through cutting out the middleman. Although some have suggested that this might lead to a net reduction in Netflix's costs, that information is confidential and cannot be verified. In any event, interconnection represent a trivial revenue stream for Comcast and a tiny portion of Netflix's cost structure, which is dominated by program acquisition costs, which means that the transaction is unlikely to have any material effect.[11]

In addition, interconnection in the Internet space is fundamentally different from carriage agreements in cable television. In cable television, the failure to come to an agreement means that subscribers cannot receive particular content. With respect to the Internet, multiple ways to reach consumers always exist. In fact, Comcast maintains 40 settlement-free peering relationships and over 8,000 paid transit relationships. That means that edge providers will always have some way to reach Comcast customers even if they are unable to reach an direct interconnection agreement. The only bargaining advantage that Comcast would enjoy is the different between the direct interconnection terms and the cost of Netflix's next-best interconnection option. Although some have speculated that Comcast might still be able to discriminate against Netflix traffic flowing over other paths, that traffic is mixed with the traffic of other end users, which would require Comcast to inspect all of the traffic coming through that connection, which would be unrealistic and prohibited by Comcast's commitment to abide by the terms of the Open Internet Order.

As an added benefit, absent the interconnection agreement, all of Comcast's customers would have had to bear the costs of Netflix's increase in traffic regardless if they used Netflix or

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[9] Preserving the Open Internet, Report and Order, 25 F.C.C.R. 17905, 17944 n.209 (2010).

[10] *Network Neutrality and Internet Regulation: Warranted or More Economic Harm than Good?, Hearing before the Subcomm. on Communications and Technology, H. Comm. on Energy and Commerce*, 102d Cong., 1st Sess. 102 (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg65940/pdf/CHRG-112hhrg65940.pdf.

[11] Dan Rayburn, *Here's How the Comcast & Netflix Deal Is Structured, with Data & Numbers*, STREAMING MEDIA BLOG, Feb. 27, 2014, http://blog.streamingmedia.com/2014/02/heres-comcast-netflix-deal-structured-numbers.html.

not. The interconnection agreement promotes fairness by ensuring that those who derive the benefits are the ones who end up paying for it. The elimination of zero-cost pricing also avoids the problems that arise when edge providers have no incentive to economize on the volume of traffic they send, as well as address the legal concerns raised by Judge David Tatel in his decision in *Verizon v. FCC*.[12]

Any remaining concerns should be eliminated by the fact that Comcast has committed to abide by the terms of the FCC's Open Internet Order even though it was struck down by the courts. In fact, the merger would extend this benefit to all of Time Warner Cable's customers as well.

Conclusion

In closing, it bears keeping in mind how dynamic and unpredictable this sector has been. Consider February 29, 2000, when Time Warner was before this Committee to discuss its merger with America Online. What many predicted would be the end of history ended up simply being the end of $200 billion in Time Warner shareholder value. In addition, just a few short years ago, many argued that fiber-to-the-home would soon consign the cable industry to the dustbin of history. These episodes underscore how easy it is to hypothesize problems that never materialize and how easy it is to forget that innovation and willingness to undertake commercial risk have created greater consumer benefits than anyone could have anticipated.

12 Verizon v. FCC, 740 F.3d 623, 658 (D.C. Cir. 2014).

QUESTIONS SUBMITTED TO JAMES L. BOSWORTH, JR., BY SENATOR KLOBUCHAR

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

James Bosworth, Back9Network
The FCC conditioned its approval of the Comcast-NBC merger on the company agreeing to a prohibition from favoring its own NBC content or discriminating against small, unaffiliated programmers. After three years of proceedings, the Tennis Channel won an FCC decision and appeal that ordered Comcast to take the channel off a little watched digital tier and place it with the other sports channels. Comcast appealed that decision to the D.C. Circuit and it was overturned. Another independent programmer, Bloomberg News, spent millions to enforce the merger conditions to have its channel placed in the channel neighborhood of an NBC-owned rival. In your experience as an independent programmer with content that would compete with an NBC-owned channel, do you believe that Comcast has lived up to its obligations under the NBC Universal merger?

QUESTIONS SUBMITTED TO DAVID L. COHEN BY SENATOR KLOBUCHAR

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

David Cohen, Comcast

1. Set top boxes are consumers' gateway to content. As I said in the hearing, I am encouraged by Time Warner Cable's plan to make its content available without the use of a set top box rental. At the hearing, you said the X1 box will give Comcast consumers the "same experience" as a Time Warner Cable customer watching on a Roku. Does this mean that the X1 will be an "open" platform and Netflix, Hulu and others will be allowed onto the platform on the same terms they gain access to independent, third party platforms like Roku and Apple TV? Furthermore, will Comcast give full access to its content without requiring a set top box rental?

2. Competition from online video services and devices is an important to consumers. Roku and PlayStation 3 offer their users' access to HBO Go if they are paying HBO subscribers on any MVPD, but Comcast has refused to "authenticate" Roku users' HBO accounts since 2011. Why has Comcast refused to authenticate HBO Go on the Roku and PlayStation platforms? What assurances can you provide that Comcast will not use authentication as a tool to deny content to competitive third-party, internet-connected set top boxes?

3. Comcast agreed to offer affordable broadband service to low income households as a condition of the NBC Universal merger. The program has enrolled about 10 percent of eligible households, that's roughly 300,000 homes. We have heard concerns about how the program criteria can be difficult to meet. For example, a household must not have had a Comcast subscription in the past 3 months. Another requirement is to have a child eligible for the National School Lunch Program. What about households with small children not yet in school, households without children, or seniors? Is Comcast willing to reconsider these requirements? What is Comcast doing to get more than 10 percent of eligible households signed-up?

4. At the hearing, you said that Comcast carries 160 independent networks. Can you please provide a list of these 160 independent networks?

QUESTIONS SUBMITTED TO GENE KIMMELMAN BY SENATOR KLOBUCHAR

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Gene Kimmelman, Public Knowledge
Comcast owns the NBC Universal suite of content – including must-have channels like Bravo and USA Network, and several regional sports networks. Competitive video providers in Time Warner's footprint will now have to buy NBC programming from Comcast. For competitors this cost must be passed on to its consumers. Will the merged company's larger presence throughout the country, especially in major markets like New York and Los Angeles, give it even more leverage to charge its competitors more for the Comcast-NBC suite of programming? Could the merger impact prices for consumers who are served by MVPDs outside of Comcast and Time Warner Cable's footprint?

QUESTIONS SUBMITTED TO ARTHUR T. MINSON, JR., BY SENATOR KLOBUCHAR

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Arthur Minson, Time Warner Cable

In a January earnings call, CEO Rob Marcus announced the launch of a new customer experience, called "TWC Maxx" and that will triple Internet speeds for customers with our most popular tiers of service, add more community WiFi, [and] dramatically improve the TV product." In your testimony, you say that as a result of the merger, Time Warner Cable customers will benefit from higher speed data services and Comcast's next generation X1 platform. Are these the things that Time Warner Cable was already planning to offer to consumers if the merger didn't occur?

QUESTIONS SUBMITTED TO CHRISTOPHER S. YOO BY SENATOR KLOBUCHAR

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Professor Yoo, University of Pennsylvania
In the Comcast-NBC order, the FCC said the company would have "the incentive and ability to hinder the development of rival online offerings." A Comcast filing made in connection to the NBC Universal merger assumes that this type of "cord cutting" household would download 288 GB of television content per month. Given the filing is from 2010, the estimate is based on a viewing mix of standard-definition and high-definition content. An all HD mix more in line with today's viewing habits requires significantly more data, not to mention greater bandwidth. Furthermore, today, consumers often want to their broadband connections to stream online video on multiple devices in their home. Confining your analysis to broadband technologies that fit these criteria, which are suitable substitutes to cable broadband? What percentage of this market does Comcast control?

QUESTIONS SUBMITTED TO DAVID L. COHEN BY SENATOR FRANKEN

Senate Judiciary Committee Hearing
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record Submitted by Senator Al Franken for David Cohen

1. Please identify Comcast's most popular bundled service offering, its most popular cable television offering, and its most popular standalone broadband offering, and, for each of these offerings, please provide the inflation-adjusted consumer price for each year from 1995 to the present. If it is not possible to provide these data on a national basis, please provide them for any Minnesota markets in which Comcast operates and for Comcast's top four markets. Please also provide Comcast's net income and profit margins for those years.

2. The *Star Tribune* has reported that Comcast customers in Eagan, Minnesota, have been subjected to new charges and rising prices since Comcast petitioned the Federal Communications Commission (FCC) to revoke the city's authority to regulate cable rates. For example, the *Star Tribune* reported that customers now are required to pay $2 per month per television for adapters that previously were included in their cable subscriptions. Many consumers are concerned that they will continue to be squeezed, particularly without local safeguards in place.

   a. For the past ten years, please identify all instances in which Comcast has challenged or is challenging a local government's authority to regulate cable rates. Please provide a brief description of the nature and outcome of each challenge. For all successful challenges, please state whether Comcast subsequently raised cable prices or imposed new charges in the market.

   b. Please identify all markets in which Time Warner Cable (TWC) or Comcast currently is subject to local rate regulations.

   c. If Comcast is permitted to acquire TWC, will Comcast challenge local regulatory authority in any of the markets listed in Question 2(b)? If so, please explain.

3. Comcast announced plans to divest systems containing approximately 3 million video customers as part of its proposed acquisition of TWC. Comcast says that the divesture will keep its share of the national multichannel video programming distribution (MVPD) market at or below 30%.

   a. Please identify any local markets in which Comcast has at least a 50% share of the MVPD market.

   b. Please identify any local markets in which Comcast has at least 50% of the total consumers who subscribe to both MVPD services and broadband Internet services.

   c. What criteria will Comcast use to determine which systems to divest? Will average revenue per user be among the factors that Comcast considers?

d. Will the divested systems be spun off into a new company, sold to competing MVPD companies, or divested in a different manner?

e. If the divested systems are spun off into a new company, would former TWC executives be disqualified from holding ownership or management interests in the company or otherwise be limited in their ability to profit from the new company?

f. Data from Leichtman Research Group indicate that Comcast would have to divest more than 4.5 million MVPD subscribers to keep its national market share below 30% and that a post-acquisition Comcast would hold nearly 32% of the MVPD market if it divested only 3 million consumers. Please describe in detail the calculations that Comcast has used to determine that divesting approximately 3 million customers will fulfill its commitment to control no more than 30% of the national market.

4. With more than 20 million subscribers, Comcast currently holds about 24% of the national broadband market. During a February 13 conference call, you were asked to estimate Comcast's expected post-acquisition percentage of the national broadband market. At the time, you said that you were unable to answer the question because you "ha[d]n't run those numbers." By some estimates, a post-acquisition Comcast would hold approximately 40% of the national broadband market, and Comcast's market share is even higher in many local markets.

a. What percentage of the national broadband market will Comcast hold if it is permitted to acquire TWC? Please describe the methodology and the data used to arrive at your estimate.

b. Why didn't Comcast estimate its post-acquisition share of the national broadband market before announcing its proposed deal with TWC, as it did with respect to its estimated post-acquisition share of the MVPD market?

5. A December 2013 FCC report indicates that about 30% of people live in areas with one or fewer providers of Internet service offering downstream speeds of at least 10 mbps and that about 67% of people live in areas with two or fewer such providers.

a. Please identify any local markets in which Comcast is the only Internet service provider offering average downstream connection speeds of at least 10 mbps.

b. Please identify any local markets in which Comcast is one of only two Internet service providers offering average downstream connection speeds of at least 10 mbps.

c. Please identify any local markets in which Comcast has at least a 50% of subscribers with average downstream connection speeds of at least 10 mbps.

d. How would your responses to Questions 5(c), (d), and (e) change if you were to exclude competitors that do not also offer MVPD services?

6. Comcast's net neutrality obligations expire in January 2018. Will you commit to abide by those obligations – including the anti-blocking and anti-discrimination requirements – beyond that date regardless of whether the Federal Communications Commission (FCC) has implemented new net neutrality rules by that time?

7. In light of the D.C. Circuit Court of Appeals' decision in *Verizon v. FCC*, some have suggested that the FCC will be unable to promulgate new net neutrality rules that withstand judicial scrutiny unless the FCC reclassifies broadband service as a telecommunications service, thus subjecting broadband service to common carrier requirements. Comcast has resisted such reclassification, arguing that the FCC should instead attempt once again to promulgate net neutrality rules under section 706 of the Telecommunications Act, despite the apparent challenge of drafting effective rules that prevent broadband service providers from discriminating against content while simultaneously treating those providers as something other than common carriers.

   a. Do you agree with the foregoing characterization of the issue and of Comcast's position? If not, please identify those aspects with which you disagree and explain your disagreement.

   b. Consistent with the *Verizon* decision, please explain how the FCC could draft new and effective net neutrality rules without reclassifying broadband service as a telecommunications service.

8. As noted on page 136 of the Public Interest Statement that Comcast and TWC filed with the FCC, Internet traffic flows along a complex system of Internet backbone networks, content delivery networks (CDN), and Internet service providers' (ISPs) networks. Generally speaking, these networks interact with each other either through peering or transit arrangements.

   a. How many peering relationships does Comcast currently have with backbone networks, CDNs, and other ISPs?

   b. Of the relationships identified in Question 8(a), how many are settlement free?

   c. Has the ratio of Comcast's settlement-free peering relationships to its overall peering relationships increased or decreased over time?

   d. What factors does Comcast take into account when deciding whether to enter into, terminate, or maintain a settlement-free peering arrangement?

   e. Please provide an overview of the nature of Comcast's transit relationships, including the number of such relationships, the reasons that Comcast enters into such relationships, the types of networks with which Comcast typically enters into transit relationships, and ways that Comcast expects these relationships to change if it is permitted to acquire TWC.

f. Have any backbone networks, CDNs, or other ISPs offered to incur the costs necessary to upgrade connections between their network and Comcast's network in exchange for an ongoing settlement-free peering relationship? If so, please identify any such offers and explain the outcome of the offer. If Comcast has rejected any such offers, please explain why.

9. In its February 2014 USA Internet Service Provider (ISP) Speed Index, Netflix reported an average speed of just 1.68 mbps for Comcast's customers, ranking Comcast 51st out of 60 ISPs in the Index.

a. How do these speeds compare to those at which Comcast's customers were able to access streaming programming through Comcast's Xfinity service or other Comcast-affiliated services during this period?

b. Fifty ISPs, each of which is smaller than Comcast, outperformed Comcast during this period, even though each ISP presumably experienced an approximately similar per customer demand for Netflix traffic. How does Comcast explain its uniquely poor performance during this period?

c. Does Comcast maintain similar performance data with respect to the speeds at which traffic reaches its customers? If so, does Comcast disclose those data to consumers? If it maintains but does not disclose such data, please explain why this is the case.

10. In August 2012, the advocacy group Public Knowledge filed a petition with the FCC, challenging Comcast's use of data caps. I share Public Knowledge's concern that data caps could be used to discriminate against nonaffiliated content and to increase consumers' costs.

a. Please explain Comcast's policies with respect to the use of data caps, including the amount of data allowed under the caps and the costs to consumers for data usage above those caps.

b. How many Comcast customers currently are subject to data caps? If different customers are subject to different caps, please specify that in your answer.

c. Of customers who are subject to data caps, what percentage of customers exceed the caps? What is the average additional cost to those consumers?

d. Has Comcast ever exempted Comcast-affiliated content or programs from the data caps that Comcast has imposed on consumers? If so, please explain.

e. If Comcast is permitted to acquire TWC, will it impose data caps on its newly acquired customers?

f. Has Comcast conducted any studies or analysis to determine whether imposition of data caps result in Comcast receiving increased average revenue per user? If so, what have been the results of those studies or analyses?

11. From the day Comcast announced its proposed acquisition of TWC, it has argued that the deal will give Comcast the economies of scale it needs to remain competitive and innovative. However, fewer than six months before the deal was announced, Comcast's Chief Financial Officer (CFO) disavowed those claims in a conference call with a Goldman Sachs analyst, brushing off the suggestion that cable consolidation presented "very accretive opportunities" and saying: "[I]t's a financial decision in terms of getting larger. We think we have scale. I think people who are talking about it are looking for the benefits of scale whether it be on the programming side or the technology side, and I think we've already executed on that." How do you reconcile Comcast's argument before the FCC with its CFO's statements to the Goldman Sachs analyst?

12. Please identify each instance in which Comcast has been involved in a dispute regarding access to or carriage of a Regional Sports Network in the past ten years. For each case cited, please identify the parties to the dispute and provide a brief description of the dispute and its ultimate resolution.

13. In 2012, the *Washington Post* reported that Comcast was prepared to launch the Internet Essentials program in 2009 but chose to delay implementation until Comcast secured regulatory approval for its merger with NBC Universal. The *Washington Post* suggested that Comcast viewed the program as a bargaining chip in the regulatory proceedings, and it quoted you as saying, "I held back because I knew it may be the type of voluntary commitment that would be attractive to the chairman [of the FCC]." Is this quotation accurate?

14. In June 2012, the FCC entered a consent decree requiring Comcast to implement certain reforms with respect to Comcast's standalone broadband offering. The consent decree was intended to bring Comcast into compliance with a condition imposed as part of the Comcast-NBC Universal deal to mitigate risks of excessive product bundling. The consent decree mandated a program to train employees about Comcast's standalone offering. Nonetheless, during a February 13 conference call with Wall Street analysts, Comcast's CFO said that he was "confident that revenue opportunities exist by including greater bundling penetration in residential," and, on a March 10 conference call, he reiterated that Comcast "would seek to bundle more" and that it would train its call center and service employees to "upsell" and bundle better. Would it be unreasonable for someone to perceive a conflict between the dictates of the consent decree and the intentions reflected in Comcast's CFO's statements?

15. Municipal broadband networks have the potential to introduce competition in markets where consumers have limited choices for broadband service.

a. Please identify any instance in which Comcast has opposed development of a municipal broadband network or lobbied a state to impose restrictions on such networks and please describe Comcast's rationale for doing so.

b. Do you agree that citizens should be able to determine for themselves, through local officials, whether they are offered broadband services through municipal enterprises or public-private partnerships?

16. Does Comcast include a binding, pre-dispute arbitration clause in its consumer contracts? If so, please answer the following questions:

a. When did Comcast begin using its arbitration clause?

b. Does the arbitration clause include either a class action or class arbitration prohibition?

c. In the five years before Comcast began using its arbitration clause, how many consumer-related complaints were brought against Comcast in court? Of these, how many proceeded as collective or class actions, either to settlement or a final judgment?

d. In the years since Comcast began using its arbitration clause, how many consumer-related complaints have been brought against Comcast in arbitration? Of these, how many proceeded as collective or class actions or as collective or class arbitrations, either to settlement or to final judgment?

e. What is Comcast's rationale for subjecting consumer claims to arbitration instead of giving consumers the option of pressing their claims in court?

f. Do you agree that class actions or class arbitrations can be an effective way for consumers to hold corporations accountable for relatively low-value claims that otherwise might not be litigated? If not, please explain your answer.

17. Does Comcast currently negotiate with TWC with respect to TWC carriage of Comcast-affiliated programming? If so, how often do those negotiations take place? What are Comcast's objectives during those negotiations?

18. Some content producers may seek out alternative delivery mechanism (ADM) arrangements as a means to gain additional exposure for their work at costs that potentially are lower than those associated with traditional MVPD carriage deals. ADMs could become impractical, however, if MVPD companies' contracts include most favored nation (MFN) provisions, which generally provide that the MVPD company is entitled to the terms that the content producer offers other distributors.

a. Do you agree with the foregoing statement? If not, please identify those aspects with which you disagree and explain your disagreement.

b. Does Comcast require content producers to agree to MFNs as a term of carriage on Comcast's distribution platforms?

19. MVPD companies generally reserve from the television networks about two minutes per hour of advertising for the MVPD companies to sell. These two minutes per hour generate billions of dollars in annual revenue for the MVPD industry. National advertisers generally purchase advertising time from the MVPD companies through NCC Media, a buying cooperative that represents MVPD companies.

a. Do you agree with the foregoing statement? If not, please identify those aspects with which you disagree and explain your disagreement.

b. What is Comcast's current ownership interest in NCC Media?

c. If Comcast is permitted to acquire TWC, what will be its ownership interest in NCC Media?

20. Last year, Comcast was sued for its alleged practice of retaining customers' personal information – including Social Security numbers and credit card numbers – long after customers cancelled their Comcast accounts. What personal data does Comcast collect from its customers? And what are Comcast's policies with respect to retention, minimization, and expungement of such data?

QUESTIONS SUBMITTED TO ARTHUR T. MINSON, JR., BY SENATOR FRANKEN

Senate Judiciary Committee Hearing
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record Submitted by Senator Al Franken for Artie Minson

1. Please identify Time Warner Cable's (TWC) most popular bundled service offering, its most popular cable television offering, and its most popular standalone broadband offering, and, for each of these offerings, please provide the inflation-adjusted consumer price for each year from 1995 to the present. If it is not possible to provide these data on a national basis, please provide them for any Minnesota markets in which TWC operates and for TWC's top four national markets. Please also provide TWC's net income and profit margins for those years.

2. Page 2 of the Public Interest Statement that Comcast and TWC submitted to the Federal Communications Commission (FCC) says that TWC "has plans to improve speeds and further digitize its network." Page 28 similarly provides that "TWC announced earlier this year a multi-year plan to upgrade its network and enhance its services."

   a. Please explain those plans, including any goals and timetables that TWC has set for network upgrades.

   b. Was Comcast's development of new broadband capabilities, including DOCSIS 3.1, a motivating factor in TWC's decision to develop and implement its upgrade plans?

   c. Has TWC changed its plans, including the timetable for such plans, in light of Comcast's proposed acquisition of TWC?

3. If Comcast's acquisition of TWC is approved, certain TWC executives will receive substantial severance compensation packages, which are often called golden parachutes.

   a. Please identify the recipient of any golden parachute that is worth at least $1 million, and please specify the value of such golden parachute.

   b. Please explain the business justification for the golden parachutes identified in question 3(a)

   c. Please explain how the golden parachutes identified in question 3(a) serve the public interest.

   d. Would the public interest be better served if funds in excess of $1 million for the golden parachutes listed in question 3(a) were instead invested in broadband service for rural and low-income communities?

4. A December 2013 FCC report indicates that about 30% of people live in areas with one or fewer providers of Internet service offering downstream speeds of at least 10 mbps and that about 67% of people live in areas with two or fewer such providers.

a. Please identify any local markets in which TWC is the only Internet service provider offering average downstream connection speeds of at least 10 mbps.

b. Please identify any local markets in which TWC is one of only two Internet service providers offering average downstream connection speeds of at least 10 mbps.

c. Please identify any local markets in which TWC has at least a 50% of subscribers with average downstream connection speeds of at least 10 mbps.

d. How would your responses to Questions 4(a), (b), and (c) change if you were to exclude competitors that do not also offer multichannel video programming distribution MVPD services?

5. Please identify any local markets in which TWC has at least a 50% share of the MVPD market.

6. Does TWC currently negotiate with Comcast with respect to TWC carriage of Comcast-affiliated programming? If so, how often do those negotiations take place? What are TWC's objectives during those negotiations?

7. On February 12, Bloomberg News reported that TWC was in negotiations with Apple about an April unveiling of Apple's new set-top box. Were those reports accurate? If so, what is the current status of those negotiations? Have they been affected by Comcast's proposed acquisition of TWC, which was announced the next day?

8. Does TWC include an arbitration clause in its contracts with consumers? If so, in what ways is that arbitration clause different from that included in Comcast's contracts with consumers?

9. During a Judiciary Committee hearing that I chaired in December about mandatory, pre-dispute arbitration, a professor from Cardozo Law School testified that TWC had begun charging consumers $3.95 per month for a modem that previously had been included with customers' subscriptions. The witness said that TWC had not provided notice of the charge and had not provided a method for consumers to avoid the fee, even if the consumers had been on fixed price plans. The law professor testified that a lawsuit challenging the new charges had been forced into arbitration.

a. Did TWC recently begin charging consumers for modems that the consumers previously received without charge?

b. Did TWC provide its consumers with notice specifically explaining that the new charge?

c. Please provide an update on the status of the lawsuit challenging the new charge, noting whether it was brought as a class action and whether and how it was resolved.

10. Please identify any areas in which TWC offers its customers a better value or experience than that which Comcast offers its own customers.

11. Please identify each instance in which TWC has been involved in a dispute regarding access to or carriage of a Regional Sports Network in the past ten years. For each case cited, please identify the parties to the dispute and provide a brief description of the dispute and its ultimate resolution.

12. Please describe TWC's policies and practices with respect to the use of data caps for broadband subscribers.

QUESTIONS SUBMITTED TO JAMES L. BOSWORTH, JR., BY SENATOR GRASSLEY

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR MR. BOSWORTH

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

QUESTIONS SUBMITTED TO DAVID L. COHEN BY SENATOR GRASSLEY

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR MR. COHEN

Some have expressed concerns based on the fact that Comcast and Time Warner create some of their own content. Will the merger enhance the company's ability to restrict competing content providers from distributing their programs to a significant number of consumers through its distribution channels? In addition, what assurances can you provide the Committee that the newly combined company will not withhold its own programming content from competing TV and Internet providers?

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

How will the proposed merger impact cable advertising? Currently, I understand that cable networks allow cable companies to keep 2 minutes per hour of advertising, which permits small businesses to advertise in a cost-effective way on national programming. Comcast and Time Warner Cable already control a substantial part of this cable advertising market, and a combined Comcast-TWC would consolidate that control over this $5.4 billion market. How can you assure the Committee that this dominant control of the market won't result in limiting the access that small businesses have, and that it won't result in higher advertising costs, which are then passed on to consumers?

If the proposed merger is approved and Comcast-TWC has a dominant position in the local spot advertising market, wouldn't that make it more difficult and expensive for local businesses to advertise in the spot market? Would there be an incentive to sell more spots at higher prices to national and regional advertisers, giving local small businesses fewer options and forcing them to pay higher prices? What are the implications for others in the cable television community – for example, independent cable systems, satellite carriers and other cable advertising companies – if they cannot get access to the spot advertising market other than through Comcast?

So called "cord cutting" is becoming more and more popular, especially as companies like Netflix and Hulu gain traction. Comcast controls the internet connections that many people use to access these sites. But because Comcast also provides cable television access, it could have an interest in preventing people from cutting the cord. What assurances can you give the Committee that it won't use its control of the internet infrastructure to stop consumers' ability to "cord cut?"

The Comcast consent decree with DOJ and the FCC Conditions to the NBC Universal transaction forbid Comcast from limiting or using incentives to limit a cable programmer from selling its content to an online video distributor. Since September 2011, has your company entered into or modified any program carriage agreements that contain contractual provisions which create a financial disincentive for programmers to sell their programming on an online video distributor?

QUESTIONS SUBMITTED TO GENE KIMMELMAN BY SENATOR GRASSLEY

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR MR. KIMMELMAN

In your opinion, should Congress take additional steps to ensure access to the Internet for content, service and application providers, as well as for consumers? Or are existing laws and policies sufficient to deal with potential anti-competitive behavior?

We currently have a hodgepodge of regulations that regulate the communications sector. Common Carriers are regulated like a telephone company from 1982 when they had a monopoly on voice services. Today, Comcast and Time Warner Cable are both competing with telephone companies not only for broadband customers, but for voice customers as well. Do you believe that today's regulatory regime that places burdensome regulations on the telephone company but not on the cable company, gives the cable company a market advantage?

In your opinion, what will be the effect of the merger on regional sports programming costs, which are necessary for other video providers to offer in order to maintain a viable service?

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

What are the implications of this merger for open access and peering in the broadband market? How does the proposed transaction affect competition in the market for "last mile' interconnection services?

What effect will the merger have on competing set-top boxes like Roku and Apple TV?

Some are concerned that this merger is bad for content providers because a combined Comcast-Time Warner Cable would be too powerful of a gatekeeper. However, others view this merger as a possible signal that the industry is transitioning from a cable television system of the past to a new system. Could this merger break down some of the walls of innovation and shift from a licensing model to a more direct IP-enabled model?

Things are changing in how we view television – every day there are more ways to watch our shows, movies and other content. Comcast and Netflix have reached a deal and it has been rumored that Apple and Comcast have had discussions about providing service for Apple TV. Both of these entities are Comcast competitors. How does this co-opetition benefit consumers? How does it affect the industry?

QUESTIONS SUBMITTED TO ARTHUR T. MINSON, JR., BY SENATOR GRASSLEY

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR MR. MINSON

Some have expressed concerns based on the fact that Comcast and Time Warner create some of their own content. Will the merger enhance the company's ability to restrict competing content providers from distributing their programs to a significant number of consumers through its distribution channels? In addition, what assurances can you provide the Committee that the newly combined company will not withhold its own programming content from competing TV and Internet providers?

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QUESTIONS SUBMITTED TO RICHARD J. SHERWIN BY SENATOR GRASSLEY

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

<u>QUESTIONS FOR MR. SHERWIN</u>

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

What are the implications of this merger for open access and peering in the broadband market? How does the proposed transaction affect competition in the market for "last mile' interconnection services?

QUESTIONS SUBMITTED TO CHRISTOPHER S. YOO BY SENATOR GRASSLEY

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR PROFESSOR YOO

We currently have a hodgepodge of regulations that regulate the communications sector. Common Carriers are regulated like a telephone company from 1982 when they had a monopoly on voice services. Today, Comcast and Time Warner Cable are both competing with telephone companies not only for broadband customers, but for voice customers as well. Do you believe that today's regulatory regime that places burdensome regulations on the telephone company but not on the cable company, gives the cable company a market advantage?

In your opinion, what will be the effect of the merger on regional sports programming costs, which are necessary for other video providers to offer in order to maintain a viable service?

In your opinion, should Congress take additional steps to ensure access to the Internet for content, service and application providers, as well as for consumers? Or are existing laws and policies sufficient to deal with potential anti-competitive behavior?

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

Are you concerned about any monopsony problems with this transaction? The concern is that new online innovators are just starting to develop competitors to cable, but many of them come from companies that need Comcast/TWC as both a cable distributor and an ISP. Is this a valid concern?

Should we be wary of agencies using their merger review authority to pursue policies that they do not otherwise have statutory authority to pursue? For example, the D.C. Circuit recently said that the FCC did not have authority to enforce its net neutrality rule. Should the FCC be allowed to now condition the merger on Comcast's agreement to comply with that same rule?

What are the implications of this merger for open access and peering in the broadband market? How does the proposed transaction affect competition in the market for "last mile' interconnection services?

Some are concerned that this merger is bad for content providers because a combined Comcast-Time Warner Cable would be too powerful of a gatekeeper. However, others view this merger as a possible signal that the industry is transitioning from a cable television system of the past to a new system. Could this merger break down some of the walls of innovation and shift from a licensing model to a more direct IP-enabled model?

Things are changing in how we view television – every day there are more ways to watch our shows, movies and other content. Comcast and Netflix have reached a deal and it has been rumored that Apple and Comcast have had discussions about providing service for Apple TV. Both of these entities are Comcast competitors. How does this co-opetition benefit consumers? How does it affect the industry?

QUESTIONS SUBMITTED TO JAMES L. BOSWORTH, JR., BY SENATOR HATCH

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record Submitted by
Senator Orrin G. Hatch

Questions to Mr. James L. Bosworth, Jr.:

1. During the hearing, Mr. Cohen noted that the issue of "a la carte" programming is complicated and that the result of an a la carte regime could be less choice and higher costs for consumers. In contrast, others argue that a la carte programming would give consumers access to more choices at lower prices. What would be the impact of mandatory a la carte offerings on independent programmers such as Back9Network? In particular, what would a la carte do to the launch and growth of new program services like Back9Network?

QUESTIONS SUBMITTED TO DAVID L. COHEN BY SENATOR HATCH

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record Submitted by
Senator Orrin G. Hatch

Questions to Mr. David Cohen:

1. During the hearing, you noted that the issue of "a la carte" programming is complicated and that the result of an a la carte regime could be less choice and higher costs for consumers. In contrast, others argue that a la carte programming would give consumers access to more choices at lower prices. Please explain why you believe a la carte options would not increase consumer welfare.

    a. In addition to the direct effects on consumers, what would be the impact of mandatory a la carte offerings on independent programmers? In particular, what would a la carte do to the launch and growth of new program services, including those targeted at niche interests?

2. During the hearing, you drew a distinction between "compliance" issues and "interpretive" issues involving the FCC's oversight of the NBCUniversal conditions and your written testimony about that subject. Please clarify what you meant by this distinction.

3. It is my understanding that so-called interconnection or peering arrangements—such as the recently-announced deal between Comcast and Netflix—are commercial agreements to distribute the costs of upgrading network infrastructure to meet growing demand for online video. I understand that Internet providers and those that provide online video content have different views about who should pay to upgrade network capacity. Despite these differences, agreements such as the one between Comcast and Netflix suggest that there is a market-based solution. From Comcast's perspective, is this market-driven approach working?

    a. During the hearing, Mr. Kimmelman testified that the merger would give Comcast more leverage not only in carriage negotiations with content providers, but also in negotiations to provide Internet companies like Netflix direct access to Comcast's networks. How can we ensure that these agreements between Comcast online content providers regarding how Internet traffic is delivered are not anticompetitive?

4. The rapidly-evolving set-top box is already starting to bridge the divide between online streaming and the traditional cable viewing experience. Time Warner Cable was reportedly collaborating with Apple on a next-generation set-top box, and now reports indicate that Apple is considering a partnership with Comcast to create a new set-top box. Some commentators suggest that such a partnership could provide exciting new technology to consumers. But cable companies have historically been reluctant to let third-parties control the viewing experience for their customers. How will this merger

affect Comcast's willingness to partner with others—in some cases, competitors—to improve the viewing experience for consumers?

5. During the hearing, Mr. Bosworth contended that Comcast carries only 20 independent networks. You testified that the number of independent networks is actually over 160. Can you please clarify how you counted the number of independent networks that Comcast carries for purposes of your testimony?

6. Since Comcast's 2011 merger with NBCUniversal, have any independent channels been dropped from any Comcast program lineups? If so, what was the reasoning? Does Comcast drop independent stations when their Nielsen ratings exceed a certain level?

7. Independent programmers are concerned that further consolidation in multichannel video programming distribution will make it more difficult for independent networks to secure carriage. What criteria are used by Comcast to evaluate independent programming networks for carriage? What criteria are used to determine if carriage of the independent programming network should be in standard definition or high definition? Is Comcast launching the high definition feeds of independent channels, or limiting them to standard definition?

QUESTIONS SUBMITTED TO CHRISTOPHER S. YOO BY SENATOR HATCH

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record Submitted by
Senator Orrin G. Hatch

Questions to Professor Christopher S. Yoo:

1. During the hearing, you commented on the proposed merger of Comcast and Time Warner Cable from the perspective of antitrust law. According to your legal analysis, would this merger create—for either video or broadband—an industry structure resulting in anticompetitive harms under established antitrust or communications law? In particular, can you speak to the relevant markets at issue in that analysis?

QUESTIONS SUBMITTED TO DAVID L. COHEN AND ARTHUR T. MINSON, JR., BY SENATOR GRAHAM

SENATOR LINDSEY O. GRAHAM
9 APRIL 2014
U.S. SENATE COMMITTEE ON THE JUDICIARY

QUESTIONS FOR THE RECORD FOR MR. DAVID COHEN AND MR. ARTHUR MINSON, JR.:

1. I have heard concerns that the proposed Comcast/Time Warner Cable merger will hinder the ability of independent television networks to get carried by cable providers. How would the Comcast/Time Warner Cable merger affect the ability of independent networks, like INSP (also known as Inspiration Network), to get carried by Comcast?

2. Why do independent television networks, like INSP, that are fast growing and have consistently increasing ratings - higher than a large portion of the higher-profile networks carried - have to pay service providers, when those other networks actually get paid licensing fees?

QUESTIONS SUBMITTED TO JAMES L. BOSWORTH, JR., BY SENATOR LEE

Questions for the Record
"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senator Mike Lee
April 16, 2014

James L. Bosworth (Chairman and CEO, Back9 Network)

1. In your testimony you argued that, given the bandwidth constraints of satellite and the current valuation of advertising on programs streamed only on the internet, survival of independents like your network depend on carriage by large cable companies like Comcast.

   a. Assuming for a moment that this is the case, I'm curious as to whether you believe it is the case that the size of a company like Comcast causes this difficulty or whether it is merely the realities of the market that consumers are not needing or demanding new programming sufficient to justify the existence of additional new content?

QUESTIONS SUBMITTED TO DAVID L. COHEN BY SENATOR LEE

Questions for the Record
"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senator Mike Lee
April 16, 2014

David Cohen (Exec. VP, Comcast)

1. Some proponents of the merger have argued that, because the price for video content is increasing, if cable companies such as Comcast are to keep prices from rising, they must have increased leverage to negotiate better deals with content providers.

    a. Do you believe content providers have more leverage than cable companies do in negotiations over price? And do you believe this merger provides additional leverage so as to be able to better negotiate price?

    b. If you don't believe the merger will increase your leverage with content providers, than do you believe the merger will help you in the video market? If so, how?

2. Some critics of the merger have expressed concern that if this merger is approved, independent programmers would not be able to survive without gaining access to Comcast—a situation that would give Comcast significant power as a kind of gatekeeper to new content providers being born. While you may disagree with this characterization, it seems that real opportunities for new independents to thrive are lacking.

    a. In your view, is the video market such that, even if this merger were approved, a content provider could gain enough prominence through other means of distribution to survive even without carriage on Comcast? Or would you argue instead that although being carried by a cable provider such as Comcast is essential to an independent network, the market is such that an independent network with valuable content will generally be able to obtain a contract with Comcast and other cable companies?

    b. What is your view of the requirement imposed during the acquisition of NBC Universal requiring carriage of independent networks, and do you believe a similar requirement is appropriate in this case?

QUESTIONS SUBMITTED TO GENE KIMMELMAN BY SENATOR LEE

Questions for the Record
"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senator Mike Lee
April 16, 2014

Gene Kimmelman (President and CEO, Public Knowledge)

1. Mr. Kimmelman, in your testimony you expressed concern with regard to the potential degree of market power Comcast could have with respect to the purchasing of video content. This seems to be a question of monopsony—the power of a buyer to dictate terms to a seller.

    a. How could undue monopsony power harm consumers, and with respect to this transaction in particular, what makes you concerned that the company's purchasing power could harm consumers?

2. With respect to the market for video programming, testimony was given during the hearing that the combined company would have less than a 30 percent share of the market. And court decisions have confirmed that a share of less than 30 percent in the video market is insufficient to raise competitive concerns.

    a. How would you respond to those that argue that based on the fact that Comcast would have less than 30 percent of the video market this transaction does not pose competition concerns?

QUESTIONS SUBMITTED TO ARTHUR T. MINSON, JR., BY SENATOR LEE

Questions for the Record
"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senator Mike Lee
April 16, 2014

Arthur T. Minson (Exec. VP, Time Warner Cable)

1. Much of the discussion surrounding this merger has centered on the market for content providers to sell content so that it may be accessed by consumers. Content providers and independent networks argue that without being carried by major providers they cannot survive in the current market.

    a. What is your experience with respect to independent programmers and other content providers and do you believe this merger could negatively affect their ability to thrive?

RESPONSES OF JAMES L. BOSWORTH, JR., TO QUESTIONS SUBMITTED BY SENATORS HATCH, KLOBUCHAR, GRASSLEY, AND LEE

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record for James L. Bosworth Jr.

Question Submitted by Senator Hatch

During the hearing, Mr. Cohen noted that the issue of "a la carte" programming is complicated and that the result of an a la carte regime could be less choice and higher costs for consumers. In contrast, others argue that a la carte programming would give consumers access to more choices at lower prices. What would be the impact of mandatory a la carte offerings on independent programmers such as Back9Network? In particular, what would a la carte do to the launch and growth of new program services like Back9Network?

Answer: The biggest impediment today to providing consumers access to more choices at lower prices is the consolidation of cable companies in the major television markets. If this merger goes through without sufficient conditions to protect independent programmers, there will be fewer programming options. The new Comcast would be the dominant provider in all 10 of the top 10 markets and would be in 23 of the top 25 markets. New programmers with innovative, quality programming will know that, to be successful long-term, they need Comcast to carry them, and since Comcast is also one of the biggest program suppliers, it has no incentive to allow new, independent programmers to reach its audience.

There is some attractiveness to an a la carte offering, because it allows networks like Back9Network to compete for subscribers based on the quality of its content, and it would mean that Back9Network would be available to all viewers who want to pay a specific fee to watch our programming. Right now, cable subscribers pay for Comcast's Golf Channel whether they watch it or not — and very few of them do. In 2013, the Golf Channel averaged just 110,000 viewers per day, out of the approximately 100 million American households that receive pay television service. We have developed quality programming that we know — based on our market research — will have a significant audience. If that audience had a chance to see our programming, and the opportunity to purchase it at a low price on an a la carte basis, we believe they would do so.

That said, Back9Network is not advocating an a la carte mandate. As you acknowledge, the issue is complicated and we do not necessarily understand the potentially far-reaching implications of that policy change. All we want is the ability to compete and get our programming to consumers where they watch and look for video programming. If consumers had the ability to choose the channels delivered to them, we are confident many of them would choose Back9Network. But as long as Comcast makes that choice for them, Comcast must be held to the highest non-discriminatory standards, to ensure that independent programmers are given a chance to compete.

Question Submitted by Senator Klobuchar

The FCC conditioned its approval of the Comcast-NBC merger on the company agreeing to a prohibition from favoring its own NBC content or discriminating against small, unaffiliated programmers. After three years of proceedings, the Tennis Channel won an FCC decision and appeal that ordered Comcast to take the channel off a little watched digital tier and place it with the other sports channels. Comcast appealed that decision to the D.C. Circuit and it was overturned. Another independent programmer, Bloomberg News, spent millions to enforce the merger conditions to have its channel placed in the channel neighborhood of an NBC-owned rival. In your experience as an independent programmer with content that would compete with an NBC-owned channel, do you believe that Comcast has lived up to its obligations under the NBC Universal merger?

Answer: No, it has not. The Federal Communications Commission conditioned its approval of the Comcast-NBCU transaction on the requirement that Comcast "not discriminate in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection of, or terms or conditions for, carriage, including in decisions regarding tiering and channel placement."[1] The Tennis Channel and Bloomberg proceedings are evidence that Comcast has indeed discriminated based on affiliation. In the Bloomberg News case, the Commission found Comcast had not complied with a condition of the Comcast-NBCU Order by refusing to place Bloomberg Television, a business news channel, in a news neighborhood.[2] The Commission also noted Comcast's increased "incentive and ability to discriminate on the basis of affiliation" after its merger with NBCU.[3]

The real problem is more significant than what is evident in these high profile cases. Truly independent programmers are shut out from serious discussions with Comcast and do not have the time and resources needed to pursue expensive, multi-year legal processes to demonstrate discrimination.

Comcast has shown little interest in having productive discussions with us or evaluating our content with the same standards it uses to launch golf and/or lifestyle networks. Comcast turned us down when we approached them in the fall of 2012. We continued to approach Comcast and provided it with a more-than-fair proposal. We met with them again on April 7, 2014, but we have not had any productive or substantive discussions regarding carriage. We believe Comcast has not given us a fair evaluation, as it promised to do for independent programmers under the conditions of the NBCU merger, and we believe the reason for that is Comcast's ownership of one of our major competitors — the Golf Channel.

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[1] *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Rcd 4238, 4287 (2011) ("*Comcast-NBCU Order*").

[2] *In the Matter of Bloomberg, L.P.*, Memorandum Opinion and Order, MB Docket No. 11-104, at ¶ 22 (Sept. 26, 2013).

[3] *Id.* at ¶ 33.

The fears expressed by the Commission about the power a vertically integrated Comcast would possess have come to fruition. The Commission found the proposed transaction posed a threat to competition because "the combination of Comcast, the nation's largest cable service provider and a producer of its own content, with NBCU, the nation's fourth largest owner of national cable networks, will result in an entity with increased ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks."[4] The Commission stated that "Comcast's extensive cable distribution network affords it the ability to use its video distribution market position to harm other competing video programming firms and harm competition in video programming."[5]

We have raised $30 million from investors who are committed to our network's mission, management team, and business model. That investment is necessary to produce the high-quality programming that consumers demand. Competition will be thwarted earlier in the process if new programmers need to raise additional funding for lawyers to battle Comcast simply as an entrance fee to compete.

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[4] *Comcast-NBCU Order* at 4284.

[5] *Id.* at 4284-85. The Commission further found that the "transaction also increases Comcast's incentives to discriminate in favor of its affiliated programming [because] [u]pon consummation of the transaction, Comcast will compete with an increased pool of unaffiliated programming vendors offering content that viewers might consider substitutes for its affiliates' programming content and against which it could potentially pursue foreclosure or discrimination strategies in order to favor that content." *Id.* at 4285-86.

Question Submitted by Senator Grassley

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

Answer: As a programmer, we do not have the expertise to comment on the broadband industry. We would note, however, that in the video programming industry, we will no longer have a truly free market if this merger goes through. Instead, we will have one company — Comcast — that can favor its own programming over competing programming from independent networks like Back9Network. With Comcast controlling so much of the video market, and with other MVPDs and satellite distributors reluctant to launch new networks, the market is not free. Instead, it is dominated by one company, Comcast, that will have virtual veto power over what new networks get off the ground. This is not fair competition and a free market. It's a stacked deck.

If the Comcast-Time Warner Cable deal is approved, we would ask regulators to impose effective and enforceable conditions to guarantee that Comcast will not discriminate based on affiliation, with a streamlined complaint process, so that Comcast cannot hobble its competition with drawn-out litigation and prohibitive legal fees.

<u>Question Submitted by Senator Lee</u>

In your testimony you argued that, given the bandwidth constraints of satellite and the current valuation of advertising on programs streamed only on the internet, survival of independents like your network depend on carriage by large cable companies like Comcast.

a. Assuming for a moment that this is the case, I'm curious as to whether you believe it is the case that the size of a company like Comcast causes this difficulty or whether it is merely the realities of the market that consumers are not needing or demanding new programming sufficient to justify the existence of additional new content?

<u>Answer</u>: We know there is demand for our programming. Our website is the fastest-growing in the golf industry. We have raised $30 million from investors who believe in our product. We are tapping into a vast market — the $177 billion golf lifestyle market — that is being served by a single channel, the Golf Channel.

If consumers do not want our programming, then we will not succeed. But in the current situation, consumers will not see our programming because Comcast has both the incentive and the ability to prevent us from reaching a sufficient audience to succeed.

It is true that consumers have many cable channel choices, but their cable bills continue to rise astronomically. Consumers deserve more channels for those higher bills, and some of those new channels need to come from truly independent networks that have no affiliation with pay television operators or media network conglomerates. Our production facilities, business model, and programming capabilities address an underserved market, which would increase output for consumers and provide advertisers with more and better options for reaching consumers.

Unfortunately, vertical integration has given Comcast a reason not to carry quality programmers that compete with its own networks unless it has to — and horizontal consolidation in the cable industry has meant that independent programmers have fewer and fewer options for gaining the carriage they need to attract advertisers. We are left, then, in a situation where the choices consumers have are dictated by one company: Comcast.

In addition, though online viewing of content is clearly growing, the simple truth is that the vast majority of viewing by Americans of all ages happens on a traditional television. That is where the eyeballs are, and so that is where the advertising dollars are, and that is where we need to be to compete for advertising dollars and long-term viability. We are well aware of all the attention paid to online video, but the market has not shifted economically yet in a dramatic way, and we see that day as still several years off. In the meantime, a dominant cable company like Comcast will have veto power over new programming.

RESPONSES OF DAVID L. COHEN TO QUESTIONS SUBMITTED BY SENATORS KLOBUCHAR, FRANKEN, GRASSLEY, HATCH, GRAHAM, AND LEE

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

David Cohen, Comcast

1. **Set top boxes are consumers' gateway to content. As I said in the hearing, I am encouraged by Time Warner Cable's plan to make its content available without the use of a set top box rental. At the hearing, you said the X1 box will give Comcast consumers the "same experience" as a Time Warner Cable customer watching on a Roku. Does this mean that the X1 will be an "open" platform and Netflix, Hulu and others will be allowed onto the platform on the same terms they gain access to independent, third party platforms like Roku and Apple TV? Furthermore, will Comcast give full access to its content without requiring a set top box rental?**

   Response: As I briefly stated during the hearing, the X1 platform enables our customers to deliver IP cable programming to a variety of devices in the home, much as TWC delivers its cable service to Roku and other devices. In Boston and other markets, we recently launched a live TV streaming feature that allows customers to access our full channel lineup in IP on smartphones, tablets, PCs, and Macs in the home without the need for a connected set-top box.

   The live TV streaming feature of the X1 platform is the next step toward offering a pure IP cable service, which could in some cases even obviate the need for any set-top box in the home. This transition is complicated and expensive, requiring adaptations such as encoding all of the PEG and local broadcast channels to ensure Title VI compliance. It is further complicated by the FCC's legacy rules regarding set-top boxes. Nevertheless, if this transaction is approved, the combined company will be able to continue to invest in and advance this transition across our combined footprint.

   We also enable a growing array of third-party Internet applications (*e.g.*, Facebook, Pandora, and others) on our X1 platform and are continuously exploring adding new apps. There is a diversity of approaches in the marketplace for applications on set-top devices, and each platform has its own specifications. Thus, applications on Roku must meet certain specifications for the Roku platform, Apple the same, and Comcast the same. This diversity of approaches offers multiple different choices to consumers, and is the hallmark of a competitive device marketplace.

   Prior to completion of the proposed transaction, we cannot comment on future plans for the combined company, and particularly as it relates to TWC's plans regarding set-top boxes.

2. **Competition from online video services and devices is an important to consumers. Roku and PlayStation 3 offer their users' access to HBO Go if they are paying HBO subscribers on any MVPD, but Comcast has refused to "authenticate" Roku users' HBO accounts since 2011. Why has Comcast refused to authenticate HBO Go on the Roku and PlayStation platforms? What assurances can you provide that**

Comcast will not use authentication as a tool to deny content to competitive third-party, internet-connected set top boxes?

Response: Comcast has not refused to authenticate Roku users. In fact, we announced over a month ago that we were testing authentication with certain programmers on both Apple TV and Roku platforms as part of our larger strategy to expand the ways in which consumers can access our TV Everywhere programming. We understand that customers want the ability to watch video programming where and when they want to, and on the equipment of their choice. As a result, we are strongly committed to meeting that demand, and this builds on the already robust menu of options we make available to consumers:

> *HBO Go*: Comcast authenticates HBO Go for a wide array of devices: desktop/laptop computers, iPad, iPhone, Android smartphones, Kindle Fire, Android 7- and 10-inch tablets, Samsung Smart TVs, Xbox 360, and Apple TV. Comcast is exploring authentication for additional platforms, including Roku.
>
> *Xfinity TV Go App*: The Xfinity TV Go app, which allows customers to stream live TV shows and movies over the Internet, is currently available on iPhone, the later generations of iPod touch, iPad, Kindle Fire, and some Android phones and tablets.
>
> *PCs/Macs*: Comcast customers have the ability to access TV Everywhere content via the Xfinity.com website on their PCs, Macs, and other device platforms supporting an Internet browser.

Comcast also supports the ability of customers to access our cable services on various customer-owned devices:

> *IP Cable Streaming*: Comcast customers can access our IP VOD services (without an additional cable set-top box) on both Xbox 360s and Samsung TVs. And Comcast is now enabling customers to experience our full IP cable service via an Xfinity app on PCs/Macs, iOS devices running 7.0 or higher, and Android devices running 4.4 or higher.
>
> *CableCARD*: We have long supported TiVo and other CableCARD-enabled retail devices in our cable systems, and will continue to do so post-transaction. We have gone above and beyond the FCC's CableCARD requirements in this area by giving TiVo customers the ability to access our VOD services on TiVo devices using our "Cardio" solution throughout most of our footprint.

3. **Comcast agreed to offer affordable broadband service to low income households as a condition of the NBC Universal merger. The program has enrolled about 10 percent of eligible households, that's roughly 300,000 homes. We have heard**

concerns about how the program criteria can be difficult to meet. For example, a household must not have had a Comcast subscription in the past 3 months. Another requirement is to have a child eligible for the National School Lunch Program. What about households with small children not yet in school, households without children, or seniors? Is Comcast willing to reconsider these requirements? What is Comcast doing to get more than 10 percent of eligible households signed-up?

Response: 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. *Internet Essentials* was designed 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.

Comcast has gone far beyond the requirements of the original voluntary commitment we made in the NBCUniversal transaction. We have expanded eligibility criteria for *Internet Essentials* twice – first by extending it to families with children eligible to receive reduced price (in addition to free) 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 30 percent from the original eligible base.

In addition, we have made numerous improvements to make it easier for eligible families to sign up. We developed an instant or auto-approval for all Provision 2 schools, which have the highest percentage of students eligible for the National School Lunch Program (the "NSLP"). We automatically approve enrollees from schools where 70 percent or more of the students are eligible to participate in the NSLP. We also created an online application tool on the program's English- and Spanish-language websites to make applications easier and faster. And we updated the "transfer of service" process for *Internet Essentials* customers, which now allows customers to move their accounts to a new home address in Comcast's service area without having to reapply for the program.

We have continuously made significant program enhancements that go well beyond our original voluntary commitment to the FCC, and we recently announced that we are extending *Internet Essentials* indefinitely. If this transaction is approved, the program will apply to communities in the TWC markets.

Experts agree that the success of this program has exceeded all reasonable expectations at launch. The unconnected population is difficult to reach – and given that issues of digital literacy (lack of understanding of the value or relevance of the Internet, fear of the Internet, lack of knowledge as to how to use computers, etc.) are the primary barriers to adoption, research confirms that closing the digital divide will be a very long-term project. When you consider that after more than a decade of aggressive marketing – spending hundreds of millions of dollars – we have connected to the Internet only about 40 percent of all the households we pass, the fact that we have connected over 10 percent of the eligible low-income population to the Internet through *Internet Essentials* in only two and a half years is a remarkable accomplishment.

Comcast also regularly considers additional ways to reach less-connected populations. With respect to seniors, we have conducted pilot adoption initiatives through the AARP Foundation and a group called Project GOAL (Project to Get Older Adults Online). We are reviewing the results of these initiatives and exploring further opportunities to reach other unconnected populations.

4. **At the hearing, you said that Comcast carries 160 independent networks. Can you please provide a list of these 160 independent networks?**

Response: As part of the independent network launch condition in the *Comcast-NBCUniversal Order*, the FCC defined "independent networks" as 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. Using the FCC's definition, Comcast carries over 160 independent networks, which are listed in Attachment A.

ATTACHMENT A
List of Independent Networks Carried By Comcast

¡Sopresa!
AYM Sports
BridgesTV
Cable Noticias
Canal 24
DMX Music
El Garage TV
ELLA (fka Casa Club TV)
GolTV
Korean American TV
LaTele Novela
Mexico 22
Mexico TV
Teleritmo
World Today TV
El Rey
Revolt
HSN
QVC
Jewelry TV
TV Guide Network
Univision
EWTN
BBC America
Bloomberg Television
UP (fka GMC)
GSN
UniMas (fka Telefutura)
WGN
Galavisión
Word Network
INSP
Azteca America
NBA TV
Outdoor Channel
TBN
Fuse
Al Jazeera (fka Current TV)
Daystar
BBC World News
Bandamax
De Película
De Película clasico
iON
Family Net
Outside Television (Satellite)
MYX
Pentagon Channel
Total Living Network
World Fishing Network
NESN
MASN
JUCE (fka JCTV)
Boston Catholic
PA Cable Network
iON qubo
iON Life
NASA
CA Channel
Northwest Cable News
Impact Network (Local Detroit)
TBN Enlace
Smile of A Child
HRTV
TV Washington
Church Channel
Altitude
Catholic TV
Newschannel 8
Cine Latino
ViendoMovies
VeneMovies
Cine Mexicano
WAPA-America
RFD TV
Gran Cine
Telehit
Once Mexico
CentroAmerica TV
TV Colombia
RTP Int'l
News 12 NJ
Three Angels Broadcasting
Texas Cable News
MAVTV
Portuguese Channel
BYU International
BlueHighways TV
Antena 3
Playboy en Espanol
TYC Sports International
Six News Now
Supercanal
Youtoo TV (fka American Life)
Arizona Capitol TV
Telemicro Int'l
Local Weather Station
HDNet Movies
GMA Pinoy
EWTN Espanol
TV Globo
Filipino Channel
Zee TV
RAI Italia
TV 5
SET Asia
News 12 WC
Star Plus
TV Japan
Jade Channel
Cox Sports
Channel One Russia
RTN
CCTV 4
CTI Zhong Tian
TV Asia
GMA Life
Star Gold
ABPNews (fka Star News)
Willow Plus (fka Neo Cricket)

Reelz Channel	LAS	ETTV
Ovation TV	MEXICANAL	TV Polonia
ASPiRE	Pasiones	Deutsche Welle
Baby First TV Americas	V-Me Kids	SPT
MGM HD	TV Chile	Mediaset
TV Games	TV Dominicana	RTVI
NuvoTV (fka SiTV)	Sur (fka Canal Sur)	Bandeirantes Int'l
Sportsman Channel	Caracol TV	Israeli Network
Pivot (fka Halogen	Sur Peru	TV Record Int'l
JLTV	TV Venezuela	Washington Korean TV
Africa Channel	PCNC	ART
HITN-TV	TeleFormula	Vijay TV
AXS TV (fka HDNet)	Video Rola	Premier Futbol Clube (fka TV Globo)
Mnet (fka ImaginAsian TV)	TVE Internacional	Antena Satellite TV
Tennis Channel	Ecuavisa	Russian Kino
Crossings TV	Latinoamérica Televisión	Impact TV
BYU Television	Telefe International	Phoenix N.A. Chinese Channel
beIN – SP	MVS (Canal 52)	Phoenix Infonews
beIN – EN	Multimedios	Milenio
Ritmoson Latino	BMA (WRNB - Minneapolis)	

Senate Judiciary Committee Hearing
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Questions for the Record Submitted by Senator Al Franken for David Cohen

1. **Please identify Comcast's most popular bundled service offering, its most popular cable television offering, and its most popular standalone broadband offering, and, for each of these offerings, please provide the inflation-adjusted consumer price for each year from 1995 to the present. If it is not possible to provide these data on a national basis, please provide them for any Minnesota markets in which Comcast operates and for Comcast's top four markets. Please also provide Comcast's net income and profit margins for those years.**

Response: Over the past decades, Comcast has offered multiple packages and options for cable television that have changed significantly in composition over time and have been subject to regional variations. In addition, Comcast has acquired numerous new cable systems. The last major acquisition was the Adelphia transaction in 2006. At around the same time, Comcast began offering digital voice as part of our most popular "triple play" bundle. (Triple play is subscribed to by approximately 36 percent of Comcast customers.) Moreover, in recent years, at any given time, approximately 50 percent of Comcast customers are on promotional packages. Our different bundled product offerings have evolved, as well as the associated equipment rented by consumers to access our services. For these reasons, we cannot provide pricing information in the form requested.

Comcast has compiled pricing information from 2006 to date, based solely on standard "rate cards," for the specified offerings in Minneapolis and the following four top major markets: Boston, San Francisco, Atlanta, and Philadelphia. The information is attached as Exhibit 1, and it includes compounded annual growth rates ("CAGR") and consumer price index ("CPI") data. We would point out that while rate cards offer something of an apples-to-apples comparison of yearly inflation-adjusted prices, they are not an accurate reflection of what most Comcast customers pay; to the extent customers have participated (or are participating) in promotions or other packaging options, their rates may be significantly lower. As noted earlier, approximately 50 percent of Comcast customers are on promotional packages. In addition, it is hard to compare prices over time because even packages with the same name change from year to year with additional channels and customer value propositions (including substantial enhancements in On Demand and TV Everywhere rights and programming over the relevant time period). For example, Comcast has more than tripled the number of VOD choices for its customers over the past six years, from approximately 17,000 choices in January 2008 to approximately 55,000 choices today.

Further, it is important to bear in mind that programming costs are the primary driver of Comcast's cable rates. From 2004 to 2013, Comcast's programming costs per video subscriber have cumulatively increased by over 120 percent, an astonishing amount. *See* Exhibit 2. Meanwhile, in terms of adding more value for customers, it is also important to note that Comcast has increased Internet speeds 13 times in the last 12 years. 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. *See* Exhibit 3.

Separately, Exhibit 4 provides Comcast's net income and profit margin data from our SEC Form 10-Ks.

2. **The *Star Tribune* has reported that Comcast customers in Eagan, Minnesota, have been subjected to new charges and rising prices since Comcast petitioned the Federal Communications Commission (FCC) to revoke the city's authority to regulate cable rates. For example, the *Star Tribune* reported that customers now are required to pay $2 per month per television for adapters that previously were included in their cable subscriptions. Many consumers are concerned that they will continue to be squeezed, particularly without local safeguards in place.**

   a. **For the past ten years, please identify all instances in which Comcast has challenged or is challenging a local government's authority to regulate cable rates. Please provide a brief description of the nature and outcome of each challenge. For all successful challenges, please state whether Comcast subsequently raised cable prices or imposed new charges in the market.**

   Response: Comcast has submitted more than 400 effective competition petitions to the FCC under the standards for deregulation that Congress created. The agency has granted over 350 and the rest are pending before the agency. When the FCC finds that effective competition exists in a community, the local franchising authority ("LFA") no longer has jurisdiction to regulate rates. Rate adjustments in these communities have been made as part of Comcast's normal business practices and are consistent with rate adjustments in both regulated and unregulated areas in which Comcast operates.

   With respect to Eagan, Minnesota, as part of the transition to all-digital service in 2010, Comcast provided digital adapters ("DTAs") to customers. Initially, Comcast provided two DTAs to non-basic subscribers at no extra charge to help ease the transition, while expressly noting that pricing was subject to change. In 2013, Comcast began charging a $1.99 service fee per DTA, which will help recoup some of the massive investments Comcast made in upgrading the system. Before this charge was assessed, Eagan customers received notices detailing the change and offering a 30-day window during which a customer could change his or her level of service at no additional charge. (Currently, basic-only subscribers pay no additional service fees for up to three DTA outlets.)

   b. **Please identify all markets in which Time Warner Cable (TWC) or Comcast currently is subject to local rate regulations.**

   Response: LFAs regulate a county, town, or village, and not a "market" as that term is customarily used in our industry. We can report that as of the end of the first quarter of 2014, approximately 17 percent of Comcast's total subscriber base is subject to rate regulation by local government – and some additional communities retain authority to regulate but choose not to do so. The communities subject to active rate regulation are listed in Exhibit 5. For purposes of this response, it is my understanding from TWC that, as of December 2013, approximately 15 percent of its footprint consists of systems that are currently subject to rate regulation. TWC has provided a list of these communities, which appears in Exhibit 6.

c. **If Comcast is permitted to acquire TWC, will Comcast challenge local regulatory authority in any of the markets listed in Question 2(b)? If so, please explain.**

Response: The authority of LFAs is limited to the basic service tier and associated equipment. Congress has determined that this local regulatory authority ceases, as a matter of law, once effective competition is demonstrated in a local franchise area. Congress and the FCC have also established clear statutory and regulatory guidelines for when effective competition exists. *See* 47 U.S.C. § 543; 47 C.F.R. §§ 76.905-907. Comcast will continue to follow these well-established guidelines when petitioning for findings of effective competition.

3. **Comcast announced plans to divest systems containing approximately 3 million video customers as part of its proposed acquisition of TWC. Comcast says that the divesture will keep its share of the national multichannel video programming distribution (MVPD) market at or below 30%.**

a. **Please identify any local markets in which Comcast has at least a 50% share of the MVPD market.**

Response: Comcast does not have access to this information because it is not privy to the local subscribership levels of other MVPDs. SNL Kagan collects video market share data for multichannel video subscribers, inclusive of cable, DBS, and telco platform service, as a percentage of aggregate market video subscribers. SNL Kagan compiles these data by Designated Market Areas ("DMAs"), geographic areas in which local broadcast television viewing is historically measured by the Nielsen Company.

According to SNL Kagan, Comcast has subscribers in 120 of the 210 DMAs in the United States.[1] Per SNL Kagan data, Comcast has at least a 50 percent share of the MVPD market in the following 12 DMAs: Peoria-Bloomington, IL (50.0%); Jacksonville, FL (51.7%); Portland, OR (52.4%); Denver, CO (53.0%); Ft. Myers-Naples, FL (54.0%); Philadelphia, PA (54.0%); San Francisco-Oakland-San Jose, CA (55.7%); Harrisburg-Lancaster-Lebanon-York, PA (57.1%); Boston, MA (Manchester, NH) (57.4%); Springfield-Holyoke, MA (60.7%); Lafayette, IN (60.9%); and Seattle-Tacoma, WA (62.5%).

[1] Comcast's share in 32 of those DMAs is *de minimis* at less than 5 percent.

As noted in the Joint Written Statement, the most critical 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 multichannel video providers, and 35.3 percent had access to at least four.[2] In addition, although DMAs are Nielsen constructs for purposes of providing TV viewership ratings, using this common industry metric as a "market" measure shows that consumers in *all* DMAs have access to two nationwide DBS distributors as well as rapidly growing online video distributors. In fact, there will be *11 or more video MVPDs* in most of the top 19 DMAs where Comcast and TWC currently have systems, and *at least six MVPDs in each* of them, as the chart below indicates.

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)*	—	**13**	No Change
12	**Detroit, MI**	Dish, DirecTV, AT&T, WOW!, Charter, and 5 others	**10**	No Change
13	**Seattle-Tacoma, WA**	Dish, DirecTV, Frontier, Coast Communications, Wave, and 11 others	**16**	No Change
14	**Minneapolis-St. Paul, MN**	Dish, DirecTV, WOW!, CenturyLink, Consolidated Communications, and 36 others	**41**	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**	Dish, DirecTV, AT&T, WOW!, Fairpoint, and 4 others	**9**	No Change
20	**Orlando-Daytona Beach-Melbourne, FL**	Dish, DirecTV, AT&T, Grande Communications, CenturyLink, and 7 others	**12**	No Change

Source: GeoResults

Moreover, as discussed in subpart (c) below, if this transaction is approved, Comcast will be divesting certain systems and, post-transaction, will have a presence in 16 of the 20 top DMAs, as is the case today.

b. Please identify any local markets in which Comcast has at least 50% of the total consumers who subscribe to both MVPD services and broadband Internet services.

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2 *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).

Response: SNL Kagan does not compile information on broadband providers as a percentage of aggregate market broadband subscribers, and Comcast does not have information on both competing MVPD and broadband Internet services that would be necessary to respond to this request.

c. **What criteria will Comcast use to determine which systems to divest? Will average revenue per user be among the factors that Comcast considers?**

Response: Subsequent to this Committee's hearing, on April 28, 2014, Comcast announced that it had reached an agreement with Charter Communications 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 regional clusters 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. Regional clusters help ensure significant operating efficiencies and a smooth customer experience going forward. In addition, Comcast will transfer certain systems to a new, independent, publicly traded MVPD to be called "SpinCo," in which Comcast shareholders, including the former Time Warner Cable shareholders, are expected to hold the majority of the equity while Charter will hold a minority share and provide operating services. *See* Exhibit 7 (showing DMAs involved in divestiture transactions).

d. **Will the divested systems be spun off into a new company, sold to competing MVPD companies, or divested in a different manner?**

Response: The divestitures will be executed, subject to the completion of the Comcast-TWC transaction, with the following key components.

First, Comcast will sell 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, improving 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 in the Midwest. Comcast shareholders, including former TWC shareholders, are expected to directly own approximately 67 percent of SpinCo, while a new holding company formed by Charter is expected to 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. 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, following the completion of its merger with TWC, Comcast's total number of managed subscribers will be approximately 29 million – less than 30 percent of the total number of MVPD subscribers in the United States and approximately the same share as Comcast's subscriber share after its completion of both the 2002 AT&T Broadband transaction and the 2006 Adelphia transaction.

e. **If the divested systems are spun off into a new company, would former TWC executives be disqualified from holding ownership or management interests in the company or otherwise be limited in their ability to profit from the new company?**

Response: Comcast shareholders, including former TWC shareholders, are expected to directly own approximately 67 percent of SpinCo. Accordingly, former TWC executives will own shares of SpinCo to the extent they become Comcast shareholders as a result of the Comcast/TWC transaction.

SpinCo will have a nine-member Board of Directors that will include six independent directors and three directors appointed by Charter. Comcast will have no ownership interest in SpinCo (or Charter) and 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 qualified independent management team, selected by SpinCo and not by Comcast.

f. **Data from Leichtman Research Group indicate that Comcast would have to divest more than 4.5 million MVPD subscribers to keep its national market share below 30% and that a post-acquisition Comcast would hold nearly 32% of the MVPD market if it divested only 3 million consumers. Please describe in detail the calculations that Comcast has used to determine that divesting approximately 3 million customers will fulfill its commitment to control no more than 30% of the national market.**

Response: According to SNL Kagan, there are a total of 100.9 million residential MVPD subscribers in the United States. As of March 31, 2014, Comcast had approximately 22 million managed residential subscribers.[3] As a result of the TWC transaction and the divestiture transactions, Comcast will net approximately 7 million managed subscribers. (TWC has approximately 11 million managed

[3] Comcast's publicly reported figure includes both its residential and its commercial subscribers. For purposes of the above calculations, Comcast is using only residential subscribers, consistent with SNL Kagan data.

subscribers, and through the divestiture transaction Comcast is divesting approximately 3.9 million subscribers.) This will bring Comcast's total number of managed residential subscribers post-merger to approximately 29 million (*i.e.*, 22 + 11 - 4) – below 30 percent of all MVPD subscribers and approximately the same share as Comcast's subscriber base after its completion of both the 2002 AT&T Broadband transaction and the 2006 Adelphia transaction.

LRG's reports include only 94.6 million multichannel video subscribers among 13 top cable providers, which LRG explains represents 94 percent of total MVPD subscribers. *See, e.g.*, Leichtman Research Group, Inc., *Research Notes*, at 2-3 (1st Q. 2014). SNL Kagan's report is more comprehensive and indicates a total of 100.9 million residential MVPD subscribers in the United States.

4. **With more than 20 million subscribers, Comcast currently holds about 24% of the national broadband market. During a February 13 conference call, you were asked to estimate Comcast's expected post-acquisition percentage of the national broadband market. At the time, you said that you were unable to answer the question because you "ha[d]n't rnn those numbers." By some estimates, a post-acquisition Comcast would hold approximately 40% of the national broadband market, and Comcast's market share is even higher in many local markets.**

   a. **What percentage of the national broadband market will Comcast hold if it is permitted to acquire TWC? Please describe the methodology and the data used to arrive at your estimate.**

   Response: If one were to look only at what the FCC calls "fixed" broadband connections, the combined company's share would be below 40 percent of the "fixed" broadband market after the divestitures we plan to make. If one were to include wireless broadband in the calculation (which accounts for about half of all broadband connections), the combined company's share drops to as low as 20 percent after divestitures. These shares are estimated from the FCC's most recent report on "Internet Access Services: Status as of December 31, 2012," which includes data on the total number of U.S. consumers, and from FCC Form 477s for Comcast and TWC, which contain data on the number of broadband customers for each company. These calculations are further explained at pages 31 and 32 of the Declaration of Mark A. Israel, 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.

   b. **Why didn't Comcast estimate its post-acquisition share of the national broadband market before announcing its proposed deal with TWC, as it did with respect to its estimated post-acquisition share of the MVPD market?**

   Response: Through its prior attempts to impose an "ownership cap" on MVPDs, the FCC has made the issue of limiting a single company's share of the MVPD market a subject of discussion and debate. Prior FCC decisions limiting cable system ownership at a 30 percent share of the MVPD market were premised on a concern about the ability of a cable company to acquire monopsony power in the purchase of programming at that market share. The D.C. Circuit twice overturned the FCC's decisions after finding that a cable company could not exercise monopsony power at 30 percent or even higher market shares. Given the past interest of the Congress and the FCC in the question of cable ownership caps, Comcast chose to address the issue when it announced the transaction.

With respect to market share of broadband, there is no similar FCC precedent or "cap." And, in any event, national market data are not relevant because the same level of broadband competition will exist post-transaction in each of the Comcast and TWC markets as exists today. Therefore, we had not completed the calculation of the company's national broadband market share on the day we announced the transaction. We completed that calculation (a link to which appears above) later in connection with the filing of our Public Interest Statement with the FCC.

5. **A December 2013 FCC report indicates that about 30% of people live in areas with one or fewer providers of Internet service offering downstream speeds of at least 10 mbps and that about 67% of people live in areas with two or fewer such providers.**

Response: Comcast uses the FCC's current definition of broadband speed and related Form 477 data in analyzing broadband markets. The FCC defines "broadband speed" as 4 Mbps downstream and 1 Mbps upstream.[4] The FCC's "Broadband Speed Guide" also indicates that 4 Mbps is the minimum download speed required for HD-quality streaming, HD video conferencing, and two-way online gaming in HD.[5]

There is data publicly available from the National Telecommunications and Information Administration (the "NTIA"), which maintains a searchable database (the "National Broadband Map" or "NBM") that can be used to identify where one or more Internet service providers ("ISPs") offer downstream speeds of 10 Mbps or higher. These data are compiled by state, metropolitan statistical area ("MSA"), legislative district, Universal Service Fund study area, and Native Nations. *See* http://www.broadbandmap.gov/speed.

The National Broadband Map identifies the wired and wireless ISPs within each MSA (or other geographic or political subdivision) and the maximum advertised downstream speed for each ISP. To determine this information for the areas currently served by Comcast, the NBM shows where Comcast provides broadband service using a coverage

[4] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, 27 FCC Rcd 10342, ¶ 7 (2012); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, Sixth Broadband Deployment Report, 25 FCC Rcd 9560, ¶ 5 (2010).

[5] *See* https://www.fcc.gov/guides/broadband-speed-guide.

map located at http://www.broadbandmap.gov/about-provider/comcast-corporation/nationwide/. Once an area within Comcast's footprint is identified, the NBM shows the ISPs within the area that provide downstream speeds of 10 Mbps or higher.

An example of how this data is available from the NBM for the Seattle-Tacoma-Bellevue, Washington MSA is shown below.

(1) Starting at the NBM homepage, select "Analyze the Data." On the right-hand side of the screen, select "Provider."

(2) Under *Select Geography*, select "MSA." Choose Washington from the *Select State* drop-down menu.

(3) Under *Enter Geography,* type in "Seattle-Tacoma-Bellevue, WA Metro Area." Under *Enter Provider Name*, type in "Comcast Corporation."

(4) Click "Review Provider." The NBM should navigate to a page with various information about Comcast's service within the Seattle MSA, including Comcast's highest advertised download speeds.

(5) Scroll to the bottom of the page to the *All Providers in MSA* section, then click "View Full List" in the bottom left-hand corner of the table of providers. Click on the name of any of the 26 ISPs other than Comcast. The NBM will navigate to a similar page about that particular ISP's service within the Seattle MSA. Under *Availability Overview*, choose "Highest advertised download speed" from the first drop-down menu, which shows the maximum downstream speed available from that ISP in the Seattle MSA.

(6) The same steps can be followed to determine how many ISPs in the MSA provide downstream service of 10 Mbps or higher.

In this case, the NBM data show that there are 17 wired ISPs and 4 wireless ISPs that offer downstream service of 10 Mbps or higher in the Seattle MSA. *See also* Exhibit 8 (screen shots showing the relevant steps outlined above). More broadly, the NBM data show that, in virtually all of the MSAs in which Comcast provides service, there is at least one additional ISP (and often multiple ISPs) that offer(s) broadband services with speeds of at least 10 Mbps.

In addition, the FCC has developed public data showing the number of ISPs offering various speeds as of December 31, 2012, by census tract. These data are replicated on pages 34 and 35 of the Declaration of Mark A. Israel, 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.

a. **Please identify any local markets in which Comcast is the only Internet service provider offering average downstream connection speeds of at least 10 mbps.**

Response: *See* response above.

b. **Please identify any local markets in which Comcast is one of only two Internet service providers offering average downstream connection speeds of at least 10 mbps.**

Response: *See* response above.

c. **Please identify any local markets in which Comcast has at least a 50% of subscribers with average downstream connection speeds of at least 10 mbps.**

Response: *See* response above.

d. **How would your responses to Questions 5(c), (d), and (e) change if you were to exclude competitors that do not also offer MVPD services?**

Response: NTIA and SNL Kagan use different metrics for compiling their competitive data (*e.g.*, NTIA uses states, MSAs for broadband providers, whereas SNL Kagan primarily uses DMAs for MVPDs). Comcast is not aware of available data that would permit the analyses required for this request.

6. **Comcast's net neutrality obligations expire in January 2018. Will you commit to abide by those obligations – including the anti-blocking and anti-discrimination requirements – beyond that date regardless of whether the Federal Communications Commission (FCC) has implemented new net neutrality rules by that time?**

Response: As part of the NBCUniversal transaction, and after Verizon challenged the FCC's Open Internet rules but before the case had been briefed, Comcast agreed to be bound by the rules until 2018 even if they were modified by the courts. The purpose was to give the FCC sufficient time, if necessary, to adopt a legally enforceable, industry-wide approach to net neutrality. We are the only ISP in the country that is currently legally bound by the "no blocking" and non-discrimination rules. These assurances will be extended to millions of additional TWC customers as a result of this transaction.

The FCC is working on new industry-wide rules based on the D.C. Circuit's recent ruling. 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. *See* http://www.fcc.gov/blog/setting-record-straight-fcc-s-open-internet-rules. We are therefore confident that the FCC will have adopted (and, if necessary, defended) a new, industry-wide approach well before 2018.

7. **In light of the D.C. Circuit Court of Appeals' decision in *Verizon v. FCC*, some have suggested that the FCC will be unable to promulgate new net neutrality rules that withstand judicial scrutiny unless the FCC reclassifies broadband service as a telecommunications service, thus subjecting broadband service to common carrier requirements. Comcast has resisted such reclassification, arguing that the FCC should instead attempt once again to promulgate net neutrality rules under section 706 of the Telecommunications Act, despite the apparent challenge of drafting effective rules that prevent broadband service providers from discriminating against content while simultaneously treating those providers as something other than common carriers.**

   a. **Do you agree with the foregoing characterization of the issue and of Comcast's position? If not, please identify those aspects with which you disagree and explain your disagreement.**

      Response: Comcast supported the FCC's *Open Internet Order* as an appropriate balance of protection of consumer and business interests, and we agreed as part of the NBCUniversal transaction to abide by the Open Internet rules for seven years even if the rules were modified by the courts. Comcast believes that FCC Chairman Wheeler has taken a thoughtful approach to the D.C. Circuit's decision in *Verizon v. FCC* that creates a path for enforceable rules pursuant to the Section 706 authority outlined by the court's findings. Reclassifying broadband as a Title II service would be an abrupt and unnecessary departure from the FCC's longstanding, bipartisan, consensus, "light-touch" policy approach to regulating broadband. Reclassification would pose a very real risk of choking off Internet investment and innovation.

   b. **Consistent with the *Verizon* decision, please explain how the FCC could draft new and effective net neutrality rules without reclassifying broadband service as a telecommunications service.**

      Response: FCC Chairman Wheeler recently outlined his plans to draft new and effective net neutrality rules without reclassifying broadband service as a telecommunications service, stating as follows:

      "1. The Court of Appeals made it clear that the FCC could stop harmful conduct if it were found to not be 'commercially reasonable.' Acting within the constraints of the Court's decision, the Notice will propose rules that establish a high bar for what is 'commercially reasonable.' In addition, the Notice will seek ideas on other approaches to achieve this important goal consistent with the Court's decision. The Notice will also observe that the Commission believes it has the authority under Supreme Court precedent to identify behavior that is flatly illegal.

      2. It should be noted that even Title II regulation (which many have sought and which remains a clear alternative) only bans 'unjust and unreasonable discrimination.'

. . . [T]he 'commercially unreasonable' test will protect against: harm to competition and consumers stemming from abusive market activity."

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

Although the FCC's proposed new rules are not yet available for public review and comment, Comcast believes Chairman Wheeler's statement above indicates a pathway to new and effective Open Internet rules without reclassifying broadband service as a telecommunications service.

8. **As noted on page 136 of the Public Interest Statement that Comcast and TWC filed with the FCC, Internet traffic flows along a complex system of Internet backbone networks, content delivery networks (CDN), and Internet service providers' (ISPs) networks. Generally speaking, these networks interact with each other either through peering or transit arrangements.**

a. **How many peering relationships does Comcast currently have with backbone networks, CDNs, and other ISPs?**

Response: Comcast has over 40 settlement-free peering agreements, and thousands of commercial (*i.e.*, paid) connecting arrangements, which include several dozen substantial peering and transit agreements (*e.g.*, with content delivery networks ("CDNs"), ISPs, or larger edge providers).

b. **Of the relationships identified in Question 8(a), how many are settlement free?**

Response: Comcast has over 40 settlement-free peering agreements.

c. **Has the ratio of Comcast's settlement-free peering relationships to its overall peering relationships increased or decreased over time?**

Response: When Comcast began interconnecting over two decades ago, nearly all of its arrangements involved Comcast purchasing transit services. As Comcast has built more backbone facilities of its own, particularly over the last decade, we have increasingly interconnected our IP network with other Internet backbone providers on a settlement-free basis.

d. **What factors does Comcast take into account when deciding whether to enter into, terminate, or maintain a settlement-free peering arrangement?**

Response: 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 traffic volumes, geographically diverse interconnection points, backbone size, and relative balance.

e. **Please provide an overview of the nature of Comcast's transit relationships, including the number of such relationships, the reasons that Comcast enters into such relationships, the types of networks with which Comcast typically enters into transit relationships, and ways that Comcast expects these relationships to change if it is permitted to acquire TWC.**

Response: Comcast has over 8,000 transit connections with CDNs, ISPs, and edge providers, among others. Comcast's transit relationships include two services. Peering services may be "settlement-free," meaning that traffic is exchanged without actual payment (other than "in-kind" trade), or they may be paid. 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, and paid peering is more common when there is a significant traffic or network imbalance. CDNs, ISPs, and more traditional backbone providers all compete to offer access to ISP networks through a variety of arrangements.

Until this transaction is approved, Comcast is not privy to TWC's transit relationships and thus cannot speculate on potential changes to any of its existing relationships.

f. **Have any backbone networks, CDNs, or other ISPs offered to incur the costs necessary to upgrade connections between their network and Comcast's network in exchange for an ongoing settlement-free peering relationship? If so, please identify any such offers and explain the outcome of the offer. If Comcast has rejected any such offers, please explain why.**

Response: On limited occasions over the last few years, some operators have offered to supply minimal hardware facilities to expand an existing relationship or to obtain a new settlement-free peering relationship where the relationship would not otherwise qualify for such peering. Under the terms of Comcast's Settlement-Free Interconnection Policy, *available at* www.comcast.com/peering, we have established specific criteria for settlement-free peering that do not include exchanging one-time system upgrades to establish a simple port connection.

9. **In its February 2014 USA Internet Service Provider (ISP) Speed Index, Netflix reported an average speed of just 1.68 mbps for Comcast's customers, ranking Comcast 51st out of 60 ISPs in the Index.**

Response: In its November 2012 rankings, Netflix ranked Comcast second among major ISPs. We did nothing differently between November 2012 and February 2014 to cause our ranking to fall. Nonetheless, in its most recent index from March 2014, Netflix ranked Comcast fifth among major ISPs with an average speed of 2.5 Mbps – less than 0.5 Mbps slower than the top ranked Cablevision. Setting aside the arbitrariness of these rankings (discussed further below), the reason for the increase in average speed from February to March is that, during that period, Netflix chose to acquire sufficient capacity for its content – rather than sending huge amounts of traffic through a middleman transit provider that had not acquired the capacity it needed to deliver the service it was selling to Netflix. As a result, our mutual subscribers began to have a better user experience.

The dramatic change in results over the course of one month shows that Netflix's ISP ranking is really a report card grading the decisions Netflix makes about how it delivers its content to ISPs. *In particular, the speeds Netflix measures are based on the speeds at which **it** chooses to deliver **its** content and how **it** decides to route that content.* And Netflix is in exclusive control of the "index" – there is no third-party review to ensure its validity or accuracy.

As one well-regarded industry analyst, Dan Rayburn, has observed: "[T]he ISP ranking that Netflix provides is NOT comparing apples-to-apples nor does it even say what exactly it is defining. As usual, no one seems to question the data that many of these companies present to the market." *See* http://blog.streamingmedia.com/2014/02/netflixs-streaming-quality-based-business-decisions-isps-net-neutrality.html (emphasis in original).

Significantly, a recent independent study comparing Netflix's ISP rankings with U.S. Government data found that "the Netflix ISP Speed Index is *not an accurate measure of capacity*," and that – in fact – Netflix "is showing the aggregate 'demand' on *their service* rather than the 'capacity' of the access network." Sandvine, *Exposing the Technical and Commercial Factors Underlying Internet Quality of Experience*, at 23 (Sept. 2013), https://www.sandvine.com/downloads/general/global-internet-phenomena/2013/exposing-the-technical-and-commercial-factors-underlying-internet-quality-of-experience.pdf (emphasis added). In other words, the Netflix Index gauges Netflix's network performance, not that of the ISPs.

Independent and transparent measurements, including those conducted by the federal government, show that Comcast delivers far superior Internet speeds to its customers than what Netflix's rankings purport to show. Recent measurements show that Comcast delivers Internet traffic at an average speed of 32.15 Mbps, *see* http://www.speedtest.net/isp/comcast (last visited April 28, 2014),[6] compared to Netflix's ranking claim of 1.51 Mbps. Similarly, the FCC consistently has reported that Comcast over-delivers on the speeds it advertises to its subscribers. *See* http://www.fcc.gov/measuring-broadband-america/2013/February (Figure 2); http://www.fcc.gov/measuring-broadband-america/2012/july (Figure 3). These independent reports confirm that if Netflix's traffic was delivered at the lower speeds it claims, it was a result of decisions or actions by Netflix or one of its intermediaries, *not* those of Comcast.

We are pleased our mutual customers are now having a better Netflix experience, but it must be recognized that it is Netflix, not the ISP, that chooses the path through which

[6] This value is the average download speed over the past 30 days and so will vary slightly from visit to visit.

Netflix traffic is delivered to the ISP, and that is highly determinative of the end-user experience.

a. How do these speeds compare to those at which Comcast's customers were able to access streaming programming through Comcast's Xfinity service or other Comcast-affiliated services during this period?

Response: As noted above, independent measurements show that Comcast delivers all Internet traffic at an average speed of 32.15 Mbps, *see* http://www.speedtest.net/isp/comcast (Ookla report), and over-delivers on the speeds it advertises to its subscribers, *see* http://www.fcc.gov/measuring-broadband-america/2013/February (Figure 2). Comcast delivers these speeds without regard to whether a subscriber is accessing affiliated or non-affiliated content.

b. Fifty ISPs, each of which is smaller than Comcast, outperformed Comcast during this period, even though each ISP presumably experienced an approximately similar per customer demand for Netflix traffic. How does Comcast explain its uniquely poor performance during this period?

Response: As noted above, the speeds Netflix measures are based on the speeds at which it chooses to deliver its content and how it decides to route its content. Ultimately it is Netflix, not the ISP, that chooses the path through which Netflix traffic is delivered *to* the ISP, and this decision has a major impact on the customer's experience in the home and the so-called "ISP speeds" that Netflix claims to measure.

Last year, Netflix began routing its traffic over routes that did not include sufficient capacity – capacity it could have supplemented readily from any of Comcast's peers or many other CDNs (as well as directly through Comcast itself). That is why Comcast's ranking on the Netflix Index "fell." But between February and March of this year, Netflix acquired sufficient capacity for its content – and suddenly, Comcast's ranking on the Netflix Index "rose."

One industry observer has explained how these kinds of decisions by Netflix and other content providers can affect the customer experience, noting that "[o]ne of the most clever and devious of all the tactics presented is the Traffic Manipulation Tactic. To understand this tactic you must recognize that the nature of web traffic is asymmetric; that is, small web requests generate comparatively large responses. The Content posters therefore decide[] [over] which of potentially many paths this relatively large proportion of traffic will flow." *See* http://drpeering.net/white-papers/Art-Of-Peering-The-Peering-Playbook.html#9. Dan Rayburn has similarly observed that, "as much as Netflix wants to make this into a net neutrality issue, it's a business issue. Netflix has alternatives, they chose not to use them. . . . . Netflix's motive[] in this whole argument is to protect their business, which is fine, but then they should not portray their argument as one where they are 'fighting for the Internet.'" *See* http://blog.streamingmedia.com/2014/03/netflix-level-3-telling-half-story-wont-detail-changes-want-net-neutrality.html.

c. **Does Comcast maintain similar performance data with respect to the speeds at which traffic reaches its customers? If so, does Comcast disclose those data to consumers? If it maintains but does not disclose such data, please explain why this is the case.**

Response: Although Comcast monitors the Internet speeds its network delivers, it has no ability to measure the speeds at which Internet traffic is transmitted from the source or as it is routed over the Internet. Comcast customers can use http://speedtest.comcast.net/ to check their individual connection speed. They can also select from available servers for the fastest and most consistent results from their Internet connections. In addition, Comcast customers and other consumers have access to speed data for Comcast and other broadband providers from independent sources, such as the FCC and Ookla reports listed above.

10. **In August 2012, the advocacy group Public Knowledge filed a petition with the FCC, challenging Comcast's use of data caps. I share Public Knowledge's concern that data caps could be used to discriminate against nonaffiliated content and to increase consumers' costs.**

a. **Please explain Comcast's policies with respect to the use of data caps, including the amount of data allowed under the caps and the costs to consumers for data usage above those caps.**

Response: Comcast does not currently have any data caps anywhere. We suspended our 250 GB per month data cap in May 2012 to explore more flexible data usage policies. We are currently running pilot programs in select markets to determine which plans consumers prefer. These pilot programs give customers who want to use more data the option to do so, while also allowing customers who want to use significantly less data to receive a discount for doing so. The trials are designed to find fair and flexible alternatives for consumers.

b. **How many Comcast customers currently are subject to data caps? If different customers are subject to different caps, please specify that in your answer.**

Response: As stated above, Comcast does not have any data caps anywhere and we discontinued our 250 GB per month data cap in May 2012 to explore more flexible data usage policies. Comcast is trialing various usage plans in markets covering approximately 10 percent of its customers.

c. **Of customers who are subject to data caps, what percentage of customers exceed the caps? What is the average additional cost to those consumers?**

Response: As described above, Comcast does not have any data caps anywhere. For the flexible data plans Comcast is currently trialing, we are finding that about 98 percent of our customers do *not* exceed a threshold of 300 GB of data in a month. Based on customer research, 80 percent of our customers prefer this new approach to our discontinued static cap. We have learned that our customers also like the tools we provide for monitoring their data use, such as a data usage meter and a data usage calculator, and appreciate that we are communicating with them regularly about their data use. These trials take various approaches and involve an element of consumer choice as to what increments of data consumers purchase, so the cost of additional data to any particular consumer will vary.

For example, in Huntsville and Mobile, Alabama; Atlanta, Augusta and Savannah, Georgia; Central Kentucky; Maine; Jackson, Mississippi; Knoxville, Memphis, and Nashville, Tennessee; and Charleston, South Carolina, our monthly data plan for all Xfinity Internet tiers includes 300 GB per month, and customers have the ability to purchase additional gigabytes in increments of 50 GB for $10.

In Tucson, AZ, we took a multi-tier approach that provides higher usage thresholds when customers purchase higher speed tiers. The Internet Essentials, Economy, and Performance Tiers have a 300 GB usage threshold, the Blast! Tier has a 450 GB threshold, the Extreme 50 tier has a 500 GB threshold, and the Extreme 105 tier has a 600 GB threshold. Customers that wish to purchase more data at each tier can buy additional gigabytes in increments/blocks of 50 GB for $10.

In all these markets, as well as Fresno, California, Xfinity Internet Economy Plus customers can choose to enroll in the Flexible-Data Option to receive a $5 credit on their monthly bill if they do not use more than 5 GB per month. If customers choose this option and use more than 5 GB of data in any given month, then they will not receive the $5 credit and will be charged an additional $1 for each gigabyte of data used over the 5 GB included in the Flexible-Data Option.

d. **Has Comcast ever exempted Comcast-affiliated content or programs from the data caps that Comcast has imposed on consumers? If so, please explain.**

Response: Comcast does not impose data caps on any Internet-delivered streaming service. All data that travel over the public Internet on our Xfinity Internet service, whether affiliated or unaffiliated with Comcast, count as Internet data usage and are counted toward any applicable usage thresholds. Our affiliated Internet services, such as all the videos watched through our Xfinity TV Player/Xfinity TV Go app and online at XfinityTV.com, are counted against a customer's usage threshold and treated exactly the same as any other Internet usage for purposes of the usage plan.

Comcast also provides cable television and voice services that are not and never have been delivered over the public Internet, and are not received using Xfinity

Internet service, so these non-Internet services are not counted against the customer's data usage.

e. **If Comcast is permitted to acquire TWC, will it impose data caps on its newly acquired customers?**

Response: We will take the same approach with former TWC subscribers as we take with Comcast subscribers – and we do not have data caps anywhere.

f. **Has Comcast conducted any studies or analysis to determine whether imposition of data caps result in Comcast receiving increased average revenue per user? If so, what have been the results of those studies or analyses?**

Response: Comcast is evaluating various aspects of its usage trials, including the number of subscribers that use data in excess of their usage thresholds and the potential revenue impacts, including both fees from the approximately 2 percent of customers that exceed the thresholds as well as potential subscriber losses.

11. **From the day Comcast announced its proposed acquisition of TWC, it has argued that the deal will give Comcast the economics of scale it needs to remain competitive and innovative. However, fewer than six months before the deal was announced, Comcast's Chief Financial Officer (CFO) disavowed those claims in a conference call with a Goldman Sachs analyst, brushing off the suggestion that cable consolidation presented "very accretive opportunities" and saying: "[I]t's a financial decision in terms of getting larger. We think we have scale. I think people who are talking about it are looking for the benefits of scale whether it be on the programming side or the technology side, and I think we've already executed on that." How do you reconcile Comcast's argument before the FCC with its CFO's statements to the Goldman Sachs analyst?**

Response: There is no inconsistency between the statements made by Comcast's CFO and the statements made in connection with the TWC transaction. Comcast has scale, as was stated during the referenced conference call. The business rationale for the transaction with TWC is that it will result in *greater* scale by combining the two companies. As more fully explained in the Joint Written Statement, in an industry like ours – with extremely high capital expenditure requirements, rapidly evolving innovation and technology, and the requirement of significant expenditures on R&D – greater scale is truly pro-consumer and pro-competition. There's a simple value cycle at play here. Scale plus Comcast's investment philosophy and track record will lead to accelerated investment in Comcast's and TWC's R&D and infrastructure. That will in turn accelerate the access of TWC's customers to faster Internet speeds and to Comcast's next-generation video services – including our acclaimed X1 entertainment operating system – and to more robust Wi-Fi offerings. Business customers in the combined company's markets will also benefit from a stronger new entrant that offers more choice and better prices.

12. **Please identify each instance in which Comcast has been involved in a dispute regarding access to or carriage of a Regional Sports Network in the past ten years. For each case cited, please identify the parties to the dispute and provide a brief description of the dispute and its ultimate resolution.**

Response: The following is a description of the handful of program access and carriage disputes for Regional Sports Networks ("RSNs"), where a Comcast entity was a party, involving the initiation of a formal proceeding (such as a demand for arbitration or a complaint). The responses below exclude any situation in which competing offers were resolved in the ordinary course of negotiations without resort to legal process.

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, MASN filed a program carriage complaint demanding carriage on Comcast systems serving subscribers in Harrisburg, PA, and Tri-Cities, Roanoke and Lynchburg, VA. After a full evidentiary hearing, the FCC's Enforcement Bureau filed formal comments stating that MASN's complaint was not meritorious, and Comcast and MASN settled the dispute thereafter, before any additional FCC proceedings.

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. After more than six years, the network has never launched.

In 2009, DirecTV initiated arbitration proceedings under the *Adelphia Order* to determine the fair market value of renewal carriage of Comcast SportsNet Bay Area, Comcast SportsNet California, Comcast SportsNet Chicago, and Comcast SportsNet New England. The arbitration proceeding involving Comcast SportsNet New England was settled in December 2009, and the remaining proceedings were settled in March 2010.

In December 2009, WaveDivision Holdings, LLC, Horizon Cable TV, Inc., Stanford University, and the City of San Bruno, California, jointly filed a program access complaint seeking to reverse certain changes to the professional sports programming on Comcast SportsNet Bay Area and Comcast SportsNet California, in addition to other relief. Complainants alleged that the realignment of programming on those networks was an unfair practice, that the networks discriminated against Complainants in the price and certain other terms of carriage, and that Comcast Corporation unduly influenced the programming changes. The Comcast entities named in the complaint denied these allegations and asked for dismissal of the action. The proceeding was settled in late 2010 and the complaint was dismissed with prejudice by the FCC in January 2011.

In 2010, Dish Network ("Dish") initiated arbitration proceedings under the *Adelphia Order* to determine the fair market value of renewal carriage of Comcast SportsNet Bay Area, Comcast SportsNet California, Comcast SportsNet Chicago, and Comcast SportsNet Mid-Atlantic. The Comcast SportsNet California arbitration proceeded first, and the arbitrator awarded Comcast its "final offer" contract for Dish carriage of the RSN. In response to losing the arbitration, Dish dropped the network. The proceeding was ultimately settled, and Dish restored Comcast SportsNet California to Dish subscribers in early 2011. The arbitration proceedings with regard to the three other RSNs were likewise settled in early 2011.

In late 2010, DirecTV initiated arbitration proceedings under the *Adelphia Order* to determine the fair market value of renewal carriage of Comcast SportsNet Mid-Atlantic. The parties settled the dispute, and DirecTV withdrew its arbitration demand in early 2013.

13. In 2012, the *Washington Post* reported that Comcast was prepared to launch the Internet Essentials program in 2009 but chose to delay implementation until Comcast secured regulatory approval for its merger with NBC Universal. The *Washington Post* suggested that Comcast viewed the program as a bargaining chip in the regulatory proceedings, and it quoted you as saying, "I held back because I knew it may be the type of voluntary commitment that would be attractive to the chairman [of the FCC]." Is this quotation accurate?

Response: There was a confluence of events that affected the timing of the launch of *Internet Essentials*. Although I believe that *Internet Essentials* was an attractive commitment to make as part of the NBCUniversal transaction review process, that was only one factor in the timing of its launch. The FCC was preparing its National Broadband Plan around this same time, and we were already developing a program similar to *Internet Essentials* at the time of the NBCUniversal transaction. So the timing of these events dovetailed, and we saw the opportunity to present the idea for the program to the FCC as part of the transaction. In addition, *Internet Essentials* is designed 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 goal comports with the recognition by the President and others that broadband access is important to education. To serve this goal, we wanted to launch the program at the beginning of a school year. In short, it was a win, win, win situation.

Comcast has done more to promote and increase broadband adoption by low-income families than any other entity in the nation, private or governmental. As noted in our Joint Written Statement, in the first 30 months of the program, Comcast has connected more than 300,000 families, representing an estimated 1.2 million low-income Americans, to the power of the Internet at home.

Although *Internet Essentials* began as a voluntary three-year commitment as part of the NBCUniversal transaction, the program has become much more than that – it is now in our DNA. We have continuously and dramatically enhanced the program well beyond our original commitment to the FCC – and recently announced that we are extending *Internet Essentials* indefinitely. If this transaction is approved, the program will apply to all the communities in the TWC markets as well.

14. **In June 2012, the FCC entered a consent decree requiring Comcast to implement certain reforms with respect to Comcast's standalone broadband offering. The consent decree was intended to bring Comcast into compliance with a condition imposed as part of the Comcast-NBC Universal deal to mitigate risks of excessive product bundling. The consent decree mandated a program to train employees about Comcast's standalone offering. Nonetheless, during a February 13 conference call with Wall Street analysts, Comcast's CFO said that he was "confident that revenue opportunities exist by including greater bundling penetration in residential," and, on a March 10 conference call, he reiterated that Comcast "would seek to bundle more" and that it would train its call center and service employees to "upsell" and bundle better. Would it be unreasonable for someone to perceive a conflict between the dictates of the consent decree and the intentions reflected in Comcast's CFO's statements?**

Response: As part of the NBCUniversal transaction, Comcast committed to offering consumers broadband service on a standalone basis. There was no commitment or condition that prohibited Comcast from offering and promoting bundled services. The FCC required us to provide a 6 Mbps downstream Internet access service for $49.95 per month. In response, we rolled out our Performance Starter offering in just one month – the fastest Comcast has ever deployed a brand new service simultaneously throughout its footprint. Consumers can also order, on a standalone basis, any tier of broadband Internet access service that we offer as part of a bundled or multi-product package. Nonetheless, over half of Comcast's customers prefer two- or three-product bundles to standalone cable, telephone, and broadband services.

As I stated during the hearing, and as noted above, nothing in the *Comcast-NBCUniversal Order* relating to the standalone broadband condition prohibits Comcast from offering and selling product bundles to customers, as our competitors may also do. In fact, the *Comcast-NBCUniversal Order* expressly contemplates our continued selling of bundles, providing that:

> If Comcast offers additional speeds in conjunction with other *bundled service packages*, Comcast shall also offer such speeds on a standalone basis at reasonable, market-based prices. In each case, the standalone offering shall be on equivalent terms and conditions (including but not limited to usage caps) to the most comparable Broadband Internet Access Service offered in a *bundled offering*.

Comcast-NBCUniversal Order, App. A, § IV.D.1. (emphasis added).

15. Municipal broadband networks have the potential to introduce competition in markets where consumers have limited choices for broadband service.

a. Please identify any instance in which Comcast has opposed development of a municipal broadband network or lobbied a state to impose restrictions on such networks and please describe Comcast's rationale for doing so.

Response: Comcast believes that where governments seek to fund or provide broadband service in areas where private providers are already doing so, they risk driving out private investment because competitive providers may find it difficult to compete against a government-subsidized product. Moreover, history shows that most government-owned broadband projects have turned out to be more complicated and more expensive than their proponents would admit – the lesson is often learned too late – and broadband projects require constant investment to remain state-of-the-art.

Comcast engages in discussions at the state and local level to educate policymakers on the potential costs and risks of government-owned networks and to help them determine how best to drive network investment.

Comcast believes that the better option is for communities to work with broadband providers to encourage private investment in broadband by removing barriers to investment, accelerating and streamlining local permitting processes, and avoiding onerous taxation. We welcome initiatives by local communities to reduce barriers to investment.

b. Do you agree that citizens should be able to determine for themselves, through local officials, whether they are offered broadband services through municipal enterprises or public-private partnerships?

Response: We believe that communities should deliberate fully before embarking on a competitive business using public funds, and that citizens should be entitled to vote on these projects.

16. Does Comcast include a binding, pre-dispute arbitration clause in its consumer contracts?

Response: Comcast strives to resolve consumer complaints without resort to arbitration or litigation, and the vast majority of consumer complaints are successfully resolved at the customer service level. In addition, Comcast includes an arbitration clause in consumer contracts as a means of timely and efficient dispute resolution. The arbitration clause comports with settled U.S. Supreme Court precedent concerning the protection of consumer rights and remedies. *See AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011). Comcast customers can also bring actions against the company in small claims courts, which typically have jurisdiction over consumer claims ranging from $10,000 to $20,000. Over the past five years, the number of these court actions has ranged from approximately 150 to 180 per year, and the vast majority of them have been resolved by settlement.

If so, please answer the following questions:

a. **When did Comcast begin using its arbitration clause?**

Response: Approximately 15 years ago.

b. **Does the arbitration clause include either a class action or class arbitration prohibition?**

Response: Yes, starting around 2004.

c. **In the five years before Comcast began using its arbitration clause, how many consumer-related complaints were brought against Comcast in court? Of these, how many proceeded as collective or class actions, either to settlement or a final judgment?**

Response: Comcast does not have case records going back that far and therefore does not have this information.

d. **In the years since Comcast began using its arbitration clause, how many consumer-related complaints have been brought against Comcast in arbitration? Of these, how many proceeded as collective or class actions or as collective or class arbitrations, either to settlement or to final judgment?**

Response: As noted above, most customer complaints are resolved without resort to litigation or arbitration. In addition to the small claims court cases described above, over 20 arbitrations have been initiated by customers. The majority of these were settled; approximately nine are currently active. To date, none of these has proceeded to settlement or final judgment as a collective or class action.

e. **What is Comcast's rationale for subjecting consumer claims to arbitration instead of giving consumers the option of pressing their claims in court?**

Response: In Comcast's experience, arbitration offers a faster, less expensive way for most customers to resolve their complaints than traditional litigation. Comcast pays the filing fee, so there is no cost to the customer to initiate the arbitration; the arbitrations are typically resolved much more quickly – often with only one short filing per side; and the results are binding so both sides avoid the potential costs and delay of appeal. As noted above, however, Comcast customers can forgo the arbitration option and pursue claims against the company in small claims court. In all of these disputes, Comcast strives to resolve customer complaints as efficiently and fairly as possible.

f. **Do you agree that class actions or class arbitrations can be an effective way for consumers to hold corporations accountable for relatively low-value claims that otherwise might not be litigated? If not, please explain your answer.**

Response: In Comcast's experience, arbitration has proven to be a fairer, more efficient, and more effective remedy for customers to resolve relatively low-value claims than traditional litigation, including class actions that often prove more beneficial for the attorneys involved than for the consumers.

17. **Does Comcast currently negotiate with TWC with respect to TWC carriage of Comcast-affiliated programming? If so, how often do those negotiations take place? What are Comcast's objectives during those negotiations?**

Response: NBCUniversal negotiates directly and independently with TWC for carriage of the full suite of NBCUniversal programming. Comcast directly owns interests in a handful of cable program networks and services (*e.g.*, MLB Network, NHL Network, and iN Demand). TWC currently carries MLB Network, NHL Network, and content from iN Demand. Comcast does not control distribution or negotiation with respect to this programming with TWC or any other MVPDs.

18. **Some content producers may seek out alternative delivery mechanism (ADM) arrangements as a means to gain additional exposure for their work at costs that potentially are lower than those associated with traditional MVPD carriage deals. ADMs could become impractical, however, if MVPD companies' contracts include most favored nation (MFN) provisions, which generally provide that the MVPD company is entitled to the terms that the content producer offers other distributors.**

a. **Do you agree with the foregoing statement? If not, please identify those aspects with which you disagree and explain your disagreement.**

Response: As a general matter, MFN provisions operate to provide material parity between a contracting party and any more favorable or expansive rights negotiated by another party, usually a competitor, although these provisions vary widely from agreement to agreement. It is unclear from the description in this example why an MFN provision that covers ADM arrangements would impair the practicality of them. Instead, the MFN provision could allow an MVPD to gain expanded rights to show content via ADMs, if another distributor is granted such rights, in which case the MVPD's subscribers would have additional choices for where to view the content. The other distributor's rights and the content producer's interests would not be impaired by that result, and consumers would benefit.

b. **Does Comcast require content producers to agree to MFNs as a term of carriage on Comcast's distribution platforms?**

Response: Under the *Comcast-NBCUniversal Order*, Comcast is permitted to have MFN provisions that ensure that Comcast is treated in material parity with other similarly situated MVPDs with respect to price and non-price terms, except to the extent that any other MVPDs' non-price terms "would frustrate the purpose of" the *Comcast-NBCUniversal Order*, App. A, § IV.B.3.c. Since 2011, Comcast has complied with this provision to the extent that it has obtained MFNs from content producers.

19. **MVPD companies generally reserve from the television networks about two minutes per hour of advertising for the MVPD companies to sell. These two minutes per hour generate billions of dollars in annual revenue for the MVPD industry. National advertisers generally purchase advertising time from the MVPD companies through Media, a buying cooperative that represents MVPD companies.**

a. **Do you agree with the foregoing statement? If not, please identify those aspects with which you disagree and explain your disagreement.**

Response: Advertisers that seek to reach a national television audience today generally purchase advertising time from 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 multiple other firms (*e.g.*, TelAmerica, CTV, Cable Scoop, Cable Time, Zip Tech Media, WorldLink, ITN, Delivery Agent (The Band), AudienceXpress) that, like NCC Media, place spot ads across multiple pay TV providers.

Local spot television advertising is negotiated within these distinct, isolated DMAs. Currently, Comcast and TWC compete against all forms of local advertising, with local broadcast TV being the most direct competitor. The list also includes radio, newspaper, outdoor display advertising, direct mail and Internet advertising. In fact, Internet advertising, including search, display and, especially, video advertising, is growing very rapidly.

As Professor Yoo testified during the April 9 hearing, cable companies represent only 7 percent of the local advertising market based on SNL Kagan data. "If 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." Similarly, even combined, Comcast and TWC will have only approximately 8-11 percent of television viewing saleable impressions. Although our geographic footprint may be larger, our share of the local TV advertising market will still be very small and well below any level that raises antitrust concerns. In fact, as described in our Joint Written Statement, we believe that the transaction will enhance competition for local and other advertisers.

b. **What is Comcast's current ownership interest in NCC Media?**

Response: Comcast has a 60 percent ownership interest in NCC Media.

c. **If Comcast is permitted to acquire TWC, what will be its ownership interest in NCC Media?**

Response: Post-transaction, Comcast will have a 76.7 percent ownership interest.

20. **Last year, Comcast was sued for its alleged practice of retaining customers' personal information – including Social Security numbers and credit card numbers – long after customers cancelled their Comcast accounts. What personal data does Comcast collect from its customers? And what are Comcast's policies with respect to retention, minimization, and expungement of such data?**

Response: Comcast complies with the stringent privacy requirements of the Cable Act, 47 U.S.C. § 551. Comcast's customer privacy policy for its cable television, high-speed Internet, and phone services is publicly available at http://www.comcast.com/Corporate/Customers/Policies/CustomerPrivacy.html. In addition, and consistent with the Cable Act, Comcast retains customer records pursuant to local, state, and federal requirements and its business purposes.

EXHIBIT 1

Minneapolis									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Triple Play EDP	N/A	$148.38	$152.88	$149.94	$144.94	$149.99	$159.95	$164.95	$169.95
Digital Preferred EDP		$65.48	$69.98	$74.49	$76.44	$76.44	$84.49	$86.99	$89.99
HD Equipment/Tech Fee		$7.00	$7.00	$7.00	$7.00	$7.00	$10.00	$10.00	$10.00
# of Channels		~201	~221	~242	~244	~305	~312	~327	~332
Subscriber Cost per Channel		$0.36	$0.35	$0.34	$0.34	$0.27	$0.30	$0.30	$0.30
Performance HSD (stand-alone)		$59.95	$59.95	$59.95	$57.95	$57.95	$62.95	$64.95	$66.95
Download Speed		6Mbps	6Mbps	12Mbps	12Mbps	12Mbps	15Mbps	15Mbps	25Mbps
Subscriber Cost per MB		$9.99	$9.99	$5.00	$4.83	$4.83	$4.20	$4.33	$2.68

Notes:
- Triple Play "Every Day Pricing (EDP)" reflects pricing for bundled services as part of a defined Triple Play package or, when a defined Triple Play packages do not exist, the bundling and associated discounts for equivalent services.
- Digital Preferred "Every Day Pricing (EDP)" reflects monthly pricing for today's Digital Preferred Tier of service or the his torical equivalent where the Preferred Tier did not exist.
- HD Equipment/Tech Fee reflects monthly pricing for HD services or the equivalent of one HD set-top-box.

Boston									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Triple Play EDP	$167.45	$174.34	$178.41	$169.99	$149.99	$154.99	$159.99	$164.99	$170.49
Digital Preferred EDP	$60.60	$67.15	$71.27	$75.95	$79.45	$83.20	$87.08	$87.90	$87.90
HD Equipment/Tech Fee	$8.95	$8.79	$8.74	$7.00	$7.95	$8.95	$9.95	$9.95	$9.95
# of Channels	~200	~208	~218	~258	~269	~292	~313	~321	~329
Subscriber Cost per Channel	$0.35	$0.37	$0.37	$0.32	$0.32	$0.32	$0.31	$0.30	$0.30
Performance HSD (stand-alone)	$57.95	$59.95	$59.95	$57.95	$59.95	$59.95	$62.95	$64.95	$66.95
Download Speed	6Mbps	6Mbps	6Mbps	12Mbps	12Mbps	15Mbps	20Mbps	25Mbps	25Mbps
Subscriber Cost per MB	$9.66	$9.99	$9.99	$4.83	$5.00	$4.00	$3.15	$2.60	$2.68

Notes:
- Triple Play "Every Day Pricing (EDP)" reflects pricing for bundled services as part of a defined Triple Play package or, wher e defined Triple Play packages do not exist, the bundling and associated discounts for equivalent services.
- Digital Preferred "Every Day Pricing (EDP)" reflects monthly pricing for today's Digital Preferred Tier of service or the his torical equivalent where the Preferred Tier did not exist.
- HD Equipment/Tech Fee reflects monthly pricing for HD services or the equivalent of one HD set-top-box.

Philadelphia									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Triple Play EDP	$168.85	$172.15	$178.65	$159.99	$159.99	$154.99	$159.99	$164.99	$169.99
Digital Preferred EDP	$66.10	$69.15	$72.65	$77.20	$76.70	$80.95	$84.95	$87.90	$87.90
HD Equipment/Tech Fee	$5.00	$5.00	$6.50	$6.50	$9.25	$9.25	$9.95	$9.95	$9.95
# of Channels	~204	~210	~218	~236	~329	~389	~394	~368	~378
Subscriber Cost per Channel	$0.35	$0.35	$0.36	$0.35	$0.26	$0.23	$0.24	$0.27	$0.26
Performance HSD (stand-alone)	$57.95	$59.95	$59.95	$59.95	$59.95	$59.95	$62.95	$64.95	$66.95
Download Speed	6Mbps	6Mbps	6Mbps	12Mbps	12Mbps	15Mbps	20Mbps	25Mbps	25Mbps
Subscriber Cost per MB	$9.66	$9.99	$9.99	$5.00	$5.00	$4.00	$3.15	$2.60	$2.68

Notes:
- Triple Play "Every Day Pricing (EDP)" reflects pricing for bundled services as part of a defined Triple Play package or, wher e defined Triple Play packages do not exist, the bundling and associated discounts for equivalent services.
- Digital Preferred "Every Day Pricing (EDP)" reflects monthly pricing for today's Digital Preferred Tier of service or the his torical equivalent where the Preferred Tier did not exist.
- HD Equipment/Tech Fee reflects monthly pricing for HD services or the equivalent of one HD set-top-box.

San Francisco									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Triple Play EDP	$147.84	$151.35	$150.39	$149.94	$144.94	$149.99	$159.95	$164.95	$169.95
Digital Preferred EDP	$64.94	$68.45	$72.94	$76.90	$78.94	$81.94	$82.99	$86.49	$88.49
HD Equipment/Tech Fee	$5.00	$7.00	$7.00	$7.00	$7.00	$8.00	$10.00	$10.00	$10.00
# of Channels	~221	~218	~264	~265	~323	~338	~364	~344	~347
Subscriber Cost per Channel	$0.32	$0.35	$0.30	$0.29	$0.27	$0.27	$0.26	$0.28	$0.28
Performance HSD (stand-alone)	$56.95	$56.95	$58.95	$58.95	$57.95	$59.95	$62.95	$64.95	$66.95
Download Speed	6Mbps	6Mbps	6Mbps	12Mbps	12Mbps	12Mbps	15Mbps	15Mbps	25Mbps
Subscriber Cost per MB	$9.49	$9.49	$9.83	$4.91	$4.83	$5.00	$4.20	$4.33	$2.68

Notes:
- Triple Play "Every Day Pricing (EDP)" reflects pricing for bundled services as part of a defined Triple Play package or, wher e defined Triple Play packages do not exist, the bundling and associated discounts for equivalent services.
- Digital Preferred "Every Day Pricing (EDP)" reflects monthly pricing for today's Digital Preferred Tier of service or the his torical equivalent where the Preferred Tier did not exist.
- HD Equipment/Tech Fee reflects monthly pricing for HD services or the equivalent of one HD set-top-box.

Atlanta									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Triple Play EDP	$161.89	$167.10	$170.10	$162.93	$162.93	$149.99	$159.95	$184.95	$169.95
Digital Preferred EDP	$63.25	$65.94	$68.45	$72.70	$74.90	$77.90	$80.90	$83.90	$85.90
HD Equipment/Tech Fee	$5.00	$6.95	$6.95	$6.95	$7.95	$8.50	$9.95	$9.95	$9.95
# of Channels	~211	~217	~229	~236	~295	~301	~321	~327	~334
Subscriber Cost per Channel	$0.32	$0.34	$0.33	$0.34	$0.28	$0.29	$0.28	$0.29	$0.29
Performance HSD (stand-alone)	$57.95	$57.95	$57.95	$59.95	$57.95	$59.95	$62.95	$62.95	$66.95
Download Speed	4Mbps	4Mbps	6Mbps	12Mbps	12Mbps	12Mbps	15Mbps	25Mbps	25Mbps
Subscriber Cost per MB	$14.49	$14.49	$9.66	$5.00	$4.83	$5.00	$4.20	$2.52	$2.66

Notes:
- Triple Play "Every Day Pricing (EDP)" reflects pricing for bundled services as part of a defined Triple Play package or, wher e defined Triple Play packages do not exist, the bundling and associated discounts for equivalent services.
- Digital Preferred "Every Day Pricing (EDP)" reflects monthly pricing for today's Digital Preferred Tier of service or the his torical equivalent where the Preferred Tier did not exist,
- HD Equipment/Tech Fee reflects monthly pricing for HD services or the equivalent of one HD set-top-box.

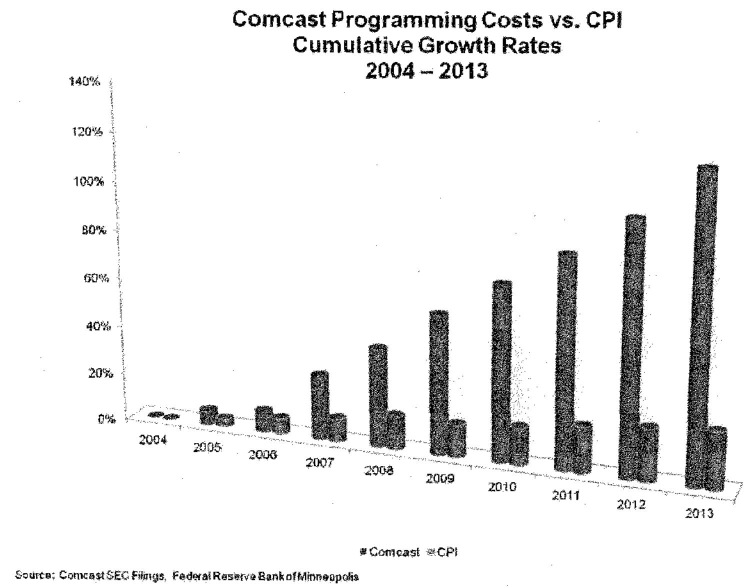
CPI
Source: Bureau of Labor Statistics

	2006	2007	2008	2009	2010	2011	2012	2013	2014	CPI CAGR
2006	100.00	102.85	106.80	106.42	108.16	111.58	113.89	115.55		2.1%
2007		100.00	103.84	103.47	105.17	108.49	110.73	112.35		2.0%

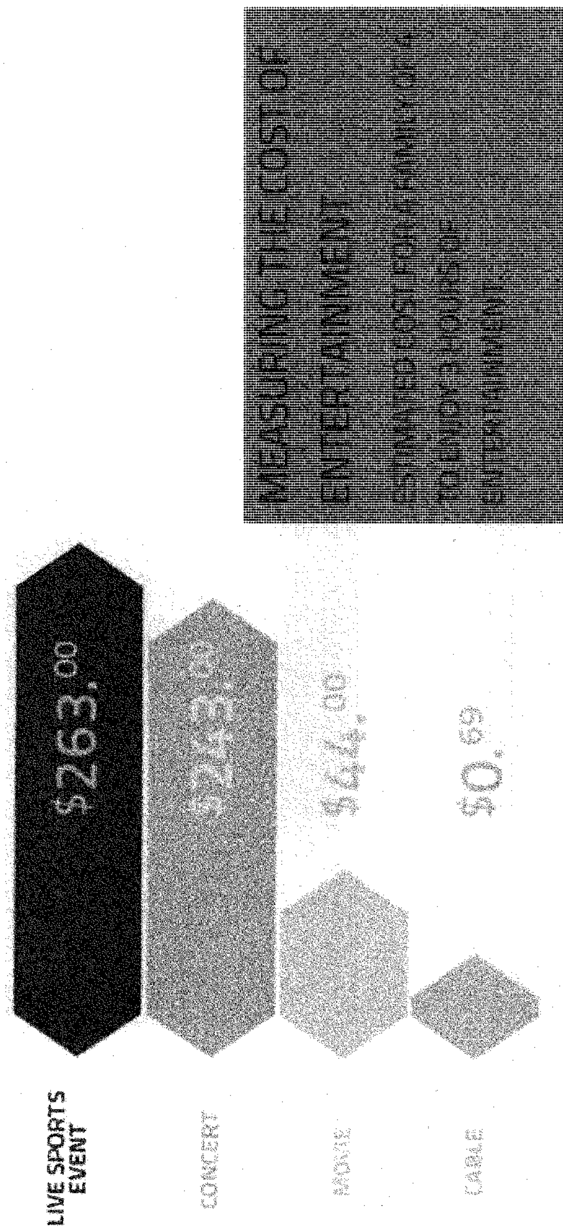
Annual Growth (Actual)										2007 - 2013 CAGR	Adjusted for CPI 2007 - 2013 CAGR
Minneapolis	2006	2007	2008	2009	2010	2011	2012	2013	2014		
Triple Play			3.0%	(1.9%)	(3.3%)	3.5%	6.6%	3.1%	3.0%	1.8%	(0.2%)
Dig. Pref.			6.9%	6.4%	2.6%	0.0%	10.5%	3.0%	3.4%	4.8%	3.2%
Perf. HSD			0.0%	0.0%	(3.3%)	0.0%	8.6%	3.2%	3.1%	1.3%	(0.7%)

Annual Growth (Actual)										2006 - 2013 CAGR	Adjusted for CPI 2006 - 2013 CAGR
Boston	2006	2007	2008	2009	2010	2011	2012	2013	2014		
Triple Play		4.1%	2.3%	(4.7%)	(11.8%)	3.3%	3.2%	3.1%	3.3%	(0.2%)	(2.6%)
Dig. Pref.		10.8%	6.1%	6.6%	4.6%	4.7%	4.7%	0.9%	0.0%	5.5%	3.8%
Perf. HSD		3.5%	0.0%	(3.3%)	3.5%	0.0%	5.0%	3.2%	3.1%	1.6%	(0.5%)
Philadelphia											
Triple Play		2.0%	3.8%	(10.4%)	0.0%	(3.1%)	3.2%	3.1%	3.0%	(0.3%)	(2.8%)
Dig. Pref.		4.6%	5.4%	6.0%	(0.6%)	5.5%	4.9%	3.5%	0.0%	4.2%	2.3%
Perf. HSD		3.5%	0.0%	0.0%	0.0%	0.0%	5.0%	3.2%	3.1%	1.6%	(0.5%)
San Francisco											
Triple Play		2.4%	(0.6%)	(0.3%)	(3.3%)	3.5%	6.6%	3.1%	3.0%	1.6%	(0.6%)
Dig. Pref.		5.4%	6.6%	5.4%	2.7%	3.8%	1.3%	4.2%	2.3%	4.2%	2.3%
Perf. HSD		0.0%	3.5%	0.0%	(1.7%)	3.5%	5.0%	3.2%	3.1%	1.9%	(0.2%)
Atlanta											
Triple Play		3.2%	1.8%	(4.2%)	0.0%	(7.9%)	6.8%	3.1%	3.0%	0.3%	(2.1%)
Dig. Pref.		4.3%	3.8%	6.2%	3.0%	4.0%	3.9%	3.7%	2.4%	4.1%	2.3%
Perf. HSD		0.0%	0.0%	3.5%	(3.3%)	3.5%	5.0%	0.0%	6.4%	1.2%	(1.0%)

EXHIBIT 2



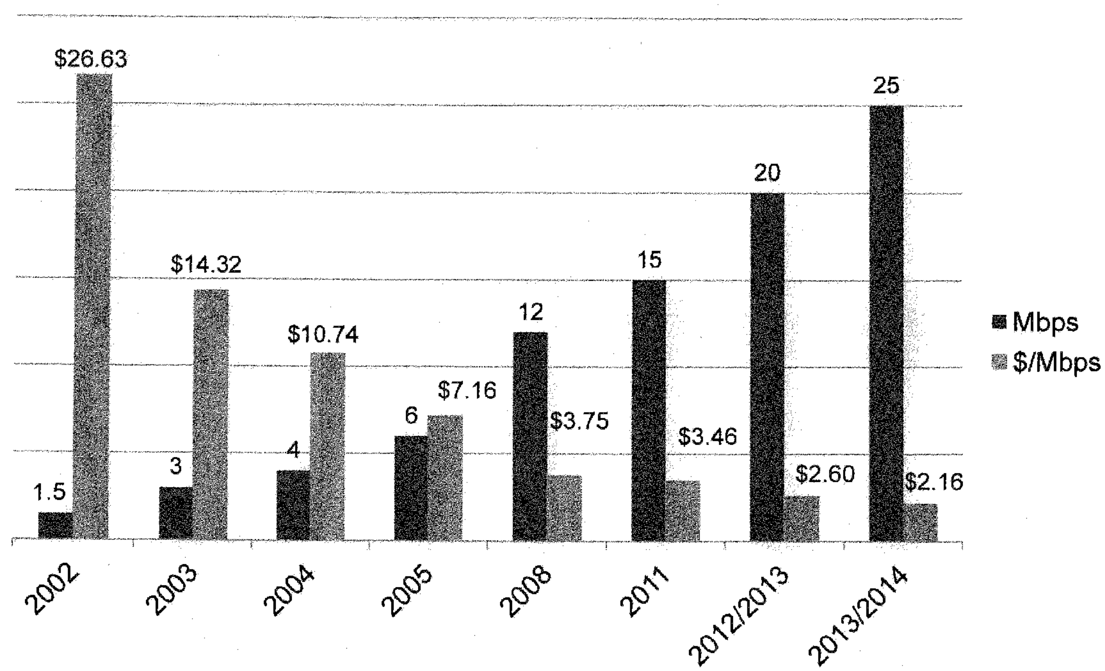
- FCC data show the price per channel of expanded basic (the most popular tier among consumers) has increased only 0.2% per year from 1995 to 2012, while the Consumer Price Index rose 2.4% per year – twelve times as much.
- Cable is a better value proposition than ever. In fact, the price per channel of expanded basic actually *decreased* in the most recent period studied by the FCC and is the lowest it has been in all the years the FCC has measured it (since 1995), and many customers are receiving promotional discounts that make the value proposition even better.
- As shown in the chart below, cable is still a tremendous consumer value and customers are getting more for their money.


MEASURING THE COST OF ENTERTAINMENT
ESTIMATED COST FOR A FAMILY OF 4 TO ENJOY 3 HOURS OF ENTERTAINMENT
LIVE SPORTS EVENT
$263.00
CONCERT
$243.00
MOVIE
$44.00
CABLE
$0.69

Source: NCTA

EXHIBIT 3

XFINITY Internet's Most Popular Speed Tier "Performance": Decrease in Cost/Mbps 2002 – 2014



Note: Services subject to availability and may vary.

COMCAST

EXHIBIT 4

Comcast Corporation
Adjusted Consolidated Results

Year Ended December 31	Revenue	OCF	Net Income	Profit Margin	Source	EIN #	
1995	3,363	1,019	(44)	30%	1997 Form 10-K	23-1709202	
1996	3,612	1,047	(54)	29%	1998 Form 10-K	23-1709202	
1997	4,468	1,293	(254)	29%	1999 Form 10-K	23-1709202	
1998	5,419	1,497	943	28%	2000 Form 10-K	23-1709202	
1999	6,529	1,880	1,036	29%	2001 Form 10-K	23-1709202	
2000	8,357	2,458	2,021	29%	2002 Form 10-K	23-1709202	NI does not tie to 2000 10-K - preferred dividends
2001	5,937	1,948	609	33%	2003 Form 10-K	23-1709202	Sale of QVC, Inc. in 9/2003
2002	8,102	2,836	(274)	35%	2004 Form 10-K	27-0000798	Sale of QVC, Inc. in 9/2003
2003	18,348	6,392	3,240	35%	2005 Annual Report	27-0000798	
2004	19,221	7,180	970	37%	2006 Annual Report	27-0000798	
2005	21,075	8,072	928	38%	2007 Form 10-K	27-0000798	
2006	24,966	9,442	2,533	38%	2008 Form 10-K	27-0000798	
2007	31,060	11,786	2,587	38%	2009 Form 10-K	27-0000798	
2008	34,423	13,132	2,547	38%	2010 Form 10-K	27-0000798	
2009	35,756	13,714	3,638	38%	2011 Form 10-K	27-0000798	
2010	37,937	14,596	3,635	38%	2012 Form 10-K	27-0000798	
2011	55,842	18,357	4,160	33%	2013 Form 10-K	27-0000798	
2012	62,570	19,977	6,203	32%	2013 Form 10-K	27-0000798	
2013	64,657	21,434	6,816	33%	2013 Form 10-K	27-0000798	
Three Months Ended March 31, 2014	17,408	5,538	1,871	32%	1Q14 Form 10-Q		

EXHIBIT 5

Comcast Cable Communications
Regulated Communities

Community	State
MODESTO	CA
CONCORD	CA
EL GRANADA	CA
MONTARA	CA
MOSS BEACH	CA
FOSTER CITY	CA
UNINC CONTRA COSTA (N)	CA
UNINC CONTRA COSTA (S)	CA
WALNUT CREEK	CA
CONTRA COSTA	CA
BAY POINT	CA
EL DORADO HILLS	CA
WALNUT CREEK	CA
WALNUT CREEK (A)	CA
GLENDALE CITY	CO
WASHINGTON	DC
LEWES	DE
REHOBOTH	DE
SUSSEX COUNTY (PSC)	DE
FENWICK ISLAND	DE
KENT COUNTY (PSC)	DE
DEWEY BEACH	DE
SUSSEX COUNTY (PSC)	DE
NEW CASTLE COUNTY (PSC)	DE
NEWARK	DE
WILMINGTON	DE
URBANA	IL
BONDVILLE	IL
MACOMB	IL
SPRINGFIELD TOWNSHIP	IL
YARMOUTH	MA
MALDEN	MA
GARDNER	MA
LEOMINSTER	MA
HAVERHILL	MA
BARNSTABLE	MA
HARWICH	MA
DENNIS	MA
MEDFORD	MA
AMESBURY	MA
CHATHAM	MA

Community	State
WINTHROP	MA
SALEM	MA
CHELSEA	MA
NEW BEDFORD	MA
GROVELAND	MA
FALMOUTH	MA
BILLERICA	MA
LOWELL	MA
ORLEANS	MA
FALL RIVER	MA
DARTMOUTH	MA
NORTH ANDOVER	MA
EASTHAM	MA
SAUGUS	MA
PEABODY	MA
BEVERLY	MA
NEWBURYPORT	MA
QUINCY	MA
TEMPLETON	MA
ATTLEBORO	MA
WEYMOUTH	MA
FAIRHAVEN	MA
ACUSHNET	MA
NORTH ATTLEBORO	MA
GLOUCESTER	MA
ROCKPORT	MA
NEWBURY	MA
MAYNARD	MA
CHELMSFORD	MA
SOMERSET	MA
PLAINVILLE	MA
SWANSEA	MA
ESSEX	MA
MANCHESTER	MA
BROCKTON	MA
MILTON	MA
MERRIMAC	MA
DRACUT	MA
NORTON	MA
MILLIS	MA
CLINTON	MA
FOXBOROUGH	MA
MILFORD	MA
MEDWAY	MA
HOLBROOK	MA
PROVINCETOWN	MA

Community	State
WELLFLEET	MA
WHITMAN	MA
STOUGHTON	MA
WRENTHAM	MA
HULL	MA
NORWELL	MA
COHASSET	MA
SCITUATE	MA
SHARON	MA
RANDOLPH	MA
AVON	MA
HANSON	MA
HOPEDALE	MA
WALPOLE	MA
BELLINGHAM	MA
BLACKSTONE	MA
MIDDLETON	MA
ASHLAND	MA
EASTON	MA
RAYNHAM	MA
WEST BRIDGEWATER	MA
HOLLISTON	MA
LANCASTER	MA
HANOVER	MA
NORFOLK	MA
HINGHAM	MA
MENDON	MA
EAST BRIDGEWATER	MA
STOW	MA
MARBLEHEAD	MA
FREETOWN	MA
DIGHTON	MA
BERKLEY	MA
WAYLAND	MA
WESTON	MA
BRIDGEWATER	MA
CONCORD	MA
LAKEVILLE	MA
DANVERS	MA
CAMBRIDGE	MA
TOPSFIELD	MA
CARLISLE	MA
DUXBURY	MA
REHOBOTH	MA
DOVER	MA
PHILLIPSTON	MA

Community	State
AMHERST	MA
GREENFIELD	MA
MONTAGUE	MA
PALMER	MA
WARE	MA
WARREN	MA
HOLYOKE	MA
SOUTH HADLEY	MA
AGAWAM	MA
WESTFIELD	MA
WEST SPRINGFIELD	MA
BUCKLAND	MA
PELHAM	MA
DEERFIELD	MA
SUNDERLAND	MA
NORTHAMPTON	MA
GRANBY	MA
LONGMEADOW	MA
HATFIELD	MA
WILLIAMSBURG	MA
SOUTHWICK	MA
SPRINGFIELD	MA
WESTHAMPTON	MA
BERLIN	MD
OCEAN CITY	MD
SALISBURY	MD
HYATTSVILLE	MD
COLLEGE PARK	MD
EDMONSTON	MD
MOUNT RAINIER	MD
UNIVERSITY PARK	MD
GREENBELT	MD
WASHINGTON GROVE	MD
POOLESVILLE	MD
BARNESVILLE	MD
LAYTONSVILLE	MD
CHEVY CHASE	MD
CHEVY CHASE VILLAGE	MD
CHEVY CHASE VILLAGE SECTION 3	MD
TOPSHAM	ME
BRUNSWICK	ME
KITTERY	ME
BLOOMINGTON CITY	MN
ST. LOUIS PARK CITY	MN
MINNEAPOLIS CITY	MN
EDEN PRAIRIE CITY	MN

Community	State
EDINA CITY	MN
HOPKINS CITY	MN
RICHFIELD CITY	MN
MINNETONKA CITY	MN
COLUMBIA HEIGHTS CITY	MN
HILLTOP CITY	MN
BROOKLYN PARK VILLAGE	MN
BROOKLYN CENTER CITY	MN
OSSEO VILLAGE	MN
NEW HOPE VILLAGE	MN
CRYSTAL CITY	MN
ROBBINSDALE CITY	MN
GOLDEN VALLEY VILLAGE	MN
ARDEN HILLS CITY	MN
FALCON HEIGHTS CITY	MN
LAUDERDALE CITY	MN
LITTLE CANADA CITY	MN
MOUNDS VIEW CITY	MN
NEW BRIGHTON CITY	MN
NORTH OAKS CITY	MN
ROSEVILLE CITY	MN
ST ANTHONY CITY	MN
SHOREVIEW CITY	MN
PLYMOUTH TOWN (MN)	MN
HASTINGS CITY	MN
MAPLE GROVE VILLAGE	MN
BIRCHWOOD VILLAGE CITY	MN
LAKE ELMO CITY	MN
NORTH ST PAUL CITY	MN
OAKDALE CITY	MN
VADNAIS HEIGHTS CITY	MN
WILLERNIE CITY	MN
GRANT TOWNSHIP	MN
WHITE BEAR LAKE CITY	MN
ANOKA CITY	MN
ANDOVER CITY	MN
CHAMPLIN CITY	MN
RAMSEY CITY	MN
BLAINE CITY (MN)	MN
CENTERVILLE CITY	MN
CIRCLE PINES VILLAGE	MN
COON RAPIDS CITY	MN
HAM LAKE CITY	MN
LEXINGTON CITY	MN
LINO LAKES CITY	MN
SPRING LAKE PARK CITY	MN

Community	State
SPRING LAKE PARK CITY	MN
STILLWATER CITY	MN
BAYPORT VILLAGE	MN
OAK PARK HEIGHTS VILLAGE	MN
WOODBURY	MN
COTTAGE GROVE VILLAGE	MN
NEWPORT VILLAGE	MN
DENMARK TOWNSHIP	MN
GREY CLOUD ISLAND TOWNSHIP	MN
ST PAUL PARK VILLAGE	MN
ST. PAUL CITY	MN
INVER GROVE HEIGHTS CITY	MN
LILYDALE CITY	MN
MENDOTA CITY	MN
MENDOTA HEIGHTS CITY	MN
SOUTH ST PAUL CITY	MN
SUNFISH LAKE CITY	MN
WEST ST PAUL CITY	MN
LAKELAND VILLAGE	MN
LAKELAND SHORES VILLAGE	MN
LAKE ST CROIX BEACH VILLAGE	MN
ST MARYS POINT VILLAGE	MN
AFTON CITY	MN
YANCEYVILLE	NC
MERRIMACK	NH
LITCHFIELD	NH
PELHAM	NH
ABSECON	NJ
LINWOOD	NJ
SOMERS POINT	NJ
BRIGANTINE	NJ
STAFFORD	NJ
HACKETTSTOWN	NJ
LAMBERTVILLE	NJ
MANSFIELD	NJ
VINELAND	NJ
MILLVILLE	NJ
HARVEY CEDARS	NJ
AVALON	NJ
MIDDLE TOWNSHIP	NJ
SEA ISLE CITY	NJ
STONE HARBOR	NJ
LONGPORT	NJ
MARGATE CITY	NJ
OCEAN CITY	NJ
WILDWOOD	NJ

Community	State
PENNSVILLE	NJ
SALEM	NJ
GLEN GARDNER	NJ
HAMPTON	NJ
WASHINGTON TOWNSHIP	NJ
WASHINGTON BOROUGH	NJ
BAY HEAD	NJ
BRICK TOWN	NJ
MANTOLOKING	NJ
POINT PLEASANT	NJ
POINT PLEASANT BEACH	NJ
HOPEWELL TOWNSHIP	NJ
EDGEWATER PARK	NJ
WESTAMPTON	NJ
WILLINGBORO	NJ
FRANKLIN	NJ
WASHINGTON TOWNSHIP	NJ
BERKELEY	NJ
BARNEGAT	NJ
CAPE MAY	NJ
WEST CAPE MAY	NJ
CAPE MAY POINT	NJ
LOWER	NJ
MIDDLE TOWNSHIP	NJ
WEST WILDWOOD	NJ
WILDWOOD CREST	NJ
NORTH WILDWOOD	NJ
BRIDGETON	NJ
HAMMONTON	NJ
NORTHFIELD	NJ
RIVERSIDE	NJ
BURLINGTON TOWNSHIP	NJ
UPPER TOWNSHIP	NJ
BURLINGTON CITY	NJ
PINE BEACH	NJ
OCEAN GATE	NJ
SOUTH TOMS RIVER	NJ
GLOUCESTER CITY	NJ
LACEY	NJ
MONMOUTH BEACH	NJ
LIVINGSTON	NJ
WEST CALDWELL	NJ
WEST ORANGE	NJ
BROOKLAWN	NJ
MOUNT EPHRAIM	NJ
AUDUBON PARK	NJ

Community	State
OAKLYN	NJ
EAGLESWOOD	NJ
TUCKERTON	NJ
LITTLE EGG HARBOR	NJ
FAIRFIELD	NJ
VERONA	NJ
MAPLEWOOD	NJ
HARRISON TOWN	NJ
HADDON	NJ
CALDWELL	NJ
ROSELAND	NJ
ISLAND HEIGHTS	NJ
LINDENWOLD	NJ
COLLINGSWOOD	NJ
HILLSIDE	NJ
ESSEX FELLS	NJ
BELLMAWR	NJ
RUNNEMEDE	NJ
MILLBURN	NJ
WESTFIELD	NJ
LINDEN	NJ
MAGNOLIA	NJ
WOODLYNNE	NJ
SUMMIT	NJ
DEPTFORD	NJ
WOODBURY HEIGHTS	NJ
WOODBURY	NJ
SPRINGFIELD	NJ
MONTCLAIR	NJ
SHREWSBURY	NJ
RUTHERFORD	NJ
LYNDHURST	NJ
NORTH ARLINGTON	NJ
KEARNY	NJ
SOMERDALE	NJ
RIVERTON	NJ
CINNAMINSON	NJ
PALMYRA	NJ
STRATFORD	NJ
BERLIN BOROUGH	NJ
GLOUCESTER	NJ
WESTVILLE	NJ
INDEPENDENCE	NJ
CLEMENTON	NJ
MAPLE SHADE	NJ
MOORESTOWN	NJ

Community	State
VOORHEES	NJ
CRESTWOOD	NJ
BERKELEY HEIGHTS	NJ
NEW PROVIDENCE	NJ
BERLIN TOWNSHIP	NJ
MOUNT LAUREL	NJ
GIBBSBORO	NJ
HI-NELLA	NJ
PITMAN	NJ
MERCHANTVILLE	NJ
PLAINSBORO	NJ
PINE HILL	NJ
SCOTCH PLAINS	NJ
CLARK	NJ
EVESHAM	NJ
LAUREL SPRINGS	NJ
EAST ORANGE	NJ
GLASSBORO	NJ
FANWOOD	NJ
WEST DEPTFORD	NJ
WENONAH	NJ
HAINESPORT	NJ
MEDFORD LAKES	NJ
NORTH HANOVER	NJ
MOUNTAINSIDE	NJ
EAST WINDSOR	NJ
HAZLET	NJ
MEDFORD	NJ
MANTUA	NJ
HIGHTSTOWN	NJ
NATIONAL PARK	NJ
GREENWICH	NJ
HELMETTA	NJ
SOUTH BRUNSWICK	NJ
DELANCO	NJ
DELRAN	NJ
BEVERLY	NJ
WASHINGTON CITY	NJ
MONROE	NJ
WINSLOW	NJ
BORDENTOWN TOWNSHIP	NJ
WATERFORD	NJ
HILLSBOROUGH	NJ
HIGHLANDS	NJ
UPPER TOWNSHIP	NJ
BUENA	NJ

Community	State
SHILOH	NJ
ALLENHURST	NJ
LOCH ARBOUR	NJ
NEWFIELD	NJ
EWING	NJ
LAWRENCE TOWNSHIP	NJ
PRINCETON BOROUGH	NJ
PRINCETON TOWNSHIP	NJ
LEBANON	NJ
CLINTON TOWN	NJ
READINGTON	NJ
CLINTON TOWNSHIP	NJ
LONG HILL	NJ
LOGAN	NJ
SWEDESBORO	NJ
WOODSTOWN	NJ
MANCHESTER	NJ
LAKEHURST	NJ
BRANCHBURG	NJ
BERNARDSVILLE	NJ
FLEMINGTON	NJ
RARITAN	NJ
ROOSEVELT	NJ
CHATHAM	NJ
FRANKLIN	NJ
BORDENTOWN CITY	NJ
WOOLWICH	NJ
OLDMANS	NJ
HARRISON TOWNSHIP	NJ
PILESGROVE	NJ
PENNS GROVE	NJ
COMMERCIAL	NJ
DOWNE	NJ
MAURICE RIVER	NJ
ELK	NJ
ELMER	NJ
FRANKLIN	NJ
PITTSGROVE	NJ
UPPER PITTSGROVE	NJ
SOUTH HARRISON	NJ
WEST WINDSOR	NJ
GLEN RIDGE	NJ
MENDHAM BOROUGH	NJ
PEAPACK-GLADSTONE	NJ
PENNINGTON	NJ
HOPEWELL BOROUGH	NJ

Community	State
UPPER DEERFIELD	NJ
MENDHAM TOWNSHIP	NJ
LAUREL LAKE	NJ
LAWRENCE TOWNSHIP	NJ
MANAHAWKIN	NJ
BEDMINSTER	NJ
CHESTER BOROUGH	NJ
CHESTER TOWNSHIP	NJ
TEWKSBURY	NJ
MONTGOMERY	NJ
ROCKY HILL	NJ
HOPEWELL TOWNSHIP	NJ
FOLSOM	NJ
BUENA VISTA	NJ
CHESILHURST	NJ
HARDING	NJ
EAST AMWELL	NJ
FRANKLIN	NJ
STOCKTON	NJ
WEST AMWELL	NJ
UNION	NJ
FAIRFIELD	NJ
DEERFIELD	NJ
UPPER DEERFIELD	NJ
MILLSTONE	NJ
BETHLEHEM	NJ
ALLOWAY	NJ
ELSINBORO	NJ
QUINTON	NJ
DELAWARE TOWNSHIP	NJ
MULLICA	NJ
DELAWARE TOWNSHIP	NJ
MANNINGTON	NJ
FAR HILLS	NJ
LOWER ALLOWAYS CREEK	NJ
WASHINGTON TOWNSHIP	NJ
BOROUGH OF PINE VALLEY	NJ
BOROUGH OF TAVISTOCK	NJ
PATTERSON	NY
PAWLING TOWN	NY
PAWLING VILLAGE	NY
CARMEL	NY
HERITAGE HILLS	NY
KENT	NY
SOUTHEAST	NY
BREWSTER	NY

Community	State
PUTNAM VALLEY	NY
BEEKMAN	NY
RAYLAND	OH
PORTLAND	OR
CORVALLIS	OR
SALEM	OR
LAKE OSWEGO	OR
EUGENE	OR
CLACKAMAS	OR
MARION	OR
WEST LINN	OR
PORTLAND	OR
ALOHA-REEDVILLE	OR
MILWAUKIE	OR
LAKE OSWEGO	OR
GRESHAM	OR
WOOD VILLAGE	OR
TROUTDALE	OR
FAIRVIEW	OR
MULTNOMAH	OR
UNINC MULTNOMAH	OR
UNINC PORTLAND AREA	OR
UNINC AREAS OF MULTNOMAH COUNT	OR
UNINC AREAS OF CLACKAMAS	OR
BRISTOL	PA
MIDDLETOWN	PA
PENNDEL	PA
PHILADELPHIA AREA 1	PA
MARPLE	PA
HAVERFORD	PA
CHELTENHAM	PA
MORRISVILLE	PA
DOYLESTOWN BOROUGH	PA
WEST WHITELAND	PA
MALVERN	PA
NETHER PROVIDENCE	PA
YARDLEY	PA
LANGHORNE	PA
LOWER MAKEFIELD	PA
EAST MARLBOROUGH	PA
WARRINGTON	PA
NEWTOWN	PA
DOYLESTOWN TOWNSHIP	PA
PHILADELPHIA (NE)	PA
PHILADELPHIA (NW)	PA
PHILADELPHIA AREA 2	PA

Community	State
FERGUSON	PA
STATE COLLEGE	PA
MOUNT UNION	PA
DAUPHIN	PA
EAST PENNSBORO	PA
HAMPDEN	PA
HIGHSPIRE	PA
LEMOYNE	PA
LOWER PAXTON	PA
MIDDLETOWN	PA
MIDDLE PAXTON	PA
SUSQUEHANNA	PA
SWATARA	PA
WORMLEYSBURG	PA
GALLITZIN	PA
DONORA	PA
MCKEESPORT	PA
WHITE OAK	PA
SPRINGDALE	PA
TRAFFORD	PA
HEMPFIELD	PA
IRWIN	PA
BRADDOCK HILLS	PA
FOREST HILLS	PA
JEFFERSON HILLS	PA
SHALER	PA
SCOTT	PA
HEIDELBERG	PA
GREENTREE	PA
SOUTH PARK	PA
ASPINWALL	PA
PLEASANT HILLS	PA
O HARA	PA
KENNEDY	PA
HAMPTON	PA
SEWICKLEY HILLS	PA
TRENTON	SC
CHARLOTTESVILLE	VA
ALEXANDRIA	VA
GALAX	VA
OLYMPIA	WA
MUKILTEO	WA
KENT	WA
RENTON	WA
SEATTLE	WA
BELLEVUE	WA

Community	State
UNINC KING COUNTY (S)	WA
UNINC KING COUNTY (N)	WA
AUBURN	WA
MCCLEARY	WA
MERCER ISLAND	WA
SEATTLE	WA
UNINC AREAS OF KING COUNTY	WA
DES MOINES	WA
ISSAQUAH	WA
BELLEVUE	WA
UNINC AREAS OF KING COUNTY	WA
REDMOND	WA
LAKE FOREST PARK	WA
LACEY	WA
UNINC AREAS OF KING COUNTY	WA
LYNNWOOD	WA
TUKWILA	WA
MOUNTLAKE TERRACE	WA
SPOKANE	WA
UNINC AREAS OF KING COUNTY	WA
KIRKLAND	WA
BRIER	WA
BELLEVUE (NORTHERN)	WA
MILL CREEK	WA
VASHON ISLAND	WA
BURIEN	WA
FEDERAL WAY	WA
LAKE FOREST PARK	WA
FEDERAL WAY	WA
SEATTLE (N)	WA
ISSAQUAH	WA
PRESCOTT	WI
HUDSON	WI
NORTH HUDSON	WI
RIVER FALLS	WI
MORGANTOWN	WV

EXHIBIT 6

AS OF MARCH 2014

CUID
SUBJECT TO REGULATION

Time Warner Cable
Communities Subject to Rate Regulation
4/28/2014

MUNICIPALITY	STATE
Enterprise, City of	AL
Maui County	HI
Bowling Green, City of	KY
Briarwood, City of	KY
Cambridge, City of (JCLCCC)	KY
Druid Hills, City of	KY
Goose Creek, City of	KY
Heritage Creek, City of (fka Minor Lane Heights)	KY
Highland Heights, City of (CCCB)	KY
Hollow Creek, City of (JCLCCC)	KY
Hollyvilla, City of	KY
Hurstbourne Acres, City of (JCLCCC)	KY
Kingsley, City of (JCLCCC)	KY
Lincolnshire, City of	KY
Newport, City of	KY
Norbourne Estates, City of	KY
Plum Springs, City of	KY
Richlawn, City of	KY
Riverwood, City of	KY
Silver Grove, City of (CCCB)	KY
Strathmoor Village, City of	KY
Wellington, City of	KY
Woodburn, City of	KY
Adams, Town of	MA
Clarksburg, Town of	MA
Dalton, Town of	MA

CUID
SUBJECT TO REGULATION

Lee, Town of	MA
Lenox, Town of	MA
North Adams, City of	MA
Pittsfield, City of	MA
Richmond, Town of	MA
Stockbridge, Town of	MA
Williamstown, Town of	MA
Brewer, City of	ME
Camden, Town of	ME
Cumberland, Town of	ME
Hermon, Town of	ME
Orono, Town of	ME
Portland, City of	ME
Rockland, City of	ME
South Portland, City of	ME
Thomaston, Town of	ME
Yarmouth, Town of	ME
Adams, Village of	NY
Afton, Village of	NY
Albany, City of	NY
Altamont, Village of	NY
Amsterdam, City of	NY
Amsterdam, Town of	NY
Antwerp, Town of	NY
Argyle, Village of	NY
Ballston Spa, Village of	NY
Bath, Village of	NY
Bethlehem, Town of	NY
Binghamton, City of	NY
Black River, Village of	NY
Bloomingburg, Village of	NY

CUID
SUBJECT TO REGULATION

Brighton, Town of	NY
Broadalbin, Town of	NY
Broadalbin, Village of	NY
Brockport, Village of	NY
Brownville, Town of	NY
Brownville, Village of	NY
Brunswick, Town of	NY
Brushton, Village of	NY
Cambridge, Village of	NY
Camden, Village of	NY
Canajoharie, Village of	NY
Candor, Village of	NY
Castleton-on-Hudson, Village of	NY
Castorland, Village of	NY
Cayuga Heights, Village of	NY
Cazenovia, Village of	NY
Celoron, Village of	NY
Charlton, Town of	NY
Chenango, Town of	NY
Cherry Valley, Village of	NY
Chittenango, Village of	NY
Clayville, Village of	NY
Clifton Park, Town of	NY
Clinton, Village of	NY
Cobleskill, Village of	NY
Cohoes, City of	NY
Cold Brook, Village of	NY
Colonie, Town of	NY
Conklin, Town of	NY
Constableville, Village of	NY
Cooperstown, Village of	NY

CUID
SUBJECT TO REGULATION

Corning, City of	NY
Corning, Town of	NY
Cornwall-on-Hudson, Village of	NY
Crawford, Town of	NY
Croghan, Village of	NY
Day, Town of	NY
De Witt, Town of	NY
Delaware, Town of	NY
Dickinson, Town of	NY
East Greenbush, Town of	NY
East Rochester, Village of	NY
Ellenville, Village of	NY
Elmira Heights, Village of	NY
Elmira, City of	NY
Elmira, Town of	NY
Erwin, Town of	NY
Fair Haven, Village of	NY
Fonda, Village of	NY
Fort Ann, Village of	NY
Fort Plain, Village of	NY
Franklin, Village of	NY
Freeville, Village of	NY
Fultonville, Village of	NY
Galway, Town of	NY
Galway, Village of	NY
Glens Falls, City of	NY
Glenville, Town of	NY
Goshen, Village of	NY
Granville, Village of	NY
Greene, Village of	NY
Greenwich, Village of	NY

CUID
SUBJECT TO REGULATION

Guilderland, Town of	NY
Hagaman, Village of	NY
Halfmoon, Town of	NY
Hannibal, Village of	NY
Herkimer, Village of	NY
Heuvelton, Village of	NY
Highland Falls, Village of	NY
Holley Village, Village of	NY
Hoosick Falls, Village of	NY
Hornell, City of	NY
Horseheads, Town of	NY
Horseheads, Village of	NY
Hurley, Town of	NY
Ithaca, City of	NY
Ithaca, Town of	NY
Johnson City, Village of	NY
Jordan, Village of	NY
Kinderhook, Village of	NY
Kingston, City of	NY
Kingston, Town of	NY
Kirkwood, Town of	NY
Lacona, Village of	NY
Lake George, Village of	NY
Lake Placid, Village of	NY
Liberty, Village of	NY
Lisle, Village of	NY
Lowville, Village of	NY
Maine, Town of	NY
Malone, Village of	NY
Malta, Town of	NY
Manlius, Village of	NY

CUID
SUBJECT TO REGULATION

Mannsville, Village of	NY
Marcellus, Village of	NY
Marcy, Town of	NY
Massena, Village of	NY
Maybrook, Village of	NY
Mayfield, Town of (Gloversville and Schnectady)	NY
Menands, Village of	NY
Mexico, Village of	NY
Middleville, Village of	NY
Milford, Village of	NY
Minetto, Town of	NY
Montgomery, Village of	NY
Monticello, Village of	NY
Montour Falls, Village of	NY
Moreau, Town of	NY
Morris, Village of	NY
Morrisville, Village of	NY
Murray, Town of	NY
New Hartford, Town of	NY
New Hartford, Village of	NY
New Paltz, Town of	NY
New Paltz, Village of	NY
New Scotland, Town of	NY
New Windsor, Town of	NY
New York Mills, Village of	NY
Newark Valley, Village of	NY
Nichols, Village of	NY
Niskayuna, Town of	NY
North Elba, Town of	NY
North Greenbush, Town of	NY
Northville, Village of	NY

CUID
SUBJECT TO REGULATION

Odessa, Village of	NY
Ogden, Town of	NY
Oneida Castle, Village of	NY
Oneida, City of	NY
Oneonta, City of	NY
Oneonta, Town of	NY
Onondaga, Town of	NY
Oriskany, Village of	NY
Oswego, City of	NY
Oswego, Town of	NY
Otego, Village of	NY
Owego, Town of	NY
Oxford, Village of	NY
Painted Post, Village of	NY
Palatine Bridge, Village of	NY
Parish, Village of	NY
Parma, Town of	NY
Penfield, Town of	NY
Perinton, Town of	NY
Perth, Town of	NY
Phoenix, Village of	NY
Pittsford, Town of	NY
Pittstown, Town of	NY
Pleasant Valley, Town of	NY
Port Henry, Village of	NY
Port Leyden, Village of	NY
Poughkeepsie, City of	NY
Queensbury, Town of	NY
Red Hook, Town of	NY
Remsen, Village of	NY
Rensselaer, City of	NY

CUID
SUBJECT TO REGULATION

Richfield Springs, Village of	NY
Richmondville, Village of	NY
Riverside, Village of	NY
Rochester, City of	NY
Rotterdam, Town of	NY
Sackets Harbor, Village of	NY
Salem, Village of	NY
Sand Lake, Town of	NY
Sandy Creek, Village of	NY
Saranac Lake, Village of	NY
Saratoga Springs, City of	NY
Saratoga, Town of	NY
Saugerties, Town of	NY
Saugerties, Village of	NY
Schaghticoke, Village of	NY
Schenectady, City of	NY
Schroon, Town of	NY
Schuylerville, Village of	NY
Scriba, Town of	NY
Shandaken, Town of	NY
Sharon Springs, Village of	NY
Sherburne, Village of	NY
Sidney, Village of	NY
Skaneateles, Village of	NY
Smyrna, Village of	NY
South Corning, Village of	NY
South Glens Falls, Village of	NY
St. Johnsville, Village of	NY
Stillwater, Village of	NY
Sullivan, Town of	NY
Sweden, Town of	NY

CUID
SUBJECT TO REGULATION

Syracuse, City of	NY
Tannersville, Village of	NY
Ticonderoga, Town of	NY
Trumansburg, Village of	NY
Ulster, Town of	NY
Unadilla, Village of	NY
Union, Town of	NY
Utica, City of	NY
Voorheesville, Village of	NY
Walden, Village of	NY
Washingtonville, Village of	NY
Waterford, Town of	NY
Waterford, Village of	NY
Watertown, City of	NY
Waterville, Village of	NY
Watervliet, City of	NY
Watkins Glen, Village of	NY
Wayland, Village of	NY
Weedsport, Village of	NY
Wellsburg, Village of	NY
West Winfield, Village of	NY
Whitehall, Village of	NY
Whitesboro, Village of	NY
Whitestown, Town of	NY
Wilton, Town of	NY
Woodridge, Village of	NY
Woodstock, Town of	NY
Yorkville, Village of	NY
Yellow Springs, Village of	OH
Elkland, Borough of	PA
Lawrenceville, Borough of	PA

AS OF MARCH 2014

CUID
SUBJECT TO REGULATION

Nelson Township	PA
Shinglehouse, Borough of	PA
Arcadia Lakes, Town of	SC
Berkeley County	SC
North Myrtle Beach, City of	SC

EXHIBIT 7

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 8

NBM

National Broadband Map

How connected is my community?

Please enter any address | **Find Broadband**

Explore the Maps or **Analyze the Data**

Analyze • **Map** • **Developer** • **About** • **Native Nations**

Rank • Summarize • Provider • Engage | Blog • Twitter • Download • States

Tweet Like 1.6k

The **National Broadband Map** is a tool to search, analyze and map broadband availability across the United States.
Created and maintained by the **NTIA**, in collaboration with the **FCC**, and in partnership with 50 states, five territories and the District of Columbia.

NTIA • FCC • Website Policies and Notices • Privacy Policy • Recovery.gov • FOIA

National Broadband Map
How connected is my community?

Homepage · Analyze · Map · Developer · About · Native Nations

Analyze

Use the tools below to rank an area by a specific broadband attribute, generate summaries of broadband availability for a given area and download reports containing popular statistics.

Rank »

Use this tool to compare broadband availability in different areas. Generate a national list of states, counties, Metropolitan Statistical Areas (MSA), Congressional Districts, census designated places or Universal Service Fund (USF) study areas by broadband speed, technology, number of broadband providers or demographic information. The tool also generates ranked lists within a state, including by county, census designated place, Congressional District, state legislative district, MSA and USF study area.

Rank your geography >>

Example Searches:

- All States within Nation
- All Counties within Nation
- All Congressional Districts within Nation
- Metropolitan Statistical Areas in California

Summarize »

Use this tool to generate an overview of broadband availability for any state, county, state legislative district, Metropolitan Statistical Area (MSA), Universal Service Fund (USF) study area, or Native Nations.

Summarize your geography >>

Example Searches:

- Nationwide
- State > California
- Native Nations > Navajo Nation
- County > Hennepin

Provider »

Use this tool to generate an overview of a broadband provider's availability for any state, county, state legislative district, metropolitan statistical area (MSA), Universal Service Fund (USF) study area, census place or Native Nation.

Popular Reports »

View and download popular reports.

- Broadband Availability in Urban vs. Rural Areas
- Number of Providers by Speed Tier

Share »

Short URL »

Tweet

Like 13

Map »

Rank »

Summarize »

Provider »

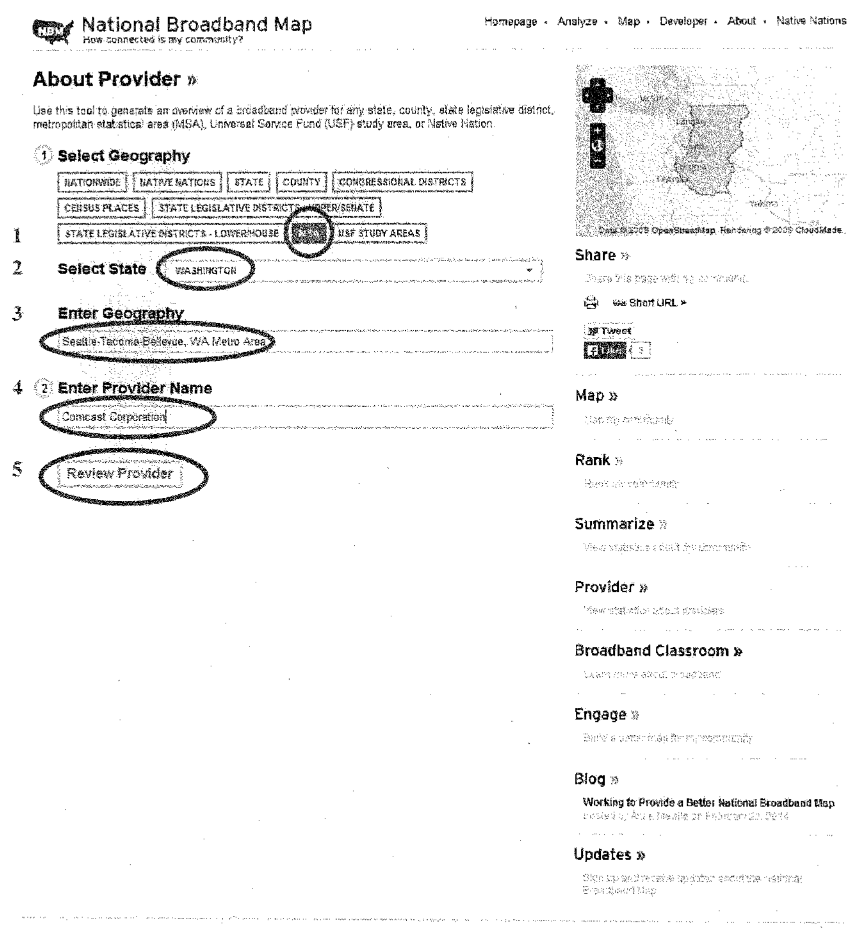
Broadband Classroom »

Engage »

Blog »

Working to Provide a Better National Broadband Map

Updates »


National Broadband Map
How connected is my community?
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About Provider »
Use this tool to generate an overview of a broadband provider for any state, county, state legislative district, metropolitan statistical area (MSA), Universal Service Fund (USF) study area, or Native Nation.
1 Select Geography
NATIONWIDE
NATIVE NATIONS
STATE
COUNTY
CONGRESSIONAL DISTRICTS
CENSUS PLACES
STATE LEGISLATIVE DISTRICTS - UPPER/SENATE
1
STATE LEGISLATIVE DISTRICTS - LOWER/HOUSE
MSAS
USF STUDY AREAS
2
Select State
WASHINGTON
3
Enter Geography
Seattle-Tacoma-Bellevue, WA Metro Area
4
2 Enter Provider Name
Comcast Corporation
5
Review Provider
Share »
Short URL »
Tweet
Map »
Rank »
Summarize »
Provider »
Broadband Classroom »
Engage »
Blog »
Working to Provide a Better National Broadband Map
Updates »

National Broadband Map
How connected is my community?

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Please enter a provider name | Review

About Provider »

Metropolitan Statistical Area »
Seattle-Tacoma-Bellevue, WA Metro Area

This page provides an overview of the percent of population with access to broadband, technology, and maximum advertised speeds for any given provider. The information is displayed according to the unit of geography (nation, state, county, etc.) selected on the previous page. Broadband data are collected by SBI grantees and are current as of June 30, 2013.

Methodology and Source · Export · API

Share »

Share this page with my community

Short URL »

Tweet

Like

Comcast Corporation

Coverage Map

This provider offers Cable Modem - DOCSIS 3.0 broadband technologies to an approximate population of 3,374,836 (out of a total population of 3,569,322).

States/Territories where this provider offers service: 40 (click to expand).

Availability Overview

Population
3,374,836

Housing Units
1,460,317

Total area (sq miles)
1,245

Population Density (people per sq mile)
2,354

Most common advertised download speed

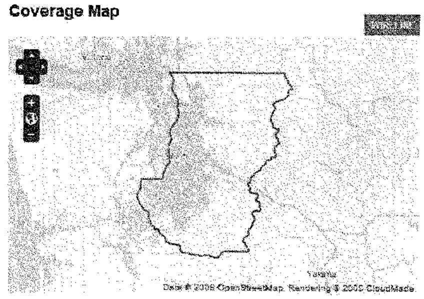
100 - 1 Gbps — 94.6% of population served

Most common advertised upload speed

10 - 25 — 94.5% of population served

Methodology & Source

Coverage Map



Open Coverage Map »

All Providers in MSA

Description: Below is a list of all broadband providers that offer service in this geography.

Provider Name
AT&T Inc.
CenturyLink, Inc.
City of Tacoma
Cogent Communications Group
Comcast Corporation
Community Fiber Network LLC
Cyberdyne Networks, Inc.
FairPoint Communications, Inc.
Frontier Broadband
Frontier Communications Corporation
Hat Island Telephone Company
Integra Telecom Holdings, Inc.
Iron Goat Networks, LLC
Level 3 Communications, LLC
Mashell Inc.
Mason County PUD #3
Platinum Equity, LLC
Sawtooth Technologies
Sprint Nextel Corporation
StarTouch Broadband
T-Mobile
Telephone and Data Systems, Inc.
Verizon Communications Inc.
WaveDivision Holdings
XO Holdings, Inc.
Zayo Group, LLC
tw telecom inc.

Source - API Call

Map »

Broadband Classroom »

Summarize »

National Broadband Map
How connected is my community?

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Please enter a provider name | Review

About Provider »

Metropolitan Statistical Area »
Seattle-Tacoma-Bellevue, WA Metro Area

This page provides an overview of the percent of population with access to broadband technology, and maximum advertised speeds for any given provider. The information is displayed according to the unit of geography (nation, state, county, etc.) selected on the previous page. Broadband data are collected by SBI grantees and are current as of June 30, 2013

Methodology and Source Export API

Share

Share this page with my community

Short URL »

Tweet

Like

AT&T Inc.

Coverage Map

This provider offers Terrestrial Mobile Wireless - Licensed broadband technologies to an approximate population of 3,543,046 (out of a total population of 3,569,322).

States/Territories where this provider offers service: 53 (click to expand).

Availability Overview

Population
3,543,046

Housing Units
1,527,043

Total area (sq miles)
2,357

Population Density (people per sq mile)
700

Highest advertised download speed

10 - 25

91.8% of population served

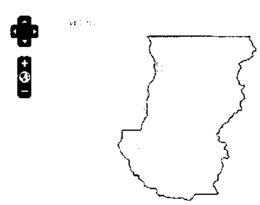
Most common advertised upload speed

768 - 1.5

99.3% of population served

Methodology & Source

Coverage Map



Data © 2008 OpenStreetMap, Rendering © 2009 CloudMade

Open Coverage Map »

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR MR. COHEN

1. Some have expressed concerns based on the fact that Comcast and Time Warner create some of their own content. Will the merger enhance the company's ability to restrict competing content providers from distributing their programs to a significant number of consumers through its distribution channels? In addition, what assurances can you provide the Committee that the newly combined company will not withhold its own programming content from competing TV and Internet providers?

Response: The combined company will have neither the incentive nor the ability to restrict competing content providers from distributing their content to consumers, or to withhold NBCUniversal programming from competing TV and Internet providers.

The combined company will account for less than 30 million managed MVPD subscribers, or less than 30 percent of MVPD homes. As discussed in our Joint Written Statement and elsewhere, this will not adversely affect the ability of content providers to distribute their content broadly to a national audience, whether or not they enter into an agreement with our company.

Most consumers can choose among three facilities-based MVPD providers; many can choose among four or more. This dynamic competition now also includes online video distributors ("OVDs"). According to SNL Kagan, 45.2 million U.S. households subscribe to online video services today, more than *double* the 19.8 million that did so in 2010. Consumers demand content from major companies, like Fox and Disney, as well as smaller companies and independent networks, like Altitude, NESN, and The Outdoor Channel. And consumers have an increasing number of providers they can choose from to access their desired content. If Comcast refuses to carry the content that consumers want, they can and will switch to our competitors.

Nor will the transaction change our incentives to license NBCUniversal content to competitors. As detailed in our Joint Written Statement, Comcast is acquiring minimal new programming interests in this transaction. Given that there is a *de minimis* change in the new company's programming holdings, it will not have any power or incentive to withhold NBCUniversal programming from MVPDs in any markets. Moreover, these relatively modest new holdings will be subject to safeguards such as the FCC's program access rules.

The licensing of NBCUniversal content to OVDs will also not be impeded by this transaction. Since the NBCUniversal transaction was approved, NBCUniversal has successfully licensed or renewed programming content to numerous OVDs, including Amazon, Netflix, and YouTube. And the *Comcast-NBCUniversal Order*'s licensing and arbitration rights for OVDs will continue to apply after the transaction.

2. Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and

deployment of broadband services? In your view, should there be more or less government involvement in this industry?

Response: Greater reliance on the competitive marketplace, and less government intervention, will promote innovation and investment. To the extent that the government believes it needs to act to ensure an open Internet, the fact that the combined company will remain subject to the FCC's original Open Internet rules through 2018 accomplishes that goal, and the FCC has now announced its intention to adopt new Open Internet rules that apply to all Internet service providers ("ISPs") in this calendar year. Other parties have called for extending regulation into other aspects of the Internet, including so-called interconnection, peering, and transit arrangements. For over two decades, ISPs and others in the Internet ecosystem have worked cooperatively to make these arrangements work. We believe introducing regulation would be counterproductive, invite regulatory gamesmanship, and needlessly break a system that is functioning well.

3. How will the proposed merger impact cable advertising? Currently, I understand that cable networks allow cable companies to keep 2 minutes per hour of advertising, which permits small businesses to advertise in a cost-effective way on national programming. Comcast and Time Warner Cable already control a substantial part of this cable advertising market, and a combined Comcast-TWC would consolidate that control over this $5.4 billion market. How can you assure the Committee that this dominant control of the market won't result in limiting the access that small businesses have, and that it won't result in higher advertising costs, which are then passed on to consumers?

Response: Comcast and TWC do not have – and, post-transaction, the combined company will not have – dominant control (or, for that matter, any control) of the cable advertising market. Advertisers who seek to reach a national television audience today primarily purchase advertising time from cable and broadcast networks, not MVPDs. These purchases can be made directly or through national broadcast representative firms.

National advertisers sometimes supplement their advertising purchases with local spot market advertising purchases from local broadcast stations or MVPDs. NCC Media is one of many firms that sell spot advertising time across multiple pay TV providers. Newspapers, radio broadcast stations, local businesses, and other small advertisers also participate in the local spot market. MVPDs may sell their available local spot advertising time directly to buyers of advertising or through firms like NCC Media.

As Professor Yoo testified during the April 9 hearing, cable companies represent only 7 percent of the local advertising market based on SNL Kagan data. "If 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." Similarly, even combined, Comcast and TWC will only have approximately 8-11 percent of television viewing saleable impressions. Although our geographic footprint may be larger, therefore, our share of the local TV advertising market will still be very small and well below any level that raises antitrust concerns.

Lastly, Comcast and TWC operate in distinct geographic footprints and do not compete for small business advertisers. Combining the Comcast and TWC systems, therefore, will not reduce the many advertising choices small businesses have to reach households in any relevant local market. Advertisers will continue to enjoy a great many alternative outlets in the Designated Market Areas ("DMAs") where the combined company operates, including broadcast television, other MVPDs, radio, Internet media, newspapers, direct mail, and outdoor display advertising, to place local advertisements for small businesses.

4. If the proposed merger is approved and Comcast-TWC has a dominant position in the local spot advertising market, wouldn't that make it more difficult and expensive for local businesses to advertise in the spot market? Would there be an incentive to sell more spots at higher prices to national and regional advertisers, giving local small businesses fewer options and forcing them to pay higher prices? What are the implications for others in the cable television community – for example, independent cable systems, satellite carriers and other cable advertising companies – if they cannot get access to the spot advertising market other than through Comcast?

Response: As noted above, Comcast and TWC serve distinct geographic markets and do not compete for local spot advertising. (New York is the only DMA where Comcast and TWC both sell cable spot advertising. But advertising on a Comcast system is not a substitute for advertising on a TWC system, since the systems serve different customers.) Given the lack of overlap between the two companies, and the limited programming assets owned by TWC, buyers of advertising on all business levels – small, regional, and national – will have the same choices among all of the competing advertising outlets as they have today. Similarly, independent cable systems, satellite carriers, and other pay TV providers will continue to be able to sell their available local advertising time directly to buyers of advertising or through firms like NCC Media that sell advertising time across multiple pay TV providers.

5. So called "cord cutting" is becoming more and more popular, especially as companies like Netflix and Hulu gain traction. Comcast controls the internet connections that many people use to access these sites. But because Comcast also provides cable television access, it could have an interest in preventing people from cutting the cord. What assurances can you give the Committee that it won't use its control of the internet infrastructure to stop consumers' ability to "cord cut?"

Response: Comcast has no interest in degrading a consumer's online experience to disadvantage online video distributors or other edge providers. That would only harm the attractiveness of our fastest-growing business segment – high-speed broadband. Further, as part of the NBCUniversal transaction, Comcast agreed to be bound by the Open Internet's "no blocking" and non-discrimination rules, which prohibit impeding or discriminating against the flow of online video programming offered by Netflix, Hulu, or others to Comcast broadband customers.

6. The Comcast consent decree with DOJ and the FCC Conditions to the NBC Universal transaction forbid Comcast from limiting or using incentives to limit a cable programmer from selling its content to an online video distributor. Since September 2011, has your company entered into or modified any program carriage agreements that contain contractual provisions which create a financial disincentive for programmers to sell their programming on an online video distributor?

Response: All of the carriage agreements Comcast has entered into since January 2011 are fully consistent with the applicable provisions of the DOJ Consent Decree and NBCUniversal Order.[1]

[1] Under both the DOJ Consent Decree and FCC Conditions, Comcast (in this case, specifically, Comcast Cable) is permitted to obtain exclusive rights to show a program if the period of exclusivity is 14 days or less; and online exhibition for free of content for which Comcast pays a license fee can be prohibited for the 30-day period after the content has first aired. DOJ Consent Decree, § V.C; *Comcast-NBCUniversal Order*, App. A, § IV.B.3.a, b. Exclusivity rights are a way for programmers and distributors to recoup the costs of original content, which generates more content, which is good for consumers. The FCC has recognized these pro-consumer benefits, *see Revisions of the Commission's Program Access Rules*, Report and Order, 27 FCC Rcd 12605, ¶¶ 41-46 (2012), and exclusivity is widely used by OVDs and MVPDs to distinguish their services.

"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"
Questions for the Record Submitted by
Senator Orrin G. Hatch

Questions to Mr. David Cohen:

1. **During the hearing, you noted that the issue of "a la carte" programming is complicated and that the result of an a la carte regime could be less choice and higher costs for consumers. In contrast, others argue that a la carte programming would give consumers access to more choices at lower prices. Please explain why you believe a la carte options would not increase consumer welfare.**

Response: There was a robust and healthy debate a few years ago about whether consumers would be better off in an a la carte world. What we learned is that while a la carte may sound like a good idea on its face, almost every independent study shows that the result of an a la carte regime would be less choice for consumers and higher cost.

The ability of programming networks to obtain a dual revenue stream – carriage fees from cable operators like Comcast, and advertising based on their potential household reach – is key to the proliferation of high-quality cable programming. In an a la carte world, where potential eyeballs may be dramatically reduced, both streams would be disrupted, and the retail price of each individual network would likely be dramatically higher than its cost as part of a programming package.

As the Congressional Research Service has found, any benefit of a la carte might go only to households that watch a small number of networks and prefer general interest programming. *See* Congressional Research Service, *The FCC's 'a la carte' Reports* (Mar. 30, 2006). That is not a majority of consumers. CRS also found that the migration of even a small percentage of households to a la carte pricing could completely undermine the economic feasibility of large tiers and the broad array of channel choices they provide.

In a separate study, the Government Accountability Office found that an a la carte requirement could result in increased cable rates (and higher per-channel rates) for most consumers and that, with increased license fees resulting from reduced ad revenue opportunities, there is no reason to assume that cable bills would decline for most Americans. *See* U.S. Government Accountability Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, at 34 (Oct. 2003).

Programming packages, or tiers, provide great value while supporting more original and independent content and programming choices. Comcast offers a wide variety of service packages so that our customers can choose the one that's right for them. A multitude of factors go into our decisions regarding the packaging and pricing of the services we offer, including responsiveness to our competitors.

Advocates who say that consumers are being forced to pay for channels they do not watch are wrong. A consumer who purchases a tier of cable services does not "subsidize" programming she does not watch any more than a purchaser of a newspaper "subsidizes" a particular columnist with whom she disagrees, or any more than a diner who prefers the chicken at a restaurant buffet is subsidizing the diner who prefers fish.

a. In addition to the direct effects on consumers, what would be the impact of mandatory a la carte offerings on independent programmers? In particular, what would a la carte do to the launch and growth of new program services, including those targeted at niche interests?

Response: Without access to a large subscriber base, and the corresponding subscription and advertising revenues, many smaller programming networks would not be viable. For example, the former COO of Ovation wrote last year in the *San Jose Mercury News* that "tiered programming combines smaller, independent networks [like Ovation] with larger well-established ones (like ESPN) and thereby allows all programmers – big and small – to build a larger audience from the bigger universe of viewers of the entire tier." He concluded: "This huge exposure that a network gets from being grouped on a tier helps offset the growing costs of producing programming. . . . Take away the tier, and these costs are inexorably shifted to the consumer." Chad E. Gutstein, *Pay-Per-Channel Pricing Costs Cable, Satellite TV Users More*, July 8, 2013, http://www.mercurynews.com/ci_23621224/pay-per-channel-pricing-costs-cable-satellite-tv.

A la carte would have a particularly adverse effect on diverse and niche programming. The Executive Director of the NAACP said last year that efforts to mandate a la carte are "aimed squarely at squelching new and emerging voices on television that represent the proud and diverse fabric that is contemporary America." David Honig of the Minority Media and Telecommunications Council has said that a la carte "would be the death knell for program diversity." He speaks of multichannel cable as the equivalent of a video library; just as natural curiosity motivates visitors to browse library shelves and check out books they have never heard about, cable channel surfing allows viewers to sample and enjoy programming they would likely never see if the government had forced them to order cable a la carte.

Our current market structure benefits diversity of all kinds, including political perspective, whereas an a la carte approach would harm it.

2. During the hearing, you drew a distinction between "compliance" issues and "interpretive" issues involving the FCC's oversight of the NBCUniversal conditions and your written testimony about that subject. Please clarify what you meant by this distinction.

Response: To date, the FCC has only initiated one "compliance" investigation concerning the NBCUniversal conditions. As noted in our Joint Written Statement, in 2012, the FCC investigated Comcast's compliance with the standalone broadband condition. That investigation has concluded and we have addressed the concern.

Separately, a dispute arose between Comcast and Bloomberg TV over interpreting what the language of the "neighborhooding" condition 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. It is fair to say that in both of the above instances, the FCC looked at questions concerning the NBCUniversal conditions, as I acknowledged during the hearing.[1]

3. **It is my understanding that so-called interconnection or peering arrangements—such as the recently-announced deal between Comcast and Netflix—are commercial agreements to distribute the costs of upgrading network infrastructure to meet growing demand for online video. I understand that Internet providers and those that provide online video content have different views about who should pay to upgrade network capacity. Despite these differences, agreements such as the one between Comcast and Netflix suggest that there is a market-based solution. From Comcast's perspective, is this market-driven approach working?**

Response: Yes it is. The terms for exchange of Internet traffic from companies transporting content, like Netflix, and Internet service providers ("ISPs"), like Comcast, have been successfully worked out in the market through commercial negotiations for nearly two decades. In this particular case, Netflix wanted to cut out the middleman – it wanted to bypass the transit providers and CDNs it had long used to obtain access to Comcast's network, and set the goal of negotiating a more favorable rate for interconnection directly with Comcast. Comcast worked collaboratively with Netflix over many months on these arrangements, and an agreement was reached. The Internet traffic exchange market continues to work well, far better than regulation could, and government involvement is unwarranted and would be counterproductive.

a. **During the hearing, Mr. Kimmelman testified that the merger would give Comcast more leverage not only in carriage negotiations with content providers, but also in negotiations to provide Internet companies like Netflix direct access to Comcast's networks. How can we ensure that these agreements between Comcast online content providers regarding how Internet traffic is delivered are not anticompetitive?**

Response: Mr. Kimmelman's argument is wrong. There are a wide variety of routes into our networks. We have over 40 settlement-free peering agreements, and thousands of commercial (*i.e.*, paid) connecting arrangements, which include several dozen substantial peering and transit agreements (*e.g.*, with CDNs, ISPs,

[1] The FCC has also participated in one arbitration under the *Comcast-NBCUniversal Order* involving a benchmark demand for content by a start-up company named Project Concord. Project Concord's benchmark request covered certain content that, under common and reasonable industry practices, is restricted from ad-supported exhibition for certain time periods under other NBCUniversal license agreements. The Conditions include an express provision to ensure that no benchmark demand results in the violation of the rights of other NBCUniversal licensees, and the arbitration centered on parsing through these contract issues. The Media Bureau reviewed the arbitration order, including relevant provisions of affected contracts, and *agreed* with NBCUniversal on *every* contract issue.

or larger edge providers). Because of the competition in the business of Internet traffic exchange, and the ability to send traffic to our network in multiple ways, the market will ensure that a combined Comcast/TWC will have no ability to raise prices or degrade service for edge providers. When Comcast accepts traffic from a transit provider or CDN, Comcast is not at liberty to discriminate against the traffic of any particular edge provider using that mode of transport; moreover, because most major edge providers use multiple sources of transit or other pathways into an ISP's network, an effort to block would quickly devolve into a game of "whack-a-mole." And the agreements Comcast offers for direct connection must be reasonable and even attractive or no edge provider would enter into such an agreement. Competition in transit services has caused the price to plummet by 99 percent in the last 15 years. If we tried to charge Netflix – or anyone else – a price for traffic exchange that was higher than the market price for transit, they would have the ready alternatives of buying very affordable transit service through a third-party provider instead.

4. **The rapidly-evolving set-top box is already starting to bridge the divide between online streaming and the traditional cable viewing experience. Time Warner Cable was reportedly collaborating with Apple on a next-generation set-top box, and now reports indicate that Apple is considering a partnership with Comcast to create a new set-top box. Some commentators suggest that such a partnership could provide exciting new technology to consumers. But cable companies have historically been reluctant to let third-parties control the viewing experience for their customers. How will this merger affect Comcast's willingness to partner with others—in some cases, competitors—to improve the viewing experience for consumers?**

Response: Customers want the ability to watch video programming where and when they want to, and on the equipment of their choice. Comcast is strongly committed to meeting that demand. We are an industry leader in providing our customers with a variety of ways to access our cable and TV Everywhere services on retail devices. We constantly evaluate additional options to enhance the customer experience.

HBO Go: Comcast authenticates HBO Go for a wide array of devices: desktop/laptop computers, iPad, iPhone, Android smartphones, Kindle Fire, Android 7- and 10-inch tablets, Samsung Smart TVs, Xbox 360, and Apple TV. Comcast is exploring other authentication for additional platforms, including Roku.

Xfinity TV Go App: The Xfinity TV Go app, which allows customers to stream shows and movies, is currently available on iPhone, the later generations of iPod touch, iPad, Kindle Fire, and some Android phones and tablets.

PCs/Macs: Comcast customers have the ability to access TV Everywhere content via the Xfinity.com website on their PCs, Macs, and other device platforms supporting an Internet browser.

Comcast also supports the ability of customers to access our cable services on various customer-owned devices:

> *IP Cable Streaming*: Comcast customers can access its IP VOD services (without needing an additional cable set-top box) on both Xbox 360s and Samsung TVs; and Comcast is now enabling customers to experience its full IP cable service via an Xfinity app on PCs/Macs, iOS devices running 7.0 or higher, and Android devices running 4.4 or higher.
>
> *CableCARD*: We have long supported TiVo and other retail CableCARD-enabled retail devices in our cable systems, and will continue to do so post-transaction. We have gone above and beyond the FCC's CableCARD requirements in this area by giving TiVo customers the ability to access our VOD services on TiVo devices using our "Cardio" solution throughout most of our footprint.

5. **During the hearing, Mr. Bosworth contended that Comcast carries only 20 independent networks. You testified that the number of independent networks is actually over 160. Can you please clarify how you counted the number of independent networks that Comcast carries for purposes of your testimony?**

   Response: Mr. Bosworth was wrong. In the *Comcast-NBCUniversal Order*, the FCC defined "independent networks" as those networks that are not owned by Comcast and are not an affiliate of either Comcast or a top 15 programming network, as measured by annual revenues. Using the FCC's definition, Comcast carries over 160 independent networks, which are listed in Attachment A.

6. **Since Comcast's 2011 merger with NBCUniversal, have any independent channels been dropped from any Comcast program lineups? If so, what was the reasoning? Does Comcast drop independent stations when their Nielsen ratings exceed a certain level?**

   Response: Between January 2011 and the end of 2013, Comcast added 20 independent networks and expanded carriage of over 120 independent networks.[2] Comcast dropped 15 independent networks during that time for various reasons, including a decision by the owners to cease operations, the loss of key programming rights by the network, and lack of subscriber interest (leading to replacement by better-performing networks). These networks were not dropped due to Nielsen ratings. Many independent networks choose not to subscribe to Nielsen and therefore are not rated by it.

7. **Independent programmers are concerned that further consolidation in multichannel video programming distribution will make it more difficult for independent networks to secure carriage. What criteria are used by Comcast to evaluate**

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[2] For example, the Africa Channel has been expanded to more than two million homes; Mnet, the only 24/7 English-language nationwide television network in the U.S. targeting Asian Americans, has been expanded to millions of additional subscribers in major DMAs; and we also launched MYX TV, a channel made for and by Asian Americans, in Seattle and western Washington state.

independent programming networks for carriage? What criteria are used to determine if carriage of the independent programming network should be in standard definition or high definition? Is Comcast launching the high definition feeds of independent channels, or limiting them to standard definition?

Response: Comcast has an stellar record of commitment to providing carriage of independent programmers. In evaluating carriage or expand carriage of a network, Comcast typically considers several factors, including whether a network is offering programming that our customers value and demand, as well as the network's proposed license fees, requested level of distribution, management experience, and financial stability. We must also consider how carriage of a network would affect our overall programming costs, our customers' monthly rates, bandwidth capacity, and other factors.

Comcast does not have a specific policy with respect to launching independent networks in high or standard definition. Our decision depends on many variables, including the quality of programming, viewer interest, financing of the network, other carriage the network has obtained, bandwidth constraints, cost, and management expertise. For example, while many independent networks are available in high definition (*e.g.*, Univision, Bloomberg, MASN, NESN, Altitude), others have chosen to pursue standard definition as a pathway for launch, particularly on systems that have limited bandwidth availability.

ATTACHMENT A
List of Independent Networks Carried By Comcast

¡Sopresa!
AYM Sports
BridgesTV
Cable Noticias
Canal 24
DMX Music
El Garage TV
ELLA (fka Casa Club TV)
GolTV
Korean American TV
LaTele Novela
Mexico 22
Mexico TV
Teleritmo
World Today TV
El Rey
Revolt
HSN
QVC
Jewelry TV
TV Guide Network
Univision
EWTN
BBC America
Bloomberg Television
UP (fka GMC)
GSN
UniMas (fka Telefutura)
WGN
Galavisión
Word Network
INSP
Azteca America
NBA TV
Outdoor Channel
TBN
Fuse
Al Jazeera (fka Current TV)
Daystar
BBC World News
Bandamax
De Película
De Película clasico
iON
Family Net
Outside Television (Satellite)
MYX
Pentagon Channel
Total Living Network
World Fishing Network
NESN
MASN
JUCE (fka JCTV)
Boston Catholic
PA Cable Network
iON qubo
iON Life
NASA
CA Channel
Northwest Cable News
Impact Network (Local Detroit)
TBN Enlace
Smile of A Child
HRTV
TV Washington
Church Channel
Altitude
Catholic TV
Newschannel 8
Cine Latino
ViendoMovies
VeneMovies
Cine Mexicano
WAPA-America
RFD TV
Gran Cine
Telehit
Once Mexico
CentroAmerica TV
TV Colombia
RTP Int'l
News 12 NJ
Three Angels Broadcasting
Texas Cable News
MAVTV
Portuguese Channel
BYU International
BlueHighways TV
Antena 3
Playboy en Espanol
TYC Sports International
Six News Now
Supercanal
Youtoo TV (fka American Life)
Arizona Capitol TV
Telemicro Int'l
Local Weather Station
HDNet Movies
GMA Pinoy
EWTN Espanol
TV Globo
Filipino Channel
Zee TV
RAI Italia
TV 5
SET Asia
News 12 WC
Star Plus
TV Japan
Jade Channel
Cox Sports
Channel One Russia
RTN
CCTV 4
CTI Zhong Tian
TV Asia
GMA Life
Star Gold
ABPNews (fka Star News)
Willow Plus (fka Neo Cricket)

Reelz Channel	LAS	ETTV
Ovation TV	MEXICANAL	TV Polonia
ASPiRE	Pasiones	Deutsche Welle
Baby First TV Americas	V-Me Kids	SPT
MGM HD	TV Chile	Mediaset
TV Games	TV Dominicana	RTVI
NuvoTV (fka SiTV)	Sur (fka Canal Sur)	Bandeirantes Int'l
Sportsman Channel	Caracol TV	Israeli Network
Pivot (fka Halogen	Sur Peru	TV Record Int'l
JLTV	TV Venezuela	Washington Korean TV
Africa Channel	PCNC	ART
HITN-TV	TeleFormula	Vijay TV
AXS TV (fka HDNet)	Video Rola	Premier Futbol Clube (fka TV Globo)
Mnet (fka ImaginAsian TV)	TVE Internacional	Antena Satellite TV
Tennis Channel	Ecuavisa	Russian Kino
Crossings TV	Latinoamérica Televisión	Impact TV
BYU Television	Telefe International	Phoenix N.A. Chinese Channel
beIN – SP	MVS (Canal 52)	Phoenix Infonews
beIN – EN	Multimedios	Milenio
Ritmoson Latino	BMA (WRNB - Minneapolis)	

SENATOR LINDSEY O. GRAHAM
9 APRIL 2014
U.S. SENATE COMMITTEE ON THE JUDICIARY

QUESTIONS FOR THE RECORD FOR MR. DAVID COHEN AND MR. ARTHUR MINSON, JR.:

1. **I have heard concerns that the proposed Comcast/Time Warner Cable merger will hinder the ability of independent television networks to get carried by cable providers. How would the Comcast/Time Warner Cable merger affect the ability of independent networks, like INSP (also known as Inspiration Network), to get carried by Comcast?**

   Response: The proposed transaction will not have any impact on our ability to carry independent networks, including INSP. Comcast has a stellar record of commitment to providing carriage of independent programmers. Comcast 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. Since the NBCUniversal transaction, Comcast has launched several new independent networks (including ASPiRE, BabyFirst Americas, El Rey, and REVOLT) and has supported the development of several more. Comcast also expanded distribution of over 120 independent programmers since 2011. As Charles Segars, CEO of the Ovation Network, recently wrote in the *Los Angeles Times*, "Comcast has been a good friend and ally to the independent programming community, bringing unique content to an underserved audience. . . . This merger will be a boon for unique, independent programmers." Charles Segars, Letter to the Editor, L.A. Times, Feb. 16, 2014, http://articles.latimes.com/2014/feb/16/opinion/la-le-0216-sunday-comcast-time-warner-20140216.

   Although network subscriber counts are confidential, Comcast has doubled the number of subscribers that can access the INSP network since 2011, and it is available in millions of homes served by Comcast.

2. **Why do independent television networks, like INSP, that are fast growing and have consistently increasing ratings - higher than a large portion of the higher-profile networks carried - have to pay service providers, when those other networks actually get paid licensing fees?**

   Response: It is very common for cable networks to pay launch, marketing, and other support and incentives to cable operators as a part of initial carriage agreements. Some of the most popular cable networks today started by paying operators for launch; otherwise consumers would bear the expense. As networks gain popularity, and depending on other market conditions, they can and often do seek license fees from cable operators in carriage renewals. In the case of INSP, in recent years Comcast has doubled carriage of the network while another major national competitor has recently dropped the channel.

Questions for the Record
"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senator Mike Lee
April 16, 2014

David Cohen (Exec. VP, Comcast)

1. **Some proponents of the merger have argued that, because the price for video content is increasing, if cable companies such as Comcast are to keep prices from rising, they must have increased leverage to negotiate better deals with content providers.**

    a. **Do you believe that content providers have more leverage than cable companies do in negotiations over price? And do you believe this merger provides additional leverage so as to be able to better negotiate price?**

    Response: Content providers have significant bargaining power, as the recent dispute between CBS and TWC confirmed. Programming costs are increasing at rates in excess both of inflation and of retail cable price changes. In fact, programming is the single biggest driver of cable price increases. From 2004 through 2013, Comcast's programming costs per video subscriber have cumulatively increased *over 120 percent*. Over the same time period, however, cable prices increased at about half that rate. If this transaction is approved, the resulting synergies and a potential slight increase in leverage in negotiating programming deals may enable the combined company to negotiate better prices and pass along some savings to customers.

    b. **If you don't believe the merger will increase your leverage with content providers, than do you believe the merger will help you in the video market? If so, how?**

    Response: While any additional leverage from this transaction could potentially help moderate future programming cost increases, it would more likely allow us to seek greater value for our customers. For example, we may be able to obtain comprehensive digital rights to more programming that could be offered as part of TV Everywhere and other streaming services. More broadly, the greater scale and efficiencies resulting from the transaction will enable the combined company to accelerate digital migration of TWC's systems, giving millions of TWC customers more reliable, secure networks and access to Comcast's cutting-edge and nationally acclaimed X1 entertainment system (including system upgrades), as well as more content on a variety of devices inside and outside the home. By providing TWC customers the enhanced video experience that Comcast customers already enjoy, we hope to win back TWC customers in the face of increasingly widespread and rigorous competition – just as Comcast has been doing in its own systems.

2. **Some critics of the merger have expressed concern that if this merger is approved, independent programmers would not be able to survive without gaining access to Comcast—a situation that would give Comcast significant power as a kind of gatekeeper to new content providers being born. While you may disagree with this characterization, it seems that real opportunities for new independents to thrive are lacking.**

a. **In your view, is the video market such that, even if this merger were approved, a content provider could gain enough prominence through other means of distribution to survive even without carriage on Comcast? Or would you argue instead that although being carried by a cable provider such as Comcast is essential to an independent network, the market is such that an independent network with valuable content will generally be able to obtain a contract with Comcast and other cable companies?**

Response: As the FCC has concluded, and as the record clearly shows, content providers can build a large enough carriage base through distribution means that exclude Comcast (even after it acquires TWC) to not only survive, but thrive. For example, looking solely at carriage by MVPDs, Epix, Longhorn Network, NFL Sunday Ticket, Fusion, Fox Soccer Plus, Chiller, Cloo, Universal Sports, and MTV U are among the many networks that are carried by other MVPDs but not by Comcast. Similarly, the Big 10 Network, ESPNU, Smithsonian Channel, Fox Movie Channel, MASN, CBS Sports Net, and several other networks were launched by other MVPDs before Comcast started carrying them. Moreover, carriage by Comcast does not guarantee a network's success. For example, AZN, Bridges Network, ESPN3D, and Mountain West Conference Channel are among networks that Comcast carried that were ultimately not successful.

Clearly, carriage by Comcast is not essential to the ability of an independent network to launch or succeed. Nevertheless, Comcast, like the MVPDs with which it competes, has every business incentive to carry programming that its customers value and demand. And the record shows that Comcast is a great friend to independent programmers, providing carriage to over 160 of them.

b. **What is your view of the requirement imposed during the acquisition of NBC Universal requiring carriage of independent networks, and do you believe a similar requirement is appropriate in this case?**

Response: Even without the independent network commitment from the NBCUniversal transaction, Comcast has a stellar record of commitment to independent networks. Comcast carries over 160 independent networks. *See* Attachment A. *Six of every seven* networks carried by Comcast are unaffiliated with the company. As Charles Segars, CEO of the Ovation Network, recently wrote in the *Los Angeles Times*, "Comcast has been a good friend and ally to the independent programming community, bringing unique content to an underserved audience. . . . This merger will be a boon for unique, independent programmers." Charles Segars, Letter to the Editor, L.A. Times, Feb. 16, 2014, http://articles.latimes.com/2014/feb/16/opinion/la-le-0216-sunday-comcast-time-warner-20140216.

The opportunities for video distribution, which cable companies helped to expand dramatically, have grown even more rapidly with online video. According to SNL Kagan, 45.2 million U.S. households subscribe to online video services today, more than *double* the 19.8 million that did so in 2010 when the NBCUniversal transaction was announced.

Our independent network commitment will continue to apply until 2018. Given our stellar record, and the increasingly dynamic and robust marketplace for independent programming distribution, we do not believe any further extension of that commitment is necessary.

ATTACHMENT A
List of Independent Networks Carried By Comcast

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El Garage TV
ELLA (fka Casa Club TV)
GolTV
Korean American TV
LaTele Novela
Mexico 22
Mexico TV
Teleritmo
World Today TV
El Rey
Revolt
HSN
QVC
Jewelry TV
TV Guide Network
Univision
EWTN
BBC America
Bloomberg Television
UP (fka GMC)
GSN
UniMas (fka Telefutura)
WGN
Galavisión
Word Network
INSP
Azteca America
NBA TV
Outdoor Channel
TBN
Fuse
Al Jazeera (fka Current TV)
Daystar
BBC World News
Bandamax
De Pelicula
De Pelicula clasico
iON
Family Net
Outside Television (Satellite)
MYX
Pentagon Channel
Total Living Network
World Fishing Network
NESN
MASN
JUCE (fka JCTV)
Boston Catholic
PA Cable Network
iON qubo
iON Life
NASA
CA Channel
Northwest Cable News
Impact Network (Local Detroit)
TBN Enlace
Smile of A Child
HRTV
TV Washington
Church Channel
Altitude
Catholic TV
Newschannel 8
Cine Latino
ViendoMovies
VeneMovies
Cine Mexicano
WAPA-America
RFD TV
Gran Cine
Telehit
Once Mexico
CentroAmerica TV
TV Colombia
RTP Int'l
News 12 NJ
Three Angels Broadcasting
Texas Cable News
MAVTV
Portuguese Channel
BYU International
BlueHighways TV
Antena 3
Playboy en Espanol
TYC Sports International
Six News Now
Supercanal
Youtoo TV (fka American Life)
Arizona Capitol TV
Telemicro Int'l
Local Weather Station
HDNet Movies
GMA Pinoy
EWTN Espanol
TV Globo
Filipino Channel
Zee TV
RAI Italia
TV 5
SET Asia
News 12 WC
Star Plus
TV Japan
Jade Channel
Cox Sports
Channel One Russia
RTN
CCTV 4
CTI Zhong Tian
TV Asia
GMA Life
Star Gold
ABPNews (fka Star News)
Willow Plus (fka Neo Cricket)

Reelz Channel
Ovation TV
ASPiRE
Baby First TV Americas
MGM HD
TV Games
NuvoTV (fka SiTV)
Sportsman Channel
Pivot (fka Halogen
JLTV
Africa Channel
HITN-TV
AXS TV (fka HDNet)
Mnet (fka ImaginAsian TV)
Tennis Channel
Crossings TV
BYU Television
beIN – SP
beIN – EN
Ritmoson Latino
LAS
MEXICANAL
Pasiones
V-Me Kids
TV Chile
TV Dominicana
Sur (fka Canal Sur)
Caracol TV
Sur Peru
TV Venezuela
PCNC
TeleFormula
Video Rola
TVE Internacional
Ecuavisa
Latinoamérica Televisión
Telefe International
MVS (Canal 52)
Multimedios
BMA (WRNB - Minneapolis)
ETTV
TV Polonia
Deutsche Welle
SPT
Mediaset
RTVI
Bandeirantes Int'l
Israeli Network
TV Record Int'l
Washington Korean TV
ART
Vijay TV
Premier Futbol Clube (fka TV Globo)
Antena Satellite TV
Russian Kino
Impact TV
Phoenix N.A. Chinese Channel
Phoenix Infonews
Milenio

RESPONSES OF GENE KIMMELMAN TO QUESTIONS SUBMITTED BY SENATORS KLOBUCHAR, GRASSLEY, AND LEE

Senator Klobuchar's QFRs
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Gene Kimmelman, Public Knowledge
Comcast owns the NBC Universal suite of content – including must-have channels like Bravo and USA Network, and several regional sports networks. Competitive video providers in Time Warner's footprint will now have to buy NBC programming from Comcast. For competitors this cost must be passed on to its consumers. Will the merged company's larger presence throughout the country, especially in major markets like New York and Los Angeles, give it even more leverage to charge its competitors more for the Comcast-NBC suite of programming? Could the merger impact prices for consumers who are served by MVPDs outside of Comcast and Time Warner Cable's footprint?

Public Knowledge's answer:

Yes. The harms from vertical integration and horizontal expansion are interrelated. The greater the combined company's horizontal reach as a cable company—that is, the more markets it provides service in and the more subscribers it serves—the greater its incentive to use its programming assets to benefit the cable part of its business. Post-merger, if the company overcharges for NBCU content, even if that reduces demand for that programming, the company as a whole would still benefit due to the harms to competitors in the distribution space.

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER HEARING, APRIL 9, 2014

QUESTIONS FOR MR. KIMMELMAN

In your opinion, should Congress take additional steps to ensure access to the Internet for content, service and application providers, as well as for consumers? Or are existing laws and policies sufficient to deal with potential anti-competitive behavior?

Public Knowledge's answer:

The FCC is in the process of crafting revised Open Internet policies, which have the potential to ensure that all content creators and service providers have a chance to reach Internet users. Under Title II of the Communications Act, the FCC has the legal authority it needs to accomplish this.

We currently have a hodgepodge of regulations that regulate the communications sector. Common Carriers are regulated like a telephone company from 1982 when they had a monopoly on voice services. Today, Comcast and Time Warner Cable are both competing with telephone companies not only for broadband customers, but for voice customers as well. Do you believe that today's regulatory regime that places burdensome regulations on the telephone company but not on the cable company, gives the cable company a market advantage?

The justification for common carrier treatment of basic communications services has not changed since the days of the telegraph. The application of common carriage principles to different technologies is of course different, but the concept of common carriage is as important today as it ever was. Furthermore, common carrier status never has been, and should not be, reserved only for monopolies. Again, the application of common carrier principles in a monopoly context might be different than the application of those principles in another context but the overall framework should continue to guide policymakers.

At the moment, broadband services are not treated as common carriers, whether they are provided by telephone companies or cable companies. So this does not provide a competitive advantage to cable over telephone. By contrast, telephone services provided by cable companies have an unclear regulatory status, and the interconnection obligations of IP-based telephone services (regardless of who provides them) are also unclear. This market uncertainty harms consumers and competition. To the extent this unclear policy situation helps any part of the industry it is to the extent that policies can be manipulated to exclude competition. The actual costs of compliance with interconnection requirements or other common carrier requirements themselves are minimal.

In your opinion, what will be the effect of the merger on regional sports programming costs, which are necessary for other video providers to offer in order to maintain a viable service?

Sports programming is one of the clearest examples of "must-have" content. A vertically-integrated, horizontally-expansive cable/broadband provider can use sports to gain an unfair advantage in the marketplace in at least two ways: (1) By controlling sports programming directly, and pricing that programming at a level that harms competing distributors, and (2) by squeezing independent sports programming providers, forcing those programmers to raise the costs they charge to competing distributors.

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

Just as bad regulation can inhibit competition and technological innovation, good regulation is necessary when market forces fail to ensure those very things. The government is regulating already, so the first task is to ensure that its policies help consumers and competition instead of protecting incumbents. Whether particular interventions are necessary can only be determined in a very fact-specific way.

What are the implications of this merger for open access and peering in the broadband market? How does the proposed transaction affect competition in the market for "last mile" interconnection services?

This merger would harm competition in those markets. Comcast/TWC would control a large proportion of the country's Internet users, and the terms they set for access to their customers would have large effects throughout the industry. In many ways, the problems this merger poses to those companies who operate networks that must interconnect with Comcast's (e.g., Cogent and Netflix) parallel the challenges that independent video programmers face when they must have their programming carried by Comcast. When just one company controls access to such a large part of the country's base of Internet users and TV viewers, actions that company can end up harming industries and users everywhere.

What effect will the merger have on competing set-top boxes like Roku and Apple TV?

Devices like the ones listed above are niche, because they only access online content, not MVPD content. While a path for third-party devices to access cable content exists—CableCARD—TiVo's challenges show that this is no easy path. This merger would make a bad situation for third-party devices even worse. In the absence of reform to CableCARD, devices that want full access to cable content without using that technology must individually negotiate with each MVPD. Having one less MVPD doesn't make this any easier, since the larger an MVPD is the less willing it is to work with third parties that want to offer customers a differentiated user experience.

Some are concerned that this merger is bad for content providers because a combined Comcast-Time Warner Cable would be too powerful of a gatekeeper. However, others view this merger as a possible signal that the industry is transitioning from a cable television system of the past to a new system. Could this merger break down some of the walls of innovation and shift from a licensing model to a more direct IP-enabled model?

No. This merger would be more likely to lock in the current distribution model. The current cable model has been very profitable for Comcast and nothing about this merger would give it an incentive to switch away from it. In fact, this merger would give it an increased ability to fend off challenges from new forms of competition, whether they come from satellite, broadband, or some other new technology or business model.

Things are changing in how we view television – every day there are more ways to watch our shows, movies and other content. Comcast and Netflix have reached a deal and it has been rumored that Apple and Comcast have had discussions about providing service for Apple TV. Both of these entities are Comcast competitors. How does this co-opetition benefit consumers? How does it affect the industry?

Consumers benefit from competition, choice, and flexibility, not sweetheart or anti-competitive deals between corporate giants. Healthy markets are characterized by open competition, not corporate cronyism.

Comcast is the country's largest cable company and largest broadband provider. Apple is the world's largest company by market capitalization. The deals companies of this sort are able to come to with each other may undercut competition from smaller companies.

While Comcast and Netflix have come to an arrangement, Netflix has been public with its position that it shouldn't have to "deal" with Comcast in this way simply to reach Comcast subscribers, many of whom have no alternative broadband provider (but could easily switch away from Netflix). This deal could portend a world where gatekeeper ISPs rake profits off of most successful online services, undercutting incentives to innovate.

Questions for the Record
"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senator Mike Lee
April 16, 2014

Gene Kimmelman (President and CEO, Public Knowledge)

1. *Mr. Kimmelman, in your testimony you expressed concern with regard to the potential degree of market power Comcast could have with respect to the purchasing of video content. This seems to be a question of monopsony—the power of a buyer to dictate terms to a seller.*

   a. *How could undue monopsony power harm consumers, and with respect to this transaction in particular, what makes you concerned that the company's purchasing power could harm consumers?*

Public Knowledge's answer:

A monopsony harms consumers by harming programmers and online service providers. By squeezing programmers (e.g., paying them less, or making them provide more generous terms), gatekeepers can impose costs on their rivals. If a programmer can't get paid enough from Comcast, it may have to charge more to other MVPDs (or reduce its investment in programming, which is also a consumer harm). Other MVPDs facing higher costs may have to raise their prices, while Comcast would face no competitive pressure to lower its bills. Similarly, if an Internet service has to pay Comcast for access to its millions of subscribers, it will have to either charge its own customers more, find a way to make smaller ISPs pay it, or reduce the quality of its offering. All of these directly harm the cost and quality of the services available to consumers.

2. With respect to the market for video programming, testimony was given during the hearing that the combined company would have less than a 30 percent share of the market. And court decisions have confirmed that a share of less than 30 percent in the video market is insufficient to raise competitive concerns.

   a. How would you respond to those that argue that based on the fact that Comcast would have less than 30 percent of the video market this transaction does not pose competition concerns?

Public Knowledge's answer:

First, the 30% number was a maximum. Market shares below that number were never given a safe harbor, but rather judged on their particular facts. Second, that number only applied to the MVPD market and did not account for unique circumstances where MVPDs were also vertically integrated.

Yet some of the largest harms that would arise from this merger arise in the broadband context, which calls for a new analysis. Of course, applying the 30% figure to broadband does Comcast no favors. While Comcast has fewer broadband than cable customers it is more dominant in broadband because of the lack of a broadband equivalent to DBS. Post-merger, Comcast's share of the high-speed broadband market would be about 50%, depending on the counting methodology.

RESPONSES OF ARTHUR T. MINSON, JR., TO QUESTIONS SUBMITTED BY SENATORS KLOBUCHAR, FRANKEN, GRASSLEY, GRAHAM, AND LEE

Responses to Questions for the Record for
Arthur Minson, Executive Vice President and Chief Financial Officer, Time Warner Cable

"Examining the Comcast-Time Warner Cable Merger and Impact on Consumers"
Senate Judiciary Committee

May 1, 2014

Senator Klobuchar

In a January earnings call, CEO Rob Marcus announced the launch of a new customer experience, called "TWC Maxx" and that will triple Internet speeds for customers with our most popular tiers of service, add more community WiFi, [and] dramatically improve the TV product." In your testimony, you say that as a result of the merger, Time Warner Cable customers will benefit from higher speed data services and Comcast's next generation X1 platform. Are these the things that Time Warner Cable was already planning to offer to consumers if the merger didn't occur?

The TWC Maxx initiative promises to deliver Time Warner Cable subscribers faster Internet speeds, more community WiFi hotspots, improved video service with more content offerings, and a differentiated, exceptional customer service experience. As part of the initiative, Time Warner Cable (also referred to herein as "TWC") plans to convert 75 percent of its cable systems to all-digital over the next three years, starting with our customers in New York City and Los Angeles.

Our merger with Comcast will accelerate the deployment of advanced technologies and innovative products and services to Time Warner Cable customers and will enable the deployment of new products and services to which TWC subscribers would not currently have access. For example, Comcast has committed to adding substantial incremental investments to those TWC has planned for broadband upgrades and enhancements over the next three years, including a commitment to convert all of TWC's cable systems to all-digital. Such investments, together with the significant experience Comcast brings to bear from converting its own network, will confer additional benefits on TWC's customers. In addition, the merger will allow Comcast to extend its innovative X1 video technology to TWC customers. Thus, the merger provides a unique opportunity to shorten the innovation timeline and allow TWC customers to benefit not only from the substantial investments that TWC has made and continues to make in its network, but also from the billions of dollars Comcast has invested in improving its network. Together, Comcast and TWC can provide consumers with better services while generating cost savings and other efficiencies, all of which will ultimately benefit the combined company's subscribers.

Senator Franken

1. **Please identify Time Warner Cable's (TWC) most popular bundled service offering, its most popular cable television offering, and its most popular standalone broadband offering, and, for each of these offerings, please provide the inflation-adjusted consumer price for each year from 1995 to the present. If it is not possible to provide these data on a national basis, please provide them for any Minnesota markets in which TWC operates and for TWC's top four national markets. Please also provide TWC's net income and profit margins for those years.**

For purposes of this response, Time Warner Cable has identified its current most popular service offerings. They are as follows:

- **Bundle:** TWC's Triple Play is its most popular bundled service offering. Currently, approximately 30% of TWC's customer base subscribe to the Triple Play.
- **Cable Television:** TWC's most popular cable television offering is the Digital Basic tier, known as the "Preferred" tier. Currently, approximately 47% of video subscribers subscribe to Preferred video service. Another 30% of TWC video subscribers purchase Preferred video service with premium channels, meaning that a total of 77% of TWC video subscribers purchase Preferred video service.
- **Broadband:** TWC's most popular standalone broadband offering is the "Standard" tier, to which approximately 50% of Internet-only customers subscribe.

Exhibit A, attached hereto, provides pricing information for each of the service offerings identified above dating back to 2011. Time Warner Cable does not retain such specific pricing data beyond three years in the normal course of business, but instead relies on other business metrics, such as average revenue per unit ("ARPU"), which is determined in part by price. We also note that the pricing information in Exhibit A is based on the actual prices paid by TWC customers, as TWC does not adjust its pricing data for inflation.

Finally, information regarding TWC's net income and profit margins are reported in the company's SEC filings, which are available (from 2006 through 2013) on Time Warner Cable's website at http://ir.timewarnercable.com/investor-relations/financial-reports-and-filings/sec-filings/default.aspx.

2. Page 2 of the Public Interest Statement that Comcast and TWC submitted to the Federal Communications Commission (FCC) says that TWC "has plans to improve speeds and further digitize its network." Page 28 similarly provides that "TWC announced earlier this year a multi-year plan to upgrade its network and enhance its services."

a. Please explain those plans, including any goals and timetables that TWC has set for network upgrades.

In January 2014, TWC announced its "TWC Maxx" initiative, which includes plans to triple Internet speeds for customers purchasing TWC's most popular tiers of broadband Internet service, add more community WiFi hotspots, improve TWC's TV product offerings, and offer a differentiated, exceptional customer service experience.

The first phase of the TWC Maxx initiative will take place in Los Angeles and New York City, where TWC is in the process of upgrading network connection sites (or "hubs"). The first four hubs to receive upgrades will be those that service customers in West Hollywood and Costa Mesa in California, and portions of Woodside (in Queens) and Staten Island in New York. As each hub site upgrade is completed, all TWC Internet customers served by that hub will see substantial increases in upload and download speeds. In addition, TWC will offer state-of-the art modems and wireless gateways to replace existing subscriber equipment.

In conjunction with these network upgrades, TWC will continue its expansion of its WiFi hotspots in Los Angeles and New York City. Additionally, TWC will complete the conversion of its video network in Los Angeles to digital technology. TWC completed the conversion to digital in New York City in 2013.

TWC plans to complete the system and service upgrades in Los Angeles and New York City by year-end, after which TWC has planned to roll out the TWC Maxx initiative market-by-market across 75 percent of its footprint by the end of 2016.

TWC also is focused on delivering more responsive customer service and providing faster resolution of service issues. In particular, TWC is rolling out a number of initiatives to improve the customer service it offers to subscribers, including, among others:

- TechTracker, which provides a service technician's picture and telephone number via text message to a subscriber with a scheduled home visit to facilitate and improve customer communications on the day of a home visit;
- the option to speak with the same customer service agent in a follow-up communication; and
- fixed appointment times rather than appointment windows for 20 percent or more of customer contacts.

b. Was Comcast's development of new broadband capabilities, including DOCSIS 3.1, a motivating factor in TWC's decision to develop and implement its upgrade plans?

No. Time Warner Cable and Comcast have taken different approaches to freeing up bandwidth on their networks to enable faster broadband speeds and expand video content offerings. For example, TWC made an early commitment to adopting switched digital video technology to reclaim bandwidth devoted to the analog delivery of video programming, while Comcast focused instead on converting its network to an all-digital platform, an effort it completed in 2012. TWC is now engaged in a similar digital migration process through its TWC Maxx initiative, as described above.

c. Has TWC changed its plans, including the timetable for such plans, in light of Comcast's proposed acquisition of TWC?

No.

3. If Comcast's acquisition of TWC is approved, certain TWC executives will receive substantial severance compensation packages, which are often called golden parachutes.

a. Please identify the recipient of any golden parachute that is worth at least $1 million, and please specify the value of such golden parachute.

For purposes of this response, TWC interprets the term "golden parachute" compensation to refer to such compensation as defined and described in the regulations of the U.S. Securities and Exchange Commission, in particular Regulation S-K. "Golden parachute" compensation under these rules includes (1) the aggregate dollar value of any cash severance payments, including base salary, bonus, and pro-rated non-equity incentive compensation plan payments, and (2) the aggregate dollar value of (i) stock awards for which vesting would be accelerated, (ii) in-the-money stock option awards for which vesting would be accelerated, and (iii) certain other benefits, in each case to be provided to a "named executive officer" of TWC in the event that the officer's employment is terminated after a change in control, such as the closing of the proposed merger. With the exception of former CEO Glenn Britt and former CFO Irene Esteves, each of TWC's named executive officers would receive compensation in excess of $1 million in the form of cash severance payments and accelerated vesting of then existing equity awards if his/her employment is terminated within 24 months after the closing of the merger with Comcast. Mr. Britt and Ms. Esteves will not receive any such "golden parachute" payments in connection with the transaction because they no longer hold their executive positions. In addition, no named executive officer will receive enhanced pension or deferred compensation benefits or tax reimbursements that are covered under the SEC's "golden parachute" rules. Furthermore, the named executive officers who are eligible will not be entitled to any "golden parachute" compensation unless their employment is terminated within 24 months of the closing of the transaction.

As reported in TWC's 2014 proxy statement, pursuant to Regulation S-K, TWC's named executive officers are:

Name	Title
Robert D. Marcus	Chairman and Chief Executive Officer
Arthur T. Minson, Jr.	Executive Vice President and Chief Financial Officer
Michael LaJoie	Executive Vice President and Chief Technology and Network Operations Officer
Philip G. Meeks	Executive Vice President and Chief Operating Officer, Business Services
Glenn A. Britt	Retired Chairman and Chief Executive Officer
Irene M. Esteves	Former Executive Vice President and Chief Financial Officer

Information about these severance arrangements was included for these named executive officers in the Form S-4 filed by Comcast with the SEC on March 20, 2014. The relevant excerpt of that filing is attached as Exhibit B and includes estimates of the value of the severance arrangements these executives would receive based on various assumptions set forth in the excerpt.

b. Please explain the business justification for the golden parachutes identified in question 3(a)

Cash severance payments and accelerated vesting of equity awards following a "double trigger" event (*i.e.*, a change in control followed by termination of employment) are standard mechanisms used by public companies to help ensure that executives' incentives are aligned with shareholders' interests when evaluating potential transactions that are likely to increase shareholder value, boost consumer welfare, and deliver other benefits, especially when such transactions would result in executives losing their positions following the transaction. Such provisions also help retain key employees and maintain strong operational performance in the sometimes-lengthy period between the announcement of such a transaction and its closing. TWC's "double trigger" severance arrangements are consistent with those adopted by peer companies, and their operation in this context is consistent with arrangements in other transactions of this nature and with corporate governance practices generally. TWC annually discloses to shareholders the terms of its executive officers' compensation arrangements in its SEC filings, including potential payouts in the event of termination following a change in control. In addition, beginning in 2011, such arrangements have been the subject of an annual shareholder "say on pay" vote, which provides shareholders an opportunity to express their opinion on TWC's compensation practices. At TWC's 2013 annual shareholder meeting, 85 percent of votes cast indicated support of these practices. In 2012, the approval percentage was 95 percent.

c. Please explain how the golden parachutes identified in question 3(a) serve the public interest.

As the parties have explained in their public filings, the transaction will benefit competition and consumers, and thus will serve the public interest. Accordingly, compensation provisions that facilitate the completion of this transaction serve the public interest as well.

d. Would the public interest be better served if funds in excess of $1 million for the golden parachutes listed in question 3(a) were instead invested in broadband service for rural and low-income communities?

Providing compensation to management and investing in broadband service are not mutually exclusive goals. To the contrary, by facilitating TWC's entry into a transaction that will result in increased broadband investment and improved service capabilities—including in rural areas and low-income communities—the golden parachute provisions are entirely consistent with those important public interest objectives.

4. A December 2013 FCC report indicates that about 30% of people live in areas with one or fewer providers of Internet service offering downstream speeds of at least 10 mbps and that about 67% of people live in areas with two or fewer such providers.

a. Please identify any local markets in which TWC is the only Internet service provider offering average downstream connection speeds of at least 10 mbps.

TWC does not maintain information in the normal course of business that is responsive to this question. The National Broadband Map (available at http://www.broadbandmap.gov/speed) is searchable and can be used to identify Internet Service Providers that provide downstream broadband speeds of at least 10 Mbps.

b. Please identify any local markets in which TWC is one of only two Internet service providers offering average downstream connection speeds of at least 10 mbps.

As explained in response to question 4(a), TWC does not maintain information in the normal course of business that is responsive to this question.

c. Please identify any local markets in which TWC has at least a 50% [share] of subscribers with average downstream connection speeds of at least 10 mbps.

As explained in response to question 4(a), TWC does not maintain information in the normal course of business that is responsive to this question.

d. **How would your responses to Questions 4(a), (b), and (c) change if you were to exclude competitors that do not also offer multichannel video programming distribution MVPD services?**

As explained in response to question 4(a), TWC does not maintain information in the normal course of business that is responsive to this question.

5. **Please identify any local markets in which TWC has at least a 50% share of the MVPD market.**

Relying on SNL Kagan data, Time Warner Cable has a 50 percent or greater share of MVPD subscribers in the following designated market areas ("DMAs"): Cincinnati, OH (52.3%); Beaumont-Port Arthur, TX (52.4%); Elmira (Corning), NY (55.3%); Lima, OH (55.8%); Zanesville, OH (56.3%); Palm Springs, CA (57.6%); Portland-Auburn, ME (57.9%); Watertown, NY (61.0%); Utica, NY (61.3%); Dayton, OH (62.8%); Binghamton, NY (63.5%); Laredo, TX (64.5%); Syracuse, NY (67.0%); Albany-Schenectady-Troy, NY (67.8%); Rochester, NY (75.7%); and Honolulu, HI (90.0%).

6. **Does TWC currently negotiate with Comcast with respect to TWC carriage of Comcast-affiliated programming? If so, how often do those negotiations take place? What are TWC's objectives during those negotiations?**

TWC negotiates with NBCUniversal with respect to TWC's carriage of Comcast-affiliated programming on a recurring basis, depending on when the relevant agreements expire. For example, in the last five years, the parties have had at least three distinct negotiations concerning one or more Comcast-affiliated networks. In all instances, TWC's goal is to obtain the right to launch and/or continue distributing programming that TWC's customers value on reasonable terms and conditions.

7. **On February 12, Bloomberg News reported that TWC was in negotiations with Apple about an April unveiling of Apple's new set-top box. Were those reports accurate? If so, what is the current status of those negotiations? Have they been affected by Comcast's proposed acquisition of TWC, which was announced the next day?**

Any negotiations between TWC and an equipment vendor regarding product development and potential business arrangements would be considered competitively sensitive and thus confidential. For that reason, such negotiations are routinely subject to nondisclosure agreements. Accordingly, TWC is unable to comment on the existence or status of any actual or potential negotiations with any equipment manufacturer.

8. Does TWC include an arbitration clause in its contracts with consumers? If so, in what ways is that arbitration clause different from that included in Comcast's contracts with consumers?

Yes. Sections 14 through 16 of TWC's residential subscriber agreement (available at http://help.twcable.com/RSSA_English.pdf) address the subject of arbitration, including the means by which customers can opt out of the arbitration provisions and the ability of customers to bring actions in small claims court in lieu of arbitration. TWC understands that Comcast's agreement likewise is publicly available, thus permitting any party to review and compare the two agreements in order to identify any terms that may be considered materially different.

9. During a Judiciary Committee hearing that I chaired in December about mandatory, pre-dispute arbitration, a professor from Cardozo Law School testified that TWC had begun charging consumers $3.95 per month for a modem that previously had been included with customers' subscriptions. The witness said that TWC had not provided notice of the charge and had not provided a method for consumers to avoid the fee, even if the consumers had been on fixed price plans. The law professor testified that a lawsuit challenging the new charges had been forced into arbitration.

a. Did TWC recently begin charging consumers for modems that the consumers previously received without charge?

Yes, with the exception of customers who are enrolled in "price lock guarantee" packages and customers who elect to purchase their own modems.

b. Did TWC provide its consumers with notice specifically explaining that the new charge?

Yes. Customers also were advised that the new charge could be avoided by purchasing their own modem at retail.

c. Please provide an update on the status of the lawsuit challenging the new charge, noting whether it was brought as a class action and whether and how it was resolved.

Three lawsuits were filed as class actions — one that originally was filed in New York state court but that was voluntarily dismissed and refiled in the U.S. District Court for the Eastern District of New York, and two in South Carolina that, while not officially consolidated, were considered on a consolidated basis and handled by the same judge. In each of these cases, the judge granted TWC's motion to compel arbitration.

10. Please identify any areas in which TWC offers its customers a better value or experience than that which Comcast offers its own customers.

TWC believes that it consistently offers strong value and a high-quality customer experience across its service footprint. Any assessment of whether TWC does so in a manner that is "better" than the experience offered by Comcast is most appropriately left to third-party rating services and to consumers who have subscribed to both companies' services, especially given that perceptions of relative value and experience may depend on a variety of subjective considerations (in addition to more objective measures).

11. Please identify each instance in which TWC has been involved in a dispute regarding access to or carriage of a Regional Sports Network in the past ten years. For each case cited, please identify the parties to the dispute and provide a brief description of the dispute and its ultimate resolution.

For purposes of this response, TWC construes a "dispute" to refer to any situation that resulted in (a) the filing of a complaint with the FCC or a court, or (b) the withdrawal of programming from one or more TWC cable systems. Subject to that understanding, TWC has been involved in three such disputes during the specified timeframe:

(1) In January 2012, TWC was required to cease carrying the MSG Network and MSG Plus (both owned by the Madison Square Garden Company) when the parties were unable to agree on a renewed carriage contract, resulting in an outage lasting approximately 48 days until the parties could reach a business resolution.

(2) In June 2007, TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network ("MASN") filed an arbitration claim seeking carriage on the analog tier in TWC's North Carolina cable systems. In December 2010, the FCC ruled in TWC's favor, reversing an arbitrator's initial decision. Further background on this dispute is available in the FCC's order and in the decision of the U.S. Court of Appeals for the Fourth Circuit affirming that order. *See TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 18099 (2010), *aff'd, TCR Sports Broadcasting Holding, L.L.P. v. FCC*, 679 F.3d 269 (4th Cir. 2012).

(3) In March 2005, TWC was required to cease carrying the MSG Network and Fox Sports Net (FSN) New York (now MSG Plus) when TWC was unable to negotiate a renewed carriage agreement with the networks' then-owner, Cablevision Systems Corp., resulting in an outage lasting approximately 62 days until the parties could reach a business resolution.

12. Please describe TWC's policies and practices with respect to the use of data caps for broadband subscribers.

Time Warner Cable offers consumers the option to choose unlimited or usage-based pricing plans for its broadband service. TWC does not utilize "data caps" in the sense that all subscribers would be subject to an overall limit on data usage and lose access to service were they to exceed the limit. Rather, Time Warner Cable has implemented its Essentials Internet plans, which provide subscribers with the choice to opt-in to a discounted broadband tier of service that provides the same speeds and includes a data allotment. Consumers can exceed the allotment and continue to use their service at a rate of $1 per gigabyte (GB) capped at $25 per billing cycle. Additionally, TWC provides a tool to monitor usage and a two-month grace period once a subscriber has opted-in to the plan. Subscribers also are free to move to a different plan or service tier at any time. The Essentials options are available on TWC's Lite, Every Day Low Price, Basic, and Standard broadband service tiers. Subscribers may choose from one of two Essentials plans:

- **Essentials Plan 1** has a 5 gigabyte (GB) monthly data allotment and is priced $8 below the regular service plan monthly price.
- **Essentials Plan 2** has a 30 GB monthly data allotment and is priced $5 below the regular service plan monthly price.

Such usage-based plans give TWC's customers an opportunity to pay less for the same level of performance, as most subscribers are relatively light users of bandwidth. Other companies are testing different approaches, and such experimentation will continue as broadband providers compete to give their customers the best online experience.

Senator Grassley

1. **Some have expressed concerns based on the fact that Comcast and Time Warner create some of their own content. Will the merger enhance the company's ability to restrict competing content providers from distributing their programs to a significant number of consumers through its distribution channels? In addition, what assurances can you provide the Committee that the newly combined company will not withhold its own programming content from competing TV and Internet providers?**

The merger will not restrict the ability of competing content providers to distribute programming to Comcast subscribers. Comcast and Time Warner Cable have powerful marketplace incentives to carry programming that their subscribers want. The merger will not alter that competitive imperative at all, as consumers will have as many choices of video providers after the transaction as they have today. In addition, the combined company will have equally strong incentives to distribute its own programming services via a wide variety of distribution platforms. And, even apart from the compelling business reasons for the combined company to carry independent programming and to distribute Comcast programming through other platforms, the FCC's program carriage and program access rules, together with related conditions adopted in connection with Comcast's acquisition of NBCUniversal, prohibit unreasonable discrimination against rival programmers and distributors.

2. **Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?**

TWC's view is that a light regulatory touch has been an important contributor to the flourishing Internet ecosystem and that heavy-handed government mandates would risk chilling continued investment and innovation. Time Warner Cable supports the transparency requirements that the FCC has imposed on broadband service providers, and we recognize that additional Open Internet rules would apply to the combined company as a result of the merger conditions adopted by the FCC in approving the Comcast-NBCUniversal transaction. As the FCC considers the regulatory framework that will apply to broadband services more broadly, we will encourage the agency to maintain the historical light-touch approach and to ensure that its new rules apply evenhandedly to different types of competitors to prevent marketplace distortions.

3. **How will the proposed merger impact cable advertising? Currently, I understand that cable networks allow cable companies to keep 2 minutes per hour of advertising, which permits small businesses to advertise in a cost-effective way on national programming. Comcast and Time Warner Cable already control a substantial part of this cable advertising market, and a combined Comcast-TWC would consolidate that control over this $5.4 billion market. How can you Cable assure the Committee that this dominant control of the market won't result in limiting the access that small businesses have, and that it won't result in higher advertising costs, which are then passed on to consumers?**

The proposed merger is unlikely to have any substantial impact on cable advertising and will not give Comcast a dominant position in the cable advertising marketplace, and any modest effects that do occur will be procompetitive and beneficial for consumers.

In metropolitan areas where only one of the two companies is present, there will be no change from the standpoint of advertisers. And in almost every metropolitan area where both companies have some presence, we already sell advertising jointly through "interconnect" arrangements. In those markets in particular, the merger will have no impact on cable advertising, because of the existing joint interconnect arrangements. In fact, because those interconnects also include smaller cable operators, telco video providers, and the DBS providers (DirecTV and DISH Network), the transaction is unlikely to have any effect on those providers' advertising sales. Moreover, because the geographic footprints of Comcast and Time Warner Cable do not overlap, the merger will not reduce the number of advertising outlets available to advertisers in any local market. Thus, far from giving the combined company a dominant position, the transaction will not substantially affect the cable advertising business. Nor do Comcast and Time Warner Cable currently hold such a position. As Professor Yoo testified, SNL Kagan data show that cable companies currently hold only 7 percent of the local advertising market.

More broadly, the transaction is likely to help the combined company compete more effectively against broadcast stations, which remain the dominant force in television advertising, as well as against emerging online platforms. The procompetitive nature of the transaction means that it will not cause price increases or diminish availability for small businesses or other advertisers.

4. **If the proposed merger is approved and Comcast-TWC has a dominant position in the local spot advertising market, wouldn't that make it more difficult and expensive for local businesses to advertise in the spot market? Would there be an incentive to sell more spots at higher prices to national and regional advertisers, giving local small businesses fewer options and forcing them to pay higher prices? What are the implications for others in the cable television community – for example, independent cable systems, satellite carriers and other cable advertising companies – if they cannot get access to the spot advertising market other than through Comcast?**

As noted above, the transaction will not give the combined company a dominant position in any advertising market, and thus will not make it more difficult or more expensive for local businesses to advertise. Comcast-TWC will continue to sell advertising availability to local companies, and such companies will not have diminished options as a result of the transaction because TWC's and Comcast's geographic footprints do not overlap. As mentioned, Comcast and TWC already sell ads jointly with other cable operators, telco video providers, and satellite carriers, and the transaction will not displace such interconnect arrangements.

5. So called "cord cutting" is becoming more and more popular, especially as companies like Netflix and Hulu gain traction. Comcast controls the internet connections that many people use to access these sites. But because Comcast also provides cable television access, it could have an interest in preventing people from cutting the cord. What assurances can you give the Committee that it won't use its control of the internet infrastructure to stop consumers' ability to "cord cut?"

Nothing about the transaction or the combined company's Internet infrastructure will restrict consumers' ability to "cut the cord" from subscription video services. Notably, the FCC required Comcast to offer Internet access service on a stand-alone basis in connection with the NBCUniversal transaction, and that regulatory obligation will extend to the TWC systems after the proposed merger closes.

Senator Graham

1. **I have heard concerns that the proposed Comcast/Time Warner Cable merger will hinder the ability of independent television networks to get carried by cable providers. How would the Comcast/Time Warner Cable merger affect the ability of independent networks, like INSP (also known as Inspiration Network), to get carried by Comcast?**

Independent networks are a valued voice on television, providing unique content to often-underserved audiences. In most cases, we are able to reach agreement with programming providers, as we historically have done with the Inspiration Network. In fact, TWC and INSP recently entered into a new carriage agreement that broadens the channel's carriage to include TWC's New York City systems, where the network is now carried on the digital basic tier. While TWC cannot speak to Comcast's future plans regarding carriage of INSP, it is our understanding that Comcast already carries the network on a number of its systems.

In addition, Time Warner Cable, Comcast, and other video distributors face substantial competition for customers and therefore have every incentive to carry the programming customers want. Indeed, each company today carries a large number and wide variety of independent programming options. To the extent there are any concerns regarding Comcast's continued willingness to carry independent programming post-merger, they are addressed by the rigorous conditions imposed on Comcast by the FCC and Department of Justice conditions as a result of the NBCUniversal transaction. In particular, Comcast was required to launch 10 new independent networks, including at least eight owned or managed by minority groups, and Comcast is fulfilling that commitment. Comcast has stated that it will voluntarily extend the NBCUniversal commitments to TWC's cable systems, meaning that the merger should lessen, not increase, any concerns regarding the health of independent programmers.

2. **Why do independent television networks, like INSP, that are fast growing and have consistently increasing ratings - higher than a large portion of the higher-profile networks carried - have to pay service providers, when those other networks actually get paid licensing fees?**

When negotiating with any programming provider, whether large or small, Time Warner Cable focuses on obtaining attractive content and delivering value to our subscribers. If we believe that a programmer's carriage demands and economic proposals create a bad value proposition for our customers, we resist such demands, but our carriage negotiations with independent programmers take place in a free market and we are able to reach agreement with most programming providers, as we have done with INSP. Moreover, carriage agreements involve a variety of exchanges of value (not just subscriber fees paid by the video distributor), all of which depend on the attractiveness of the content offered by a particular programming provider. It is not uncommon for carriage agreements to include provisions that require a cable network to pay a video distributor for certain services, including costs associated with the marketing and launch of the network.

Senator Lee

1. **Much of the discussion surrounding this merger has centered on the market for content providers to sell content so that it may be accessed by consumers. Content providers and independent networks argue that without being carried by major providers they cannot survive in the current market.**

   a. **What is your experience with respect to independent programmers and other content providers and do you believe this merger could negatively affect their ability to thrive?**

Independent networks are a valued voice on television, providing unique content to often underserved audiences. When negotiating with any programming provider, whether large or small, Time Warner Cable focuses on obtaining attractive content and delivering value to our subscribers. In most cases, we are able to reach agreement with programming providers, and there is no reason to expect that to change following the merger. On the contrary, Time Warner Cable, Comcast, and other video distributors face substantial competition for customers and therefore have every incentive to carry the programming customers want. Indeed, each company today carries a large number and wide variety of independent programming options. Moreover, the FCC and Department of Justice imposed rigorous conditions on Comcast relating to the carriage of independent programming as part of the NBCUniversal transaction. For example, Comcast was required to launch 10 new independent networks, including at least eight owned or managed by minority groups, and Comcast is fulfilling that commitment. Comcast has stated that it will voluntarily extend the NBCUniversal commitments to TWC's cable systems, meaning that the merger should lessen, not increase, any concerns regarding the distribution opportunities available to independent programmers.

EXHIBIT A

EXHIBIT A
TWC Response to Question 1 from Senator Franken
May 1, 2014

Most popular bundled service offering: Triple Play (Video + Internet + Home Phone) currently 30% of Residential customer base

Triple Play

Fiscal Quarter	Avg. EoQ CR MRR
2011-Q1	$146.38
2011-Q2	$149.12
2011-Q3	$150.32
2011-Q4	$150.49
2012-Q1	$148.94
2012-Q2	$148.25
2012-Q3	$149.12
2012-Q4	$150.10
2013-Q1	$151.92
2013-Q2	$152.17
2013-Q3	$156.58
2013-Q4	$155.60
2014-Q1	$155.81

CR MRR = Customer Relationship Monthly Recurring Rate includes all recurring service fees; non-recurring fees (e.g. VOD transactions) are not reflected in MRR

Most popular television offering: "Preferred" a.k.a. Digital Basic (includes BST, CPST and Digital Basic tier, but no premium channels.) currently 47% of Video customer base

Digital Basic

Fiscal Quarter	Avg. EoQ Video MRR
2011-Q1	$74.53
2011-Q2	$71.92
2011-Q3	$71.85
2011-Q4	$73.12
2012-Q1	$73.87
2012-Q2	$73.30
2012-Q3	$72.70
2012-Q4	$72.77
2013-Q1	$75.56
2013-Q2	$73.71
2013-Q3	$74.61
2013-Q4	$74.23
2014-Q1	$75.62

Video MRR = Video Line of Business Monthly Recurring Rate includes recurring service fees for Video, including equipment; non-recurring fees (e.g. VOD transactions) are not reflected in MRR

Most popular standalone broadband offering: Standard tier, currently 50% of Internet Only customers

Internet Only, Standard Tier

Fiscal Quarter	Avg. EoQ CR MRR
2011-Q1	$44.12
2011-Q2	$44.14
2011-Q3	$43.80
2011-Q4	$43.75
2012-Q1	$43.49
2012-Q2	$43.64
2012-Q3	$43.89
2012-Q4	$46.85
2013-Q1	$47.50
2013-Q2	$47.84
2013-Q3	$50.33
2013-Q4	$50.84
2014-Q1	$50.79

CR MRR = Customer Relationship Monthly Recurring Rate includes all recurring service fees including modem rental

Data provided reflects CVC/EDW data pulled via AAHA on 4/28/14
Note report filters: Residential Only; excludes Insight, New Wave acquired properties and Hawaii due to unreliable historical data

EXHIBIT A
TWC Response to Question 1 from Senator Franken
May 1, 2014

Mix and Avg. MRR by Product Holding Group

Metrics	01. Bundle Name / 02.Activity Fiscal Quarter	Trio Customers / Video & Internet & Phone
Avg Actual MRR of Service PER Customer Accounts w/ Service -- EOP	2011-Q1	$148.68
	2011-Q2	$149.12
	2011-Q3	$150.32
	2011-Q4	$150.49
	2012-Q1	$148.94
	2012-Q2	$149.25
	2012-Q3	$148.12
	2012-Q4	$150.10
	2013-Q1	$151.92
	2013-Q2	$152.17
	2013-Q3	$155.69
	2013-Q4	$155.60
	2014-Q1	**$155.81**
Percent to Total Over Columns (# of Cust Accts w/ Service -- EOP) 1	2011-Q1	28.8%
	2011-Q2	29.2%
	2011-Q3	29.2%
	2011-Q4	29.5%
	2012-Q1	30.3%
	2012-Q2	30.9%
	2012-Q3	31.1%
	2012-Q4	31.4%
	2013-Q1	31.1%
	2013-Q2	30.8%
	2013-Q3	30.0%
	2013-Q4	30.1%
	2014-Q1	**30.3%**

EXHIBIT A
TWC Response to Question 1 from Senator Franken
May 1, 2014

Video Segment Mix-Line of Business Avg. MRR

Metrics	02.Activity Fiscal Quarter	Digital Basic
Avg Actual MRR of Service PER Customer Accounts w/ Service -- EOP	2011-Q1	$71.63
	2011-Q2	$71.92
	2011-Q3	$71.85
	2011-Q4	$73.12
	2012-Q1	$73.87
	2012-Q2	$73.30
	2012-Q3	$72.70
	2012-Q4	$72.71
	2013-Q1	$73.96
	2013-Q2	$73.71
	2013-Q3	$74.61
	2013-Q4	$74.23
	2014-Q1	**$75.62**
Percent to Total Over Columns (# of Cust Accts w/ Service -- EOP)	2011-Q1	42.4%
	2011-Q2	43.4%
	2011-Q3	44.1%
	2011-Q4	45.6%
	2012-Q1	47.6%
	2012-Q2	50.0%
	2012-Q3	50.4%
	2012-Q4	50.3%
	2013-Q1	50.7%
	2013-Q2	50.9%
	2013-Q3	50.1%
	2013-Q4	48.3%
	2014-Q1	**46.6%**

EXHIBIT A
TWC Response to Question 1 from Senator Franken
May 1, 2014

Internet Segment Mix-CR Avg. MRR

Metrics	02.Activity Fiscal Quarter	RR Standard
Avg Actual MRR of Service PER Customer Accounts w/ Service -- EOP	2011-Q1	$44.12
	2011-Q2	$44.14
	2011-Q3	$43.86
	2011-Q4	$43.76
	2012-Q1	$43.49
	2012-Q2	$43.64
	2012-Q3	$43.89
	2012-Q4	$46.95
	2013-Q1	$47.50
	2013-Q2	$47.94
	2013-Q3	$50.33
	2013-Q4	$50.64
	2014-Q1	**$50.79**
Percent to Total Over Columns (# of Cust Accts w/ Service -- EOP) 2	2011-Q1	57.4%
	2011-Q2	57.5%
	2011-Q3	57.7%
	2011-Q4	57.9%
	2012-Q1	57.8%
	2012-Q2	57.2%
	2012-Q3	57.0%
	2012-Q4	56.4%
	2013-Q1	55.2%
	2013-Q2	53.0%
	2013-Q3	52.5%
	2013-Q4	51.6%
	2014-Q1	**49.8%**

EXHIBIT B

proxy statement/prospectus as the Director Equity Arrangements. Glenn A. Britt is the only director who holds options, which were granted to him when he served as TWC's Chairman and Chief Executive Officer until his retirement on December 31, 2013, all of which are fully vested. In addition, Mr. Britt currently holds 105,519 restricted stock units that were also granted to him when he was in such position and which will be settled on July 1, 2014 (the six-month anniversary of Mr. Britt's retirement as TWC's Chairman and Chief Executive Officer), regardless of whether the merger closes or is terminated. Only 1,120 restricted stock units have been granted to Mr. Britt under the Director Equity Arrangements in his capacity as a non-employee director.

Under the Director Equity Arrangements, upon a change in control, restricted stock units and deferred stock units held by such directors will become payable, along with any retained distributions credited thereto (generally to reflect dividends or distributions other than regular cash dividends), if applicable, and are settled as soon as practicable following such change in control. Closing of the merger will be a change in control under the Director Equity Arrangements.

In addition, to the extent that the vesting of outstanding equity awards (a) constitutes a "parachute payment" under Section 280G of the Code and (b) would be subject to the excise tax imposed by Section 4999 of the Code, then any unvested awards shall vest either (i) in full or (ii) in such lesser amount that would result in no portion of them being subject to the Section 4999 excise tax, whichever of the foregoing amounts (taking into account all applicable taxes), results in the individual's receipt on an after-tax basis, of the greatest amount of total compensation, notwithstanding that all or some portion of the awards may be taxable under Section 4999. This provision, including as applied under any other plans, agreements or arrangements to any executive officer or other vesting or payment events, is referred to in this joint proxy statement/prospectus as a Golden Parachute Modified Cutback. For illustrative purposes, if the completion of the merger were to have occurred on March 12, 2014, the latest practicable date prior to the filing of this joint proxy statement/prospectus, no equity awards held by any of the non-employee directors would be cut back.

For illustrative purposes, if the completion of the merger were to have occurred on March 12, 2014, the latest practicable date prior to the filing of this joint proxy statement/prospectus, the aggregate cash-out value of all deferred stock units, restricted stock units and (as applicable) options, for all non-employee directors other than Glenn Britt would be approximately $32.0 million in the aggregate and, for Mr. Britt, would be approximately $87.5 million (calculated as required under the merger agreement and using the average closing market price of a share of Comcast Class A common stock on NASDAQ over the first five business days following the first public announcement of the merger agreement).

Beneficial Ownership of Officers and Directors

TWC's executive officers and directors hold shares of TWC common stock, which will be treated like all other shares of TWC common stock in the merger. See "Certain Beneficial Owners of TWC Common Stock—Security Ownership by the TWC Board of Directors and Executive Officers" beginning on page [•] of this joint proxy statement/prospectus for further details. In addition, one of TWC's independent directors, David Chang, may be deemed to beneficially own shares of Comcast stock, held in a revocable trust, with a current market value of approximately $100,000.

Indemnification; Directors and Officers Insurance

Under the merger agreement, certain former directors and officers of TWC will have rights to indemnification and expense advancement from the surviving corporation in the merger and Comcast has agreed to cause the surviving corporation to maintain directors' and officers' insurance policies and fiduciary liability insurance policies or purchase tail coverage, in each case for a six-year period. See "The Merger Agreement—Indemnification and Insurance" beginning on page [•] of this joint proxy statement/prospectus for further details.

Quantification of Potential Payments to TWC Named Executive Officers in Connection with the Merger

The information below is intended to comply with Item 402(t) of Regulation S-K, which requires disclosure of information about compensation for each TWC "named executive officer" that is based on or otherwise relates

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to the merger. Under applicable SEC rules, TWC's named executive officers are required to consist of TWC's executive officers who, during 2013, served as TWC's principal executive officer and principal financial officer and the three most highly compensated executive officers who were serving as such at the end of 2013. For 2013, the named executive officers were:

- Glenn A. Britt, who served as TWC's Chairman and Chief Executive Officer during 2013 until his retirement on December 31, 2013;
- Robert D. Marcus, who served as President and Chief Operating Officer during 2013 and became TWC's Chairman and Chief Executive Officer upon Mr. Britt's retirement;
- Irene M. Esteves, who served as TWC's Executive Vice President and Chief Financial Officer until May 1, 2013;
- Arthur T. Minson, Jr., who served as Executive Vice President and Chief Financial Officer from May 2, 2013;
- Michael LaJoie, who served as TWC's Executive Vice President and Chief Technology and Network Operations Officer during 2013; and
- Philip G. Meeks, who served as TWC's Executive Vice President and Chief Operating Officer, Business Services from June 3, 2013.

In connection with Mr. Marcus starting his term as TWC's Chairman and Chief Executive Officer and the appointment of Dinesh Jain as TWC's Chief Operating Officer, TWC assessed the roles and responsibilities of its senior management. Effective January 1, 2014, it was determined that its "executive officers" are Messrs. Marcus, Minson, Jain, Lawrence-Apfelbaum and Stern and Mses. East and MacKinnon, as identified above in "—Interests of Directors and Executive Officers of TWC in the Merger—Options Held by Executive Officers." Of these current executive officers, only Messrs. Marcus and Minson were also named executive officers for 2013.

To the extent that any of TWC's named executive officers' compensation arrangements are described in "—Interests of Directors and Executive Officers of TWC in the Merger" beginning on page [▪] of this joint proxy statement/prospectus, these are incorporated herein by reference. The amounts set forth in the table below, which represent an estimate of each named executive officer's golden parachute compensation, assume the following:

- That consummation of the merger constitutes a change in control for purpose of the applicable compensation plan or agreement;
- That the change in control was consummated on March 12, 2014, the latest practicable date prior to the filing of this joint proxy statement/prospectus;
- Each named executive officer's employment is terminated without "cause" or with "good reason" immediately following the change in control; and
- The value of the vesting acceleration of the named executive officers' equity awards is calculated assuming a price per share of Comcast Class A common stock of $52.32, which is the average closing market price of a share of Comcast Class A common stock on NASDAQ over the first five business days following the first public announcement of the merger agreement, in accordance with SEC rules.

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The amounts reported below are estimated based on multiple assumptions that may or may not actually occur, including the assumptions described above, and elsewhere in this joint proxy statement/prospectus. As a result, the golden parachute compensation, if any, to be received by a named executive officer may materially differ from the amounts set forth below.

Golden Parachute Compensation

Name	Cash ($)(1)(2)	Equity ($)(3)	Perquisites/ Benefits ($)(4)	Other ($)(5)	Totals ($)
Robert D. Marcus					
Chairman and Chief Executive Officer (former President and Chief Operating Officer)	20,458,904	56,506,890	399,838	2,500,000	79,865,632
Glenn A. Britt					
Retired Chairman and Chief Executive Officer(6)	—	—	—	—	—
Arthur T. Minson, Jr.					
Executive Vice President and Chief Financial Officer	7,008,904	19,327,402	80,132	675,000	27,091,438
Michael LaJoie					
Executive Vice President and Chief Technology and Network Operations Officer	3,374,658	12,539,053	72,164	325,000	16,310,875
Philip G. Meeks					
Executive Vice President and Chief Operating Officer, Business Services	3,715,068	7,622,524	58,751	300,000	11,696,343
Irene M. Esteves					
Former Executive Vice President and Chief Financial Officer	—	—	—	—	—

(1) The amounts in this column reflect continuation of annual base salary and target bonus in effect on the assumed date of termination for a 36-month period for Messrs. Marcus, Minson, and Meeks and for a 30-month period for Mr. LaJoie. Base salaries as of the effective time of the transaction are as follows: Mr. Marcus ($1,500,000), Mr. Minson ($900,000), Mr. LaJoie ($650,000) and Mr. Meeks ($600,000). The most recent target annual bonuses as of the effective time of the transaction are as follows: Mr. Marcus ($5,000,000), Mr. Minson ($1,350,000), Mr. LaJoie ($650,000) and Mr. Meeks ($600,000). These severance amounts are "double trigger" payments, payable if the executive resigns for "good reason" (see discussion below) or is terminated by TWC without cause within (i) 24 months following the effective date of a change in control or (ii) following TWC's execution of an agreement contemplating a change in control but before the date that is 24 months after a change in control (or, if earlier, the expiration or termination of such change in control agreement without a change in control). Assuming a termination on March 12, 2014, the amounts also include a pro-rata target bonus for the year of termination which are as follows: Mr. Marcus ($958,904), Mr. Minson ($258,904), Mr. LaJoie ($124,658) and Mr. Meeks ($115,068). Ultimately, such bonus amounts would be paid based on actual performance. These amounts reflect the full amount of cash severance payable to these officers assuming termination occurs immediately following the completion of the merger. In the case of Messrs. Marcus, Minson and Meeks, only a portion of this amount reflects an increase to severance from what it would have been had no change in control occurred.

(2) The compensation arrangements of each of Messrs. Marcus, Minson and Meeks provide for a Golden Parachute Modified Cutback. Based on the assumptions listed above, for Messrs. Marcus, Minson and Meeks, neither the severance amounts nor any amounts in this table have been reduced because the officers in all cases would have had a better after-tax result had all amounts been paid in full.

(3) The amounts in this column reflect the value (spread value in the case of options) in respect of restricted stock units and unvested options, in each case, in accordance with the merger agreement and without regard to applicable tax withholding. The amounts for each named executive officer represent the following amounts: Mr. Marcus: $40,257,101 for 267,632 restricted stock units and $16,249,789 for 235,334 unvested options; Mr. Minson: $13,824,671 for 91,908 restricted stock units and $5,502,731 for 100,262 unvested options; Mr. LaJoie $8,236,842 for 54,760 restricted stock units and $4,302,211 for 62,654 unvested options; and Mr. Meeks: $6,178,573 for 41,077 restricted stock units and $1,443,951 for 44,134 unvested options.

(4) The amounts in this column include (i) for all executives, continuation of health and welfare benefits for a 36-month period (except for Mr. LaJoie, which provides for a 30-month continuation period), (ii) in addition, for Mr. Marcus only, continued supplemental life insurance coverage and financial services during his 36-month severance period, and (iii) for Mr. LaJoie, in addition to continuation of health and welfare benefits for a 30-month period, (x) executive level outplacement services and (y) one year of office space. The total aggregate value of these perquisites for each of Messrs. Marcus, Minson, LaJoie and Meeks is $399,838, $80,132, $72,164 and $58,751, respectively.

(5) The amounts in this column reflect the 2014 supplemental bonus opportunity, assuming that 2014 performance through March 12, 2014, the assumed date of completion of the merger, is at target. These supplemental bonus opportunities are "single trigger."

(6) All of Mr. Britt's equity awards are currently vested. If the merger had closed on March 12, 2014, then his 1,120 restricted stock units granted to him as a director would have been immediately settled and cashed-out. All of Mr. Britt's restricted stock units received while an employee will be settled on July 1, 2014 (the six-month anniversary of his retirement as TWC's Chairman and Chief Executive Officer).

For additional information regarding compensation arrangements with directors and other executive officers, please see "—Interests of Directors and Executive Officers of TWC in the Merger" beginning on page [•] of this joint proxy statement/prospectus, which is incorporated herein by reference.

TWC's Employment Agreements with its Named Executive Officers

TWC has entered into employment agreements with each of its named executive officers. These agreements, along with the Employee Equity Arrangements, cover the payments that would be due to these individuals in connection with the proposed transaction. The following provides a summary of material terms, conditions and circumstances under which the payments for Messrs. Marcus, Minson, Meeks, and LaJoie are triggered.

Pursuant to each named executive officer's employment agreement, if the officer resigns for "good reason" (see discussion below) or is terminated by TWC without cause, the officer is entitled to the payments and benefits described below:

- accrued but unpaid bonus for the preceding fiscal year, based on actual results for the year;
- pro rata bonus for service during the year of termination, based on actual results for the year;
- continued salary and target bonus payments, paid on TWC's normal payment dates for salary:
  - for 36 months for each of Messrs. Marcus, Minson, and Meeks, with aggregate salary and target bonus amounts set at the greater of (i) amounts effective at termination, and (ii) amounts effective on effective date of the officer's employment agreement;
  - for 30 months for Mr. LaJoie, where the bonus component is the greater of (i) the target bonus at termination and (ii) the average of his annual bonus for the two years immediately preceding the year of termination;
- continued participation in TWC's health and welfare benefits for the applicable 30 or 36 month severance period;

- for Mr. Marcus, (i) continued supplemental life insurance coverage and (ii) financial services during the 36-month severance period; and
- for Mr. LaJoie, (i) executive level outplacement and (ii) one year of office space.

For Messrs. Marcus, Minson and Meeks, the above severance payments and benefits are triggered if the officer's termination occurs either (i) within 24 months following a change in control or (ii) following TWC's execution of a merger, acquisition, sale or other agreement providing for a change in control but before 24 months following a change in control (or, if earlier, the expiration or termination of such agreement without a change in control). If such termination occurs outside of the time periods described above, the severance payments and benefits due are lower than the amounts above (e.g., they are provided severance for a 24 month period versus a 36 month period). For Mr. LaJoie, the above severance payments and benefits are triggered upon the termination, regardless of whether there is also a change in control.

"Good reason" generally means any of the following occurrences without the officer's consent:

- a material violation with respect to such officer's authority, functions, duties, powers, responsibilities or place of employment;
- a failure to cause any successor to all or substantially all of the business and assets of the company expressly to assume the obligations of the company under the employment agreement;
- a material breach of the employer's obligations under the employment agreement; or
- for Mr. Minson, a material violation with respect to his reporting relationship.

For Mr. Marcus, good reason also includes (i) TWC's failure to nominate him for re-election to the TWC board of directors or Mr. Marcus otherwise ceasing to be a member of the TWC board of directors other than in connection with his removal as a director for cause under TWC's by-laws and (ii) the failure to elect Mr. Marcus as Chairman of the TWC board of directors or Mr. Marcus otherwise ceasing to be the Chairman of the TWC board of directors other than in connection with his removal as a director for cause under the company's by-laws, subject to certain exceptions if cessation occurs under requirements of law.

Depending on their respective titles, roles and responsibilities, as applicable, immediately after the completion of the merger, Messrs. Marcus, Minson, LaJoie and Meeks may have the right to assert good reason, resign and collect the above severance benefits following such time.

The severance payments and benefits set forth above for Messrs. Marcus, Minson and Meeks are subject to the Golden Parachute Modified Cutback, which, generally, applies to first reduce cash-based payments and then to equity vesting. Mr. LaJoie's employment agreement requires that he engage in any mitigation of damages necessary to avoid applicability of any lost corporate tax deduction and related excise tax under Sections 280G and 4999.

As a condition to receiving these severance payments and benefits, the named executive officer must (i) execute, deliver and not revoke a release of claims and (ii) abide by the restrictive covenants detailed below. The agreements require each of the executive officers to abide by (i) perpetual restrictive covenants relating to non-disclosure and non-disparagement (mutual non-disparagement in the case of Mr. Marcus), (ii) except for Mr. LaJoie, a one-year covenant relating to non-solicitation of TWC's customers, independent contractors, joint venturers or suppliers, (iii) a one-year covenant relating to non-solicitation of certain former employees, and (iv) covenants relating to non-competition during their employment terms and for 24 months (12 months for Mr. LaJoie) following the end of their employment terms.

RESPONSES OF RICHARD J. SHERWIN TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Hon. Chuck Grassley
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6257

Re: Comcast - Time Warner Cable Merger

April 28, 2014

Dear Senator Grassley:

We received Senator Leahy's letter on April 17, 2014 concerning questions that you had raised. We will provide our answers to your questions as set forth below:

Question 1:

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services?

We believe that free markets and less regulation, in general, enable technological innovation and improve services through competition. Unfortunately, when a monopoly is established, especially through regulation, as has occurred in the cable television/broadband industry, unregulated monopolies will generally stifle innovation, and will charge more for services than would otherwise occur in a competitive market. Between 2009 and 2013 Comcast raised their Basic TV rates by 68%. To get the industry to where it needs to be, increased competition is a critical requirement, and that can only occur if the regulatory authorities mandate certain rules to encourage that competition.

Question 2:

In your view, should there be more or less government involvement in this industry?

We do not believe in heavy government involvement in any industry other than to protect those users of services or products by promoting competition. This industry is made up of local, regional and national monopolies as a result of previous government regulation establishing exclusive franchises in certain areas. Existing government involvement can be lessened once sustainable competition becomes available in those areas. By mandating certain rules such as requiring the existing monopolies to sell wholesale broadband access to competitive service spoton networks

providers, and by prohibiting monopoly providers from providing services that stifle competition, government involvement can be reduced. By mandating that necessary access to wholesale high speed broadband be made available to disruptors and innovators, new technologies will reach the consumer, and government involvement will no longer be necessary.

Question 3:

What are the implications of this merger for open access and peering in the broadband market?

We are not involved in "peering" and so we take no position on this issue.

Question 4:

How does the proposed transaction affect competition in the market for "last mile' interconnection services?

"Last mile" interconnection service was mandated by the Telecommunications Act of 1996 and required local exchange carriers to provide interconnection to competitors that provide local loop service to subscribers and end users. This requirement was established to promote competition in areas where the local exchange carrier had a monopoly.

This proposed merger transaction of the two largest incumbent cable/broadband providers, without the mandates previously suggested, would create an environment that is similar to the situation that the Telecommunications Act of 1996 addressed, by establishing provisions to remove impediments to competition. This policy is what is needed now so that local, regional and national monopolies cannot prevent competitors from entering the market.

Thank you very much for giving us the opportunity to respond to your questions, and to clarify our view on this very important market.

Very truly yours,

Richard J. Sherwin
Chief Executive Officer

Cc: Hon. Patrick J. Leahy, Chairman

RESPONSES OF CHRISTOPHER S. YOO TO QUESTIONS SUBMITTED BY SENATORS KLOBUCHAR, GRASSLEY, AND HATCH

Penn Law
UNIVERSITY of PENNSYLVANIA LAW SCHOOL

3400 Chestnut Street
Philadelphia, PA 19104-6204
Tel 215.746.8772 Fax 215.573.2025
csyoo@law.upenn.edu
http://www.law.upenn.edu/faculty/csyoo/

Christopher S. Yoo
John H. Chestnut Professor of Law
Professor of Communication
Professor of Computer and Information Science
Founding Director, Center for Technology, Innovation, and Competition

May 1, 2014

Chairman Patrick Leahy
U.S. Senate Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Chairman Leahy:

Thank you again for the opportunity to testify on April 9 at the hearing on "Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers." At your request, I am forwarding you my answers to the questions for the record you sent to me on April 17.

Question from Senator Klobuchar:

In the Comcast-NBC order, the FCC said the company would have "the incentive and ability to hinder the development of rival online offerings." A Comcast filing made in connection to the NBC Universal merger assumes that this type of "cord cutting" household would download 288 GB of television content per month. Given the filing is from 2010, the estimate is based on a viewing mix of standard-definition and high-definition content. An all HD mix more in line with today's viewing habits requires significantly more data, not to mention greater bandwidth. Furthermore, today, consumers often want to their broadband connections to stream online video on multiple devices in their home. Confining your analysis to broadband technologies that fit these criteria, which are suitable substitutes to cable broadband? What percentage of this market does Comcast control?

The U.S. broadband market is undergoing fundamental changes as providers in many technologies are investing heavily in upgrading their infrastructure.

DSL is making a major comeback. AT&T is in the process of deploying technologies known as IP DSLAMs, pair bonding, and vectoring to upgrade its DSL network to provide 45 Mbps service to nearly 80% of its service area, with half of those households receiving 75 Mbps service. AT&T plans to increase the number of locations where AT&T's U-verse VDSL network to 33 million locations (an increase of 8.5 million), 90% of these locations receiving 75 Mbps service and 75% of these locations receiving 100 Mbps. CenturyLink has also deployed VDSL, although it has not yet announced any expansion plans. But the real bellwether is Europe, where leading telecommunications providers as Deutsche Telecom, BT, Telecom Italia, and Orange are making VDSL the centerpiece of their broadband strategies. These speeds are clearly sufficient to compete with cable. Indeed, where AT&T has already upgraded its network, it is taking subscribers away from cable.

With respect to fiber-to-the-home (FTTH), Verizon's FiOS network has been joined by two new companies. Google Fiber has expanded beyond Kansas City to expand to Provo and Austin and has indicated that it plans to lay FTTH to 34 additional cities. In addition, AT&T has also begun deploying FTTH in Austin and in April announced plans to deploy FTTH in the Research Triangle and Piedmont Triangle areas of North Carolina. AT&T has announced plans to expand FTTH to 100 cities, including 21 major metropolitan areas.

Even LTE is capable of providing the download speeds necessary to support HDTV. *PC Magazine* and *Root Metrics* report that Verizon, AT&T, and T-Mobile each offer average download speeds of 12–19 Mbps and peak download speeds of 49–66 Mbps, well in excess of the 8 Mbps needed for HDTV. Moreover, most U.S. households have their choice of multiple providers. As of the end of 2013, Verizon covered 96% of the U.S., AT&T covered 90%, Sprint covered 66%, and T-Mobile covered 63%. By mid-year, Sprint projects to reach 79%, and by the end of 2014, AT&T's coverage should reach 95%, and T-Mobile's should reach 79%. Moreover, LTE providers initially focused on making geographic coverage as broad as possible, even if that meant provisioning too little bandwidth in major metropolitan areas. These providers are now focusing on densification of urban areas which should help bring capacity in line with demand. In addition, if one gives up mobility and uses LTE to provide service to a fixed location (in direct competition with cable), it is possible to use 8 antennas instead of 4, in which case the throughput rates increase dramatically. In addition, U.S. providers are preparing to follow the lead of South Korea, Australia, and the U.K. and deploy 150 Mbps and 300 Mbps service, often based on the next-generation technology known as LTE Advanced. All of these developments suggest that wireless broadband holds considerable promise as a competitor to cable.

When evaluating a merger, antitrust law counsels in favor of focusing on what the world will look like in the future rather than what the world looks like today, since it is the future world that matters. In this respect, the future looks quite bright. Indeed, we are seeing waves of investment driven by the competitive incentive to outdo one another. Those who have attempted to right off DSL, FTTH, and LTE as meaningful competitors to cable have done so without any empirical foundation. Indeed, observers have been writing off DSL for years only to be proven wrong time after time. Moreover, it was just a few short years ago where the Berkman Center report and other studies were writing off cable, arguing that it was not match for FTTH. The real lesson is that the future is hard to predict and that innovation has thrived most when no one has attempted to impose remedies based on any particular prediction of which technologies will succeed or fail.

Questions from Senator Grassley

We currently have a hodgepodge of regulations that regulate the communications sector. Common Carriers are regulated like a telephone company from 1982 when they had a monopoly on voice services. Today, Comcast and Time Warner Cable are both competing with telephone companies not only for broadband customers, but for voice customers as well. Do you believe *that today's regulatory regime that places burdensome regulations on the telephone company but not on the cable company, gives the cable company a market advantage?*

The one consistent complaint from every quarter is that the regulatory regime that has governed the communications ever since the Communications Act of 1934 creates technological siloes where different technologies are subject to different regulatory regimes. This was workable in 1934 because different technologies did not compete with one another. Voice communications were available only via wire, and video was available only over the air. The advent of cable television and the ability to provide video over wires put pressure on this regime and required the enactment of a new statutory regime in 1984 just to govern cable. Wireless telephony and the ability to transmit voice over the air required still more statutory adjustments.

And yet these changes are minor compared with the fully convergent world made possible by packet-based communications. At this point, every type of communication is available via any transmission technology. Yet despite the fact that cable modem service, DSL, and FTTH compete directly with one another, they are subject to completely different regulatory regimes.

The differences between these regimes are stark. Cable broadband has never been subject to significant regulation since its inception. Telephone-based broadband, in contrast, was heavily regulated at first and was not deregulated until 2005, three years after the FCC made clear that it would not impose on cable the regime that it had initially imposed on broadband provided by telephone companies.

The FCC's major decisions of the mid-to-late 2000s have eliminated much of the regulatory asymmetry. However, some important differences remain. For example, telephone companies remain subject to privacy restrictions under the rules governing customer proprietary network information (CPNI) that do not apply to cable broadband. All such differences should be eliminated if U.S. broadband policy is to achieve the ideal of technological neutrality and does not have the practical effect of picking technological winners and losers.

In your opinion, what will be the effect of the merger on regional sports programming costs, which are necessary for other video providers to offer in order to maintain a viable service?

Interest in regional sports programming tends to be highly localized. People who live in the Philadelphia area tend to follow Philadelphia sports teams. A merger between the cable company that serves the Philadelphia area with the cable company serving the Los Angeles area would not alter the relative bargaining power of the Philadelphia-area sports teams or the Philadelphia-area cable provider. Moreover, it is not clear how such a combination would hurt any advertising market. National advertising revenue naturally seeks national distribution channels. In terms of local advertising, FCC data indicate that cable represents only 7% of the local advertising market. It is possible that a market for regional advertising may exist. Any concerns would require an examination of actual behavior and the extent to which advertisers regard local and national advertising as a substitute for regional advertising. In addition, advertising markets can be very hard to define. Different advertising avenues vary in their ability to reach different types of demographics. As a result, it is impossible to make predictions in the abstract that the merger will harm the market for regional sports programming. Such a conclusion would depend on a very careful and fine-tuned analysis of actual market conditions.

In your opinion, should Congress take additional steps to ensure access to the Internet for content, service and application providers, as well as for consumers? Or are existing laws and policies sufficient to deal with potential anti-competitive behavior?

Congress has the authority to take additional steps to mandate greater access for content, service, and application providers. It is not yet clear that such action is necessary at this time. With respect to traditional video, the FCC has a mature regime of program and network access rules designed to ensure that no actor can use its control over key content or key infrastructure to harm other actors in a way that harms consumers. With respect to the Internet, at the FCC's May 15 open meeting, the agency is scheduled to vote on revised open Internet rules designed to address these problems with respect to the entire industry. At this point, I would recommend that Congress permit these initiatives to run their course while keeping a watchful eye on how things develop.

The one matter on which the FCC and academic commentators agree is that merger clearances represent a bad way to create such access reuiqr3ements. Not only does the resulting restriction apply only to the merging parties. Merger conditions are typically not subject to the full range of administrative procedures, such as public participation, the need for reasoned justification, and the discipline of judicial review. Most importantly, it would only address the conduct of a handful of industry actors. It would do nothing to solve the same problems when they arise with respect to parties who have not recently merged. The proper venue for such issues is in a general regulatory or legislative proceeding, not the merger review process.

Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and deployment of broadband services? In your view, should there be more or less government involvement in this industry?

A comparison of the U.S. approach and those taken in other parts of the world demonstrate the value of the hands-off approach that the U.S. has taken with respect to the Internet. Despite some occasional rhetoric to the contrary, the actual data shows that European countries are by and large lagging far behind the U.S. in terms of high-speed broadband deployment and that European broadband companies are investing two to two-and-one-half times less than their American counterparts. Moreover, in terms of service providers, U.S. companies are the envy of the world. Even in Asia, where governments have mandated broadband buildouts, high-speed service is languishing with low take-up rates and enormous financial losses. Together these comparisons provide a strong endorsement in favor of maintaining the U.S. approach of minimal government involvement with respect to the Internet.

Chairman Patrick Leahy
May 1, 2014
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Are you concerned about any monopsony problems with this transaction? The concern is that new online innovators are just starting to develop competitors to cable, but many of them come from companies that need Comcast/TWC as both a cable distributor and an ISP. Is this a valid concern?

The merger would not create the levels of concentration traditionally associated with monopsony power. As an initial matter, many observers have mistakenly asserted that the merged company would have market shares as high as 40% by disregarding DSL and other technologies. The fact that AT&T's DSL network is taking market share away from cable in areas where AT&T has upgraded its DSL network suggests that this approach is mistaken. Other analysts make the mistake of ignoring smaller players, who typically represent roughly 7% of the market, as well as the fact that the merging companies have pledged to divest 3 million subscribers. The resulting market share of the merged company would only be 30% of the multichannel video market and 32% of the broadband market, which is well below the levels traditionally associated with monopoly or monopsony power.

On a more fundamental level, there is an essential difference between cable television and Internet video. For multichannel video, the failure to reach an agreement means that none of the cable company's subscribers will be able to see the content. The situation is quite different for the Internet. Comcast maintains peering arrangements with more than 40 other networks and transit arrangements with more than 8,000 other networks. This means that the failure to reach an agreement does not cut subscribers off, as there are always thousands of other paths into Comcast's network, although these paths vary slightly in terms of cost and latency. It also limits Comcast's bargaining power, as the only leverage is the difference the price of a direct connection and the content provider's next-best alternative. Unless the cable company were to use deep packet inspection to monitor all 8,000+ paths, conduct that is both impractical and barred by Comcast's commitment to abide by the Open Internet Order despite the fact that it has been struck down, content will be able to find a way to consumers. All that is at stake is a routine bargain over price.

Should we be wary of agencies using their merger review authority to pursue policies that they do not otherwise have statutory authority to pursue? For example, the D.C. Circuit recently said that the FCC did not have authority to enforce its net neutrality rule. Should the FCC be allowed to now condition the merger on Comcast's agreement to comply with that same rule?

Comcast's obligation to abide by the terms of the Open Internet Order is the result of voluntary commitments it made in order to obtain approval of its acquisition of NBC Universal and not the result of the Order itself. As a strict legal matter, the FCC may continue to impose conditions whether or not general regulations exist with respect to that subject matter.

For the reasons stated above, however, the merger clearance is widely recognized as a poor avenue for making regulatory policy. Not only does it obviate standard administrative processes and immunize decisions from judicial review. It also raises the ability for agencies to impose mandates that they could not impose through regular administrative processes.

A similar situation arose in the past with respect to the FCC's attempt to place a cap on the percentage of the national market for multichannel video subscribers that any cable company could reach. In order to obtain clearance of its cable mergers, AT&T agreed to abide by the national ownership cap only to see that regulation struck down by the courts. The FCC decided to waive that obligation because otherwise the merged company would be subject to restrictions that applied to no other company and were beyond the FCC's statutory authority to impose.

What are the implications of this merger for open access and peering in the broadband market? How does the proposed transaction affect competition in the market for "last mile' interconnection services?

As an initial matter, the fact that Comcast remains bound by the terms of the Open Internet Order severely limits the impact of the merger on open access. In terms of peering and the market for last-mile interconnection services, companies are experimenting with a wide range of different solutions, including proprietary data centers, collocated content delivery networks, and multitenant hosting in third-party data centers just to name a few. At the same time, each of these types of companies are experimenting with a wide range of commercial arrangements including for example traditional peering, paid peering, secondary peering, traditional transit, and paid transit. The parties should be permitted to experiment with different ways to satisfy all of these actors' shared interest in delivering content to end users in the most effective way.

Some are concerned that this merger is bad for content providers because a combined Comcast-Time Warner Cable would be too powerful of a gatekeeper. However, others view this merger as a possible signal that the industry is transitioning from a cable television system of the past to a new system. Could this merger break down some of the walls of innovation and shift from a licensing model to a more direct IP-enabled model?

Things are changing in how we view television – every day there are more ways to watch our shows, movies and other content. Comcast and Netflix have reached a deal and it has been rumored that Apple and Comcast have had discussions about providing service for Apple TV. Both of these entities are Comcast competitors. How does this co-opetition benefit consumers? How does it affect the industry?

The video industry is undergoing fundamental changes. Cable subscribership is slowly declining, and consumers are shifting more and more to online video. At the same time, content acquisition costs are increasing faster than the overall cost of cable television. These price trends suggest that content providers are in a stronger bargaining position than are able operators to the point where Cablevision has floated the possibility of abandoning the video business and simply allowing over-the-top providers like Netflix to fill the void.

In this world, agreements such as the one between Netflix and Comcast hold many benefits for consumers. As an initial matter, as a direct customer instead of an indirect customer, Netflix now has a service level agreement with Comcast that guarantees certain levels of service. At the same time, direct connections hold the promise of allowing the two companies to better coordinate their behavior to deliver content more effectively. In addition to obtaining better service, there are indications that such arrangements may reduce the prices that consumers pay. Although Netflix has to pay Comcast to terminate traffic, it no longer has to pay its former transit provider, Level 3. Industry observers have concluded that cutting out the middleman can yield substantial savings. Even if the net price does not go down, the enhanced service should provide considerable benefits to consumers.

Question from Senator Hatch

During the hearing, you commented on the proposed merger of Comcast and Time Warner Cable from the perspective of antitrust law. According to your legal analysis, would this merger create—for either video or broadband—an industry structure resulting in anticompetitive harms under established antitrust or communications law? In particular, can you speak to the relevant markets at issue in that analysis?

As I stated in my written testimony, the merger has implications for two product markets: the market for multichannel video and the market for broadband Internet access. In both of these product markets, the merged company would contract with two different types of entities: end users and content/service providers. Each of these markets should be analyzed separately.

Beginning with the market for multichannel video, the merger will have no impact on the market in which cable companies bargain with end users. This is because cable operators in different cities serve different geographic markets and as a result do not compete with one another. In short, consumers would have the same number of choices of multichannel video providers the day after merger that they did the day before. With respect to the market in which cable companies bargain with channels such as ESPN, Nickelodeon, and the Disney Channel, the courts have twice rejected attempts by the FCC to show that control of 30% of the national market would give a cable operator the ability to create anticompetitive harms. Given the merging companies' commitment to reduce their holdings so that they control no more than 30% of the national market, these court decisions raise serious doubts as to whether anyone can show that the merger would create anticompetitive harms in this market.

Moving on to the market for broadband Internet access, again the merger will not affect the market in which merging companies bargain with end users. The lack of any overlap in the areas served by Comcast and Time Warner Cable again means that the merger will not reduce the number of options available to any end user, which makes it unlikely that the merger would affect the prices charged to subscribers. The rapid deployment of new broadband technologies should reduce any such concerns still further. With respect to the market in which cable companies contract with transit and peering providers that carry data from content and service providers, again, the 32% market share falls below the thresholds associated with anticompetitive activity. In addition, as noted in my answers to Senator Grassley, content and service providers have literally thousands of ways to reach Comcast customers. Disputes are thus not over whether the content and service providers can reach Comcast subscribers. Instead, they are fairly routine disputes over price and quality of service that are well suited to being resolved through arms-length bargaining.

I hope that these answers are helpful. Please do not hesitate to contact me again if there is any way I can be of assistance.

Sincerely,

Christopher S. Yoo

Christopher S. Yoo
John H. Chestnut Professor of Law
Professor of Communication
Professor of Computer and Information Science
Founding Director, Center for Technology, Innovation, and Competition

SUBMISSION FOR THE RECORD

USHCC
UNITED STATES HISPANIC CHAMBER OF COMMERCE

April 9, 2014

Senator Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley,

We are writing you today in regard to the Judiciary Committee's hearing entitled, *Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers*. The United States Hispanic Chamber of Commerce (USHCC) advocates on behalf of nearly 3.2 million Hispanic-owned businesses that together contribute in excess of $468 billion to the American economy each year. We thank you for holding this important hearing and for allowing the USHCC to share its perspectives with the Committee.

The USHCC believes that the evidence strongly suggests that this proposed merger would not threaten consumer choice. As you know, the internet has allowed for multiple innovative platforms for content enjoyment. Consumers now enjoy an unheard of proliferation in means to access content as well as companies that provide these services. This innovation has initiated strong competition. Today consumers can choose between traditional over-the-air broadcasting, cable, satellite, and multiple online platforms. The vitality of this market does not stand to be weakened by this merger.

The same is true for consumer choice of high-speed internet. As you know, numerous telecommunications firms are now offering competitive high-speed internet options. As consumers are increasingly turning to mobile technologies such as smart phones and tablets, the high-speed networks of mobile carriers are competing with traditional internet service providers like Comcast. Although the advent of these technologies is relatively new, more than half of the world owns a smart phone and roughly half of them use mobile broadband as their primary or exclusive means of accessing the internet.

Google has also begun deploying a revolutionary internet access service called Google Fiber that will offer alternatives to consumers in certain markets.

In addition to discussing how the internet ecosystem is changing the way we should think about competition in the telecommunication space, it is also important to note that the merger of Comcast and Time Warner Cable should not reduce consumers' options because these companies have virtually no overlap. Of the 30 million Comcast and Time Warner Cable customers, less than 0.01 percent of them live in zones of overlap.

The robust competition in the telecommunications industry is one of our economy's greatest assets. We at the USHCC believe that Comcast-Time Warner Cable merger will not only preserve consumer choice, but also generate innovation and efficiencies that will support this competitive environment.

Respectfully Submitted,

Marc Rodriguez
Chairman of the Board
USHCC

Javier Palomarez
President & CEO
USHCC

SUBMISSION FOR THE RECORD

American Cable Association
CONNECTING HOMETOWN AMERICA

NTCA THE RURAL BROADBAND ASSOCIATION

April 9, 2014

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary U.S. Senate Washington, DC 20510	The Honorable Charles E. Grassley Ranking Member Committee on the Judiciary U.S. Senate Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

In advance of the Committee's hearing to explore the competitive ramifications of the proposed combination of the nation's two largest cable operators, Comcast Corporation ("Comcast") and Time Warner Cable ("TWC") in a $45.2 billion transaction, the American Cable Association ("ACA") and NTCA– The Rural Broadband Association ("NTCA") wish to share their initial views on how the combination will result in harm to competition and consumers. Combined the ACA and NTCA comprise approximately 850 small and medium-sized multichannel video programming distributors ("MVPDs") that provide video, broadband Internet, and phone services in all 50 states to nearly 7 million video subscribers. Members range from family owned companies and cooperatives serving small cities and rural areas to multiple system operators serving urban areas.

ACA and NTCA are most concerned about the competitive effects of the transaction in two vertically related 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 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 is also 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 of 16 RSNs.

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 and NTCA are most concerned with the following three components of the 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 TWC's distribution assets.

Chairman Leahy and Senator Grassley
April 9, 2014
Page 2

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

ACA and NTCA were active participants in this Committee's and the Department of Justice's ("DOJ") 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 Federal Communications Commission ("FCC"). That deal brought together the nation's largest cable operator, Comcast, with one of the nation's largest programmers, NBCU. Comcast also had a 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.) The FCC concluded that significant competitive harms would result from both aspects of the transaction and imposed conditions that were intended to ameliorate these harms.

Our joint 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. With respect to the upstream horizontal component, we 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 together. This effect will occur in the areas where TWC offers its popular RSNs, and will be most severe in the designated market areas ("DMAs") where there is both an NBCU O&O and a TWC RSN, such as the New York, Los Angeles, and Dallas DMAs. All MVPDs in these regions and markets will be affected by this harm regardless of whether they compete against Comcast or TWC.

With respect to the vertical component, our concern is that the merged entity will have an incentive to disadvantage MVPDs that compete with TWC 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. ACA and NTCA have at least 20 members representing more than 1.5 million subscribers that have at least a 10% competitive overlap with TWC. However the vertical competitive harm will not necessarily be limited to only these MVPDs. Due to the fact that many of these MVPDs obtain their programming through a buying group, which serves as the buying group for most small and medium sized MVPDs, Comcast-TWC will have an incentive to raise the prices that it charges to this buying group, and these price increases will harm all MVPDs that obtain their programming through the group. Customers of these small and medium-sized MVPDs will ultimately pay the price.

The FCC adopted arbitration conditions that were intended to ameliorate these harms 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 solve the problems that will be created by this transaction, because these conditions, although well-intended, have turned out to exhibit a number of defects and problems which limit their effectiveness, particularly for small and medium sized MVPDs. In particular, arbitration is too expensive for individual small and medium sized MVPDs to use, and the manner in which buying groups could potentially avail themselves of the arbitration conditions was poorly and incompletely described. We hope 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.

The third component of the current transaction - the horizontal combination of Comcast's distribution assets with TWC's distribution assets - did not arise in the Comcast-NBCU transaction and raises significant and troubling new issues. We have read many press reports where the merging parties glibly deny that there is any horizontal problem at the MVPD level by noting that Comcast and TWC do not compete at this level. As Paul Krugman of the New York Times and others have noted, however, this facile response ignores the main problem created by this massive horizontal combination, which is the dramatic increase in the merged entity's bargaining power with respect to and control over the video programming industry. With more than 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. Programmers subject to the enhanced bargaining power of Comcast-TWC will seek to make up for lost revenues either by charging higher prices to other MVPDs or by reducing their investments in programming. In the longer 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, therefore ultimately reducing the competitiveness of this industry as well. In any event, the final result will likely be higher prices and fewer choices for consumers.

We are currently actively engaged in additional research and fact-finding and will report our findings and conclusions to the Committee, the DOJ, and the FCC as our analysis progresses. Please do not hesitate to let us know if you or your staff requires additional information or clarification of our views.

Sincerely,

Matthew M. Polka
President and Chief Executive Officer
American Cable Association

Shirley Bloomfield
Chief Executive Officer
NTCA– The Rural Broadband Association

Cc: Members of the Senate Judiciary Committee

SUBMISSION FOR THE RECORD

aai

The American Antitrust Institute

April 4, 2014

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
437 Russell Senate Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Amy Klobuchar
U.S. Senate Committee on the Judiciary
Chairman
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
302 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Michael S. Lee
U.S. Senate Committee on the Judiciary
Ranking Member
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
316 Hart Senate Office Building
Washington, D.C. 20510

RE: APRIL 9TH HEARING: EXAMINING THE COMCAST-TIME WARNER CABLE MERGER AND THE IMPACT ON CONSUMERS

Dear Chairman Leahy and Honorable Committee Members:

The American Antitrust Institute (AAI) commends the Senate Judiciary Committee for convening a hearing to address Comcast's proposed merger with Time Warner Cable (TWC).[1] The deal would create an entity with a vastly larger footprint – covering over one-third of cable and broadband internet subscribers nationwide – and put control of essential content distribution "pipes" into the hands of a single company. Together with Comcast-TWC's enormous content holdings, the merged company would have control over the production and distribution of important news, opinion, sports, and entertainment video programming to tens of millions of American consumers. The economic, political, and social implications of such control are potentially concerning.

The AAI believes that the proposed merger raises pressing issues related to competition, consumer welfare, and the protection of free speech that a diverse and independent media ensures. A merged Comcast-TWC could potentially exercise undue control over: (1) the timing, method, quality, and pricing of content and its distribution; (2) the rivals that produce and distribute content; (3) the scope and nature of content; and (4) the pace of innovation in broadband development. Moreover, the proposed merger comes strategically at a time when the U.S. is grappling with fundamental policy questions regarding network

[1] The AAI is an independent non-profit education, research, and advocacy organization. Its mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust laws. For more information, see www.antitrustinstitute.org.

neutrality and the role of increasingly larger and more powerful broadband gatekeepers.

The AAI is currently completing research based on publicly available information on the likely effects of a Comcast-TWC merger. We anticipate releasing a White Paper in late April that provides an analysis of the major competitive and consumer effects of the proposed transaction. The AAI White Paper will cover a number of possible issues. For example, how might combining the cable television and broadband distribution systems of Comcast and TWC enhance the merged company's ability to restrict competing content providers' access to a significant base of consumers through distribution channels controlled by the merged company? The White Paper may also address how the combination of TWC's content assets with Comcast's vast content portfolio may enhance the ability of the merged company to frustrate access by rival cable, digital broadcast satellite, broadband, and telco rivals to valuable content controlled by the merged company.

The AAI White Paper will be made available to this Committee, the Federal Communications Commission, and the U.S. Department of Justice Antitrust Division. In the interim, the upcoming hearing is a key venue in which to vet a number of critical questions. We respectfully submit to the Committee the following questions that the AAI believes are particularly important.

1. The merger may shift relative bargaining power between the merged company and rival content providers. How will this affect the competitive landscape, pace and type of innovation, and benefits to consumers? How could the merged company's enhanced bargaining power lead to superior outcomes for consumers, relative to preserving existing competition between content providers and distributors?

2. The deal comes at a time when regulatory policies regarding network neutrality are in flux. What role will current and probable future regulatory protections play in addressing the merged company's ability to engage in restrictive practices, particularly toward online content providers and content delivery networks? How does the proposed transaction affect competition in the market for "last mile" interconnection services?

3. The size of a combined Comcast-TWC, coupled with very limited competition in video programming distribution in the U.S., means that rival video programmers could be foreclosed from access to a sizable share of the distribution market, potentially affecting tens of millions of consumers. How should this concern be addressed?

4. In light of the merged company's vast content holdings, there is a significant risk that distributors of video programming that currently and potentially compete with TWC could be foreclosed from access to competitively valuable Comcast-TWC content. How should this concern be addressed?

5. The merged company will control an even larger set of cable and broadband "pipes" than it currently does. How is the transaction likely to change Comcast-TWC's decisions regarding the nature and pace of innovation and competition involving the two distribution channels?

6. The merging parties state that Comcast and TWC do not overlap or compete with each other. If this is true, then how might the merged company realize claimed operating efficiencies such as scale economies in video and high-speed data for TWC customers? More generally, how credible are the merging parties' claims of cost savings and consumer benefits, and how would they be passed through to consumers in the light of reduced horizontal and vertical competition? What are the implications of Comcast's claims regarding competition and efficiencies for future mergers and acquisitions that the company might propose?

7. There is very limited existing head-to-head competition in pay television and broadband access. How, therefore, will the merger enable Comcast-TWC to better compete against larger rivals (regionally and nationally), as claimed by the merging parties? How does Comcast-TWC's logic apply in the context of Regional Sports Networks?

8. Limited competition in U.S. broadband development is known to have produced higher prices, lower quality, and less innovation than in Europe and elsewhere. The American public seems to be particularly unhappy with its cable companies. How will an even larger Comcast-TWC possess competitive incentives to provide pro-consumer bundles of services and to offer more choice in the pricing and quality of products and services?

9. Cable and broadband rivals have a history of agreeing to forbear from entering each other's markets. How would the proposed merger – by further concentrating the market for video programming distribution – change incentives for entering into such agreements? How might the merger affect competition and innovation in wireless broadband, in light of past agreements between cable and wireless competitors?

10. The remedies imposed in the DOJ consent decree and FCC order in Comcast-NBCU are controversial. How have those remedies been challenged, modified, violated, or litigated since the Comcast-NBCU transaction? If such conditions are extended to the even more complex and significant competitive concerns in Comcast-TWC, why should they be expected to be effective?

We would be pleased to discuss these questions and issues with the Committee Staff in advance of the April 9th hearing.

Respectfully,

Albert A. Foer

Albert A Foer

President
American Antitrust Institute
202-276-6002
bfoer@antitrustinstitute.org

Diana L. Moss

Diana L. Moss

Vice President
American Antitrust Institute
720-233-5971
dmoss@antitrustinstitute.org

cc:
The Honorable Richard Blumenthal
The Honorable Al Franken
The Honorable Elizabeth Warren
The Honorable Sheldon Whitehouse
The Honorable Bob Goodlatte
The Honorable John Conyers Jr.

SUBMISSION FOR THE RECORD

ConsumersUnion

POLICY & ACTION FROM CONSUMER REPORTS

April 8, 2014

The Honorable Patrick J. Leahy, Chairman
The Honorable Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

Consumers Union, the public policy and advocacy division of Consumer Reports, appreciates your holding a hearing regarding the proposed merger between Comcast and Time Warner Cable. We believe this merger would be extremely harmful to consumers and to the video and internet marketplace, and that the more closely the merger is examined, the more obvious these harms will be.

A combined Comcast/TWC would control nearly two-thirds of the nation's cable TV service, nearly 40 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 is claiming 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, now and for years to come.

The fact that Comcast and Time Warner Cable have previously not competed in each other's territories does not indicate that they couldn't or wouldn't ever likely compete. Indeed, as technology evolves, including with increased incorporation of wireless technology, these two well-established video and broadband companies could prove to be strong rivals. Allowing the merger would obviously foreclose this future competition.

Equally important, the merger will 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 that consumers want. As gatekeepers of such an enormous portion of consumers – and monopoly gatekeepers in numerous major markets – the combined firm would have the ability to extract higher "admission tolls" from programming content producers seeking to reach those consumers. The fact that Comcast already owns its own broadcast network and production company only increases its incentive to extract these tolls from rival networks and content producers. Those networks and content producers would then be forced to raise prices, cut corners on quality, or go out of business. Any of these results would be at the expense of consumers and programming diversity.

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 three articles from *The Consumerist* – responding to a recent op-ed in the New York Times, assessing the benefits and shortcomings of Comcast's "Internet Essentials" program, and describing Comcast's data caps on Internet service.

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 retard innovation. This merger should not be permitted to go forward.

Respectfully,

Delara Derakhshani
Telecommunications Policy Counsel

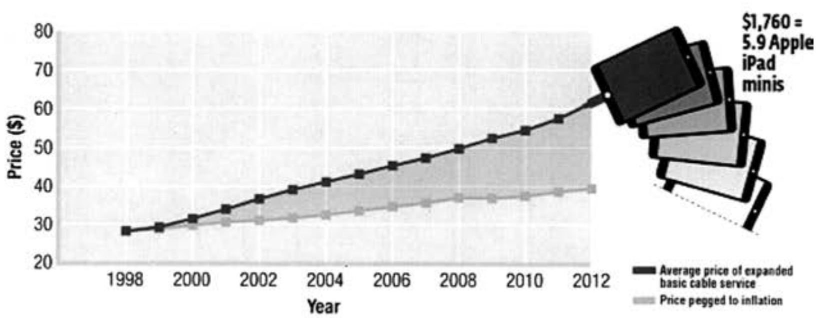
George P. Slover
Senior Policy Counsel

cc: Members of Senate Judiciary Committee

Attachments

Cable vs. inflation

Every year since 1993, the Federal Communications Commission has published data on the average price of expanded basic cable television packages in the U.S. (Expanded basic cable is a step up from the entry-level package offered by most providers.) We took the FCC's pricing data from 1998 through 2012, then compared that with what cable would have cost if it had been pegged to the standard rate of inflation as defined by the Consumer Price Index. We found that over the course of those 15 years, the average American cable-watching household had forked over about $1,760 more than it would have if the price of cable had matched inflation. That's enough to have purchased almost six iPad Minis for each household.



Consumers still don't like cable TV companies

Comcast and Time Warner rank near the bottom in our survey

Published: March 26, 2014 11:00 AM

Find Ratings

Telecom services

Do you subscribe to cable, but don't exactly love the TV services you're getting? Join the club. Once again, some of the largest cable TV companies—including Comcast and Time Warner, which are in the midst of a merger—are among the bottom feeders in overall customer satisfaction for TV service, according to the Consumer Reports National Research Center's latest annual telecom survey.

In fact, if it weren't for Mediacom Communications, a cable company that serves a little more than a half-million customers in the Midwest and Southeast, Time Warner and Comcast would have ranked lowest in the survey. Comcast came in 15th out of 17 pay-TV providers for customer satisfaction with TV service, with an overall score of 59 out of 100. The company had low scores for value and customer support. Its proposed merger partner, Time Warner, did no better, ranking 16th overall for TV service with an overall score of 58. Time Warner had low scores for value, reliability, and customer support. Mediacom trailed the entire pack with an overall score of 54.

But the flip side is that two smaller cable companies, Armstrong Cable and WOW (WideOpenWest), topped the Consumer Reports survey for TV service. Those companies were followed by Verizon FiOS, which came in third, Wave/Astound, DirecTV and Dish Network, and then AT&T U-verse.

The two cable giants fared a bit better for broadband service in the survey although both were still nestled in the bottom third of all ISPs. Topping the chart (again) for broadband were WOW and Verizon FiOS.

These findings are just a small part of our annual telecom bundling story.

Find out how your TV, Internet, and phone company did in our newly updated telecom services Ratings.

In addition to ranking the TV, broadband, and telecom bundled services from 14 major providers, the article provides tips and advice to help consumers save money on their telecom services and select the best providers. One way is to haggle with your provider—we found that 92 percent of the respondents who attempted to negotiate a better bundle package got some sort of deal. Another is to build your own bundle by piecing together services from different sources. Just be aware that many companies are talking tough about cracking down on serial negotiators.

In the interest of disclosure, Consumers Union, the advocacy arm of Consumer Reports, is opposing Comcast's takeover of Time Warner, a merger between the country's two largest cable companies. Consumers Union believes the consolidation is anti-consumer, contending that the combined company would be able to exert even greater control over the cable and broadband Internet markets, leading to higher prices, fewer choices, and worse customer service for consumers. The Federal Communications Commission is currently reviewing the merger. We'll follow the progress, so keep checking back for the latest updates.

—*James K. Willcox*

Tuesday, March 25, 2014

Comcast and Time Warner Cable Score Low on Latest Consumer Reports Customer Satisfaction Survey

Low Scores Show Why The Companies Shouldn't Be Allowed To Merge

WASHINGTON, D.C. – Comcast and Time Warner Cable earned low customer satisfaction scores in the latest Consumer Reports National Research Center's survey of consumers about their experiences with television and Internet services.

The low customer satisfaction scores should give the Federal Communications Commission and Department of Justice ample reason to be skeptical of a proposed merger between the two companies, according to Consumers Union, the policy and advocacy division of Consumer Reports.

"Both Comcast and Time Warner Cable rank very poorly with consumers when it comes to value for the money and have earned low ratings for customer support," said Delara Derakhshani. "A merger combining these two huge companies would give Comcast even greater control over the cable and broadband Internet markets, leading to higher prices, fewer choices, and worse customer service for consumers."

While the Consumer Reports survey on telecom providers found almost universally low ratings across providers, both Comcast and Time Warner earned scores toward the bottom of all companies included in the analysis.

Comcast ranked 15th among 17 television service providers included in the ratings and earned particularly low marks from consumers for value for the money and customer support. Time Warner ranked 16thoverall for television service with particularly low ratings for value, reliability, and phone / online customer support.

Comcast and Time Warner Cable were mediocre on overall satisfaction with Internet service. Both companies received especially poor marks for value and low ratings for phone / online customer support.

"In an industry with a terrible track record with consumers, these two companies are among the worst when it comes to providing good value for the money," said Derakhshani. "The FCC and Department of Justice should stand with consumers and oppose this merger."

In early February, Comcast announced a proposed $45 billion takeover of Time Warner Cable. The deal is likely to be reviewed by the Department of Justice, which could sue to stop it. The Federal Communications Commission must review the merger to determine whether it serves "the public interest" and it must approve the licensure transfers to allow the deal to move forward.

Ratings are based on responses from 81,848 Consumer Reports readers to the Consumer Reports National Research Center's 2013 Annual Telecommunications Service survey. The full report on in-home telecom services can be found in the May issue of Consumer Reports and online at ConsumerReports.org.

Contact: David Butler, dbutler@consumer.org or 202-462-6262 or Michael McCauley, mmccauley@consumer.org or 415-902-9537 (cell) or 415-431-6747, ext 126 (office)

Let's Count The Ways In Which The NY Times' Love Letter To The Comcast Merger Is Full Of Bull

By Chris Morran March 29, 2014

A Vision Beyond Cable for Comcast After Merger

MARCH 28, 2014

Brian Roberts, Comcast's chief executive, sees its major competitors as the media companies of the future, like Google and Apple.

Common Sense
By JAMES B. STEWART

Comcast's chief executive, Brian Roberts, was stung four years ago when Reed Hastings, chief executive of the then-fledgling Netflix, dismissed Comcast with a rhetorical question: "Why would we want to do a deal with

This NY Times column from March 28 reads like it was written by Comcast's PR department.

Yesterday, the NY Times' "Common Sense" column demonstrated anything but common sense in a thinly-veiled love letter to Comcast CEO Brian Roberts, who is apparently the savior of cable TV and will somehow bestow wonderful, magically-awesome levels of customer service on Time Warner Cable... if only those big-bad regulators in D.C. would just see what is so obviously a perfect deal for consumers. If only that were true.

Let's look at author James B. Stewart's article and try to figure out exactly how much Kabletown Kool-Aid he's consumed...

1. Ignoring Comcast's Role In Current State Of Cable TV

Early in the article, Comcast-inheritor Roberts laments the current state of cable competition, in which a company's presence is often determined by deals made with municipalities many moons ago.

"Cable is a relic of an antiquated model," admits Roberts. "The result is we're not in New York or Los Angeles. How great can that be?"

In a sense, he's right. Comcast should have been in New York City and/or Los Angeles, but not as the sole provider like TWC is for many of the residents of those two cities. No, Comcast should have been able to compete with everyone else, giving consumers choice and compelling providers to compete on rates and customer service.

But Roberts can not wash his hands of the situation that he (and his company-founding father before him) played no small part in creating, and from which Comcast has benefited greatly.

Take the Philadelphia area, which has long been dominated by Comcast, but which used to have multiple regional providers serving different parts of the region. In the last two decades, Comcast has gobbled up most of those companies, creating an effective monopoly in the area thanks to all those exclusivity deals each of the acquired providers had made in the '70s and '80s.

Furthermore, while Philly leadership pretends it's about prettying up the city, a recent move to regulate and remove satellite dishes from buildings all around the city has Comcast written all over it.

And don't forget Boston, a city is so ridiculously overrun by exclusive Comcast coverage that former Mayor Thomas Menino had to petition the FCC to allow the city to regulate the company's soaring prices.

It is the cable industry, including Comcast, that sought these sorts of deals and guarantees, and which has allowed them to continue because they allow providers to get away with charging high rates and providing minimal customer service.

Roberts even admits as much later in the Times piece, when he says the only feasible way for Comcast to be a player in NYC is for it to buy Time Warner Cable, as it would be too expensive to run its own lines.

2. No One Asked Us...

Stewart then goes on to make a completely asinine statement about those who are against the Comcast merger:

> The sheer size of the deal, and the intense public interest in unfettered Internet access, have galvanized an array of opponents, from Senator Al Franken, Democrat of Minnesota, to the Consumers Union to the Writers Guild of America...I suspect few of them, if any, are Time Warner Cable customers.

Let's just look at how utterly, absolutely stupid of an assumption that is.

First, I'm not going to speak for my colleagues at Consumers Union, but I happen to know for a fact that they — and many other employees of Consumer Reports, including myself, and several other Consumerist writers — have had, or currently have, cable and Internet service from Time Warner Cable. Consumers Union's headquarters is located in Yonkers, NY, only a few miles north of NYC, and many of CR's employees live in areas where TWC is the only option. A simple phone call or e-mail, and anyone at the company would have told Mr. Stewart so.

And then there's the Writers Guild, which has a large number of members in New York City (that's why there is a WGA East office in Manhattan, Mr. Stewart.) All those writers for Comcast's own Saturday Night Live and Tonight Show are probably TWC customers. That's not to mention all the people who write for the soap operas, talk shows, and the various series that film in NYC. Again, I'm sure someone at the Guild, or the use of the author's much-touted common sense, would have sorted this one out.

I don't know Sen. Franken's current living situation, but I do believe he's lived in NYC at some point in the past 25 years, since he used to broadcast his Air America radio show from Manhattan, and worked on Saturday Night Live in the early '90s, which means he's likely to have been a TWC customer at some point.

3. Personal Bias Is A Bad Measuring Stick

Let's just assume that Mr. Stewart's ill-informed attempt to discredit merger critics was based in actual fact and that none of these people concerned about a merger between the nation's two largest cable and Internet providers have ever had to deal with TWC's horrendous service.

What does that matter?

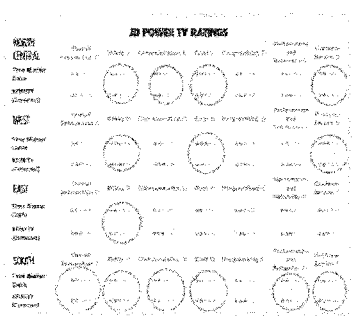
Did one need to be either an AT&T or T-Mobile customer to oppose that failed merger? Does he think that members of the FCC and the DOJ are going to say, "Well, I can't be part of this decision because I'm a DirecTV gal"?

In fact, it may be best if the people making the decision have minimal experience with either provider, as their personal biases can't get in the way. The last thing I want is some regulator deciding they will approve this merger because they once got double-billed by Time Warner Cable and somehow think this merger will stop such nonsense from happening in the future (Spoiler Alert: It won't.)

Speaking of which...

4. The Grass Is Always Slightly Less Brown

Stewart seems to be living under the delusion that Comcast's customer service couldn't possibly be worse than TWC's. He even cites J.D. Power regional ratings to back up his point, saying that TWC was the lowest-rated in almost every region for its pay TV service. And this is indeed true.



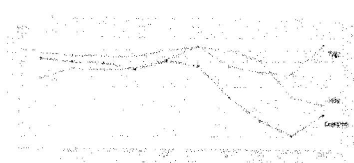
A summary of the JD Power ratings for Comcast and TWC's pay-TV services. We've circled all the instances in which the two companies scored the same or in which TWC outscored Comcast. Note that neither company managed to do better than a 3 on the JD Power scale, indicating a score of "About Average." Click chart for full-size.

What the author at the venerated newspaper omits is a link to the JD Power study, as that would show that Comcast performed just as poorly half of the time, and the instances in which Comcast outscored Time Warner Cable, it did so only marginally (a fact Stewart waits until the very end of the story to even mention before allowing Roberts to shrug it off with all the awesome super-rad tech that will help curmudgeonly Stewart finally find Mad Men on his cable listings... Kids today!). Nowhere in the seven rated categories for each of the four regions does either company score better than "About Average."

And you'll notice that of all the companies that rank or rate TV and Internet providers, Stewart cherry-picks one that sort of helps to make the case that Time Warner Cable is a bad company.

In fact, there are multiple sources that would have indicated the same thing, but which would have also shown that Comcast is just as bad, if not worse.

Circling back once again to our colleagues at Consumer Reports, whose recent survey of telecom providers turned up equally bad results for the two merger partners, and where Comcast received especially low marks for customer support.



Recent data from Netflix showing how Verizon and Comcast have allowed its downstream speeds to slow

Stewart conveniently left out this information from Netflix, showing that Time Warner Cable downstream speeds have remained sufficient, and even improved, during the months that the all-great Comcast passive-aggressively throttled Netflix content by allowing it to bottleneck until the Internet's biggest traffic consumer decided to pay the toll.

And the folks at the American Customer Satisfaction Index, whose latest ratings of pay-TV companies and ISPs showed to a crawl during the last half of 2013, while TWC continued to provide adequate support for the service. Click for full-size chart.

both Comcast and Time Warner Cable bringing up the rear in the two categories. Comcast was the bottom-scraper when it came to Internet service, while it allowed TWC the honor of being the caboose on the pay-TV train.

Neither company has provided any shred of evidence that customer service, billing, or reliability will improve post-merger. There has been lip-service paid to the notion that by combining their assets, they will be better able to invest in much-needed resources.

But given the potholed track record of these two companies, why would we have any reason to believe that savings on manpower, networks, maintenance, and content will be reinvested in improving customer service when all a merger would do would be to create an even larger company with minimal competition and even fewer reasons to provide competitive rates or customer service?

5. The Myth Of Geographic Overlap

Here's the argument you hear repeatedly from Stewart and other cheerleaders for this merger: Comcast and Time Warner Cable don't currently overlap, so it's not really creating a monopoly.

It's a valid point, and one that those opposed to the merger will have to repeatedly rebut in the coming months, but it's a deflection of the bigger issues involved here.

Because the cable industry has virtually no competition — even the large satellite companies can't compete in providing broadband services — they can get away with things like unexplained rate increases; new fees for old products and services; using customers as hostages in blackout battles with broadcasters.

Far from giving Comcast a reason to pass savings on to customers, a nearly-doubled subscriber base could actually provide the company with an incentive to continue nickel-and-diming customers. An extra dollar a month from 30 million customers is a nice chunk of change at the end of the year. Data caps and usage-based pricing for Internet users would be a gold mine for the merged company, especially since their consumers have few-to-no alternatives for broadband service.

Stewart mocks the notion put forth by law professor and author Susan Crawford, among others, that a merged Comcast/TWC would create a "monopsony," a company that would effectively be negotiating with vendors on behalf of an entire industry. The mega-provider would be able to demand the absolute lowest rates from networks and other providers, which Stewart sees as only resulting in good, claiming the future Comcast-zilla "has an incentive to pass at least some of those savings on to customers to increase demand for its services with lower prices."

Again, we ask where he's imagining this incentive coming from? If Comcast has no competition and customers can't get their Internet and TV service elsewhere, why on Earth would the company not continue to chisel away at subscribers' wallets?

6. Who Cares About The Broadcasters?

Continuing on with the discussion of creating a monopsony, the Comcast ad in the Times— (because that's what it is: a huge, effectively sponsored, story that only cost Comcast a few bucks to get Stewart to Philly and show him around its shimmering USB drive on JFK Blvd.) — rightfully points out that antitrust law is intended to protect consumers, so why should anyone care about broadcasters and other content creators not getting their full due?

"It's hard to imagine that the wildly popular ESPN or Netflix needs protection from regulators in Washington," writes Stewart, ignoring the ripple effects and other problems associated with monopsony.

Say Comcast goes to Sony to discuss online streaming rates for its TV and movie studios' content. The megacompany, which not only has cable customers, but also Internet users, a built-in TV audience on a major broadcast network, multiple news channels, and a slew of cable offerings, could use that leverage to guarantee it pays a lower rate than anyone else in the industry. This drives up rates for competitors, who either pass that cost on to customers or who have to be more selective about what they license for their customers' use.

It provides a barrier for entry to start-up companies or new ventures from existing companies; makes it harder for smaller, regional providers to grow and compete; and could drive some companies — on both the content and provider side — out of business. Less choice, higher prices. That's a consumer issue, Mr. Stewart.

Additionally, cable companies are the gatekeepers for much of the information entering Americans' homes. With no current net neutrality rules, **a cable company can literally decide what its customers can and can't see.** Even though Comcast is still obligated to oblige by the recently-gutted rules through 2018, the above-referenced Netflix standoff shows that it has the means and the leverage to get around such weak-kneed regulation.

7. Someday My Cable Prince Will Come...

Stewart makes the fallacious claim of an "array of consumer television and broadband options" available to consumers, disregarding all studies showing that very few people have access to more than one cable provider; that satellite TV customers generally need a cable company to get broadband; that Verizon has stated publicly that it has no immediate plans to build out its FiOS fiber network into new areas of the country.

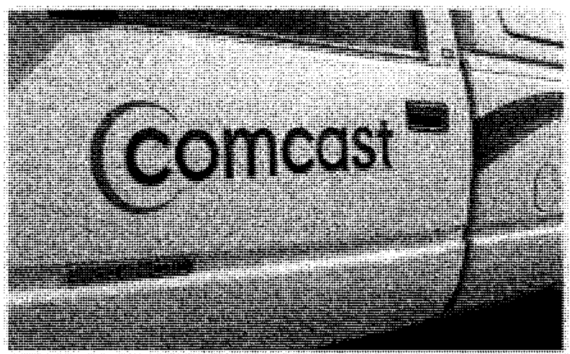
He even made me laugh a bit by speculating that Google may bring its Google Fiber network to New York City at some point in the next millennium. Verizon, which has the poles and the existing landline network in place, has been trying to wire that city for years with FiOS and has barely made a dent in Manhattan and many of the more populated areas of the city.

I actually did a spit-take when Stewart tossed out the suggestion that Sprint's pie-in-the-sky plan to provide wireless broadband service would someday be a viable non-cable option for consumers. At this point, that idea exists only in the speeches that SoftBank CEO Masayoshi Son gives to make the case for his own desired merger of Sprint and T-Mobile USA. Yes, widespread broadband Internet seems like an inevitable future for data to the home, but it's unlikely to come from any of the major wireless providers who are currently too busy enjoying their tiered data plans and their associated overage fees. And the notion that Sprint, which has not been able to keep up with its competitors in terms of speed and reliability, would be the superhero to swoop in and provide competition to New Yorkers is just ludicrous.

You simply can't wipe away all the problems with this merger with a few glib, biased complaints about how much you currently hate Time Warner Cable. You can't just say that the deal won't create a monopoly because there already is one. You can't pin your hopes for future competition on what-ifs and maybes.

How Comcast Uses Low-Income Families To Look Good For Regulators

By Kate Cox March 29, 2014



(spidra)

Back in 2011, Comcast launched a program to help low-income families. The program, Comcast Internet Essentials, lets certain families enroll in 5 MBps broadband for $10 a month. In timing that was completely coincidental we're sure, shortly after announcingtheir plan to buy Time Warner Cable, Comcast announced an indefinite extension to the program.

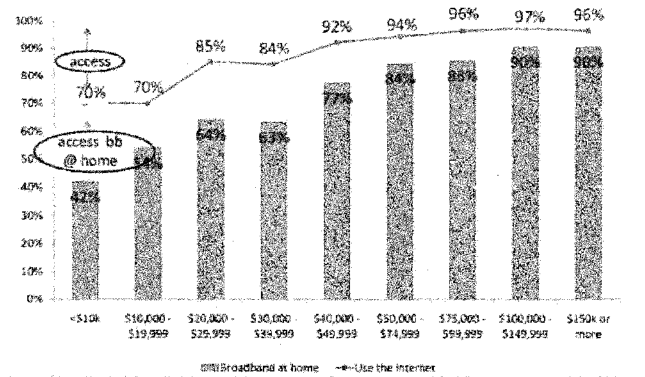
It's not the first time that Comcast has waved the flag of its commitment to underserved populations right as regulators were poised to take a fine-toothed comb to its business dealings. Internet Essentials is now here to stay — but who does it really serve?

The Internet Essentials program is aimed at helping a niche that badly needs help.
Let's say this up front, and clearly: expanding broadband access to lower-income households is a laudable and deeply necessary goal. In 2014, internet access is basically how everyone does everything. Need to apply for a job? Do it online. Need to access state and federal services? Do it online. Need to contact a school, do your homework, research something? Do it online.

Internet access isn't just about the newest in entertainment (though it is that, too). It's access to jobs, to education, to commerce, to news and information, to friends and family, and basically to the entire world at large. Being locked out of it due to high prices can be crippling in a hundred little ways, especially to a family with children who may be falling academically and socially behind their more moneyed peers.

The gap of the digital divide is real, and it's persistent. The Pew Internet Project has tracked internet access for years. On average, 85% of Americans access the internet. But an average is just that: averaged. Breaking down the data by household income, on the other hand, highlights the disparity.

Internet use & broadband by income



Broadband internet access by income, via The Pew Internet Project.

Pew's research, from last fall, shows just how big that divide is, and the correlation is undeniable: the more money you make, the more likely you are to have broadband internet access.

Given how expensive a utility broadband can be, it's not surprising that workers hanging onto the lowest rung of the economic latter have trouble buying into it. But as digital tools become more and more prevalent in the classroom, kids who aren't well-versed in them are at a distinct disadvantage for catching up to their classmates.

So with Internet Essentials, Comcast really is trying to fill in service for a segment of the population that generally goes underserved. 300,000 families are using the service, according to Comcast's most recent progress report, and that's 300,000 families who weren't connected before.

That's the good news. Now here's the rest.

There aren't as many families benefiting from Internet Essentials as there could be.
While it's great that over a quarter million families have enrolled, it could be a lot more. But somehow, Comcast just keeps managing to stand in its own way.

There are two major obstacles to getting low-income families enrolled in the program, according to outreach workers. The first is is the set of eligibility requirements Comcast lays out. To enroll in Internet essentials, families must:

- Be located where Comcast offers Internet service
- Have at least one child eligible to participate in the National School Lunch Program
- Have not subscribed to Comcast Internet service within the last 90 days
- Not have an overdue Comcast bill or unreturned equipment

Of those four requirements, that 90-day requirement is apparently the biggest stumbling block. Families who were overextending themselves to pay for a full-price Comcast package have to go completely without all service for three full months in order to reduce their costs. 90 days is a full semester of the school year — a long time for a family to cut itself off.

The other barrier is the enrollment process itself: Internet Essentials is separate from Comcast's standard service. It uses a different website and phone number for enrollment and information. Consumers who call Comcast's regular line and try to ask for the cheap internet generally get shunted into some kind of promotional triple-play package. Comcast representatives don't redirect callers to the other phone number.

So the consumers most likely to be able correctly to sign up for Internet Essentials are high-information consumers who have the time and resources to use the internet to research how to get the best choice in internet access. And the target user of Internet Essentials is a lower-information consumer, potentially with education and/or language barriers, who doesn't necessarily have the time and resources, or internet access, to do all the research over best choices.

It's not just the enrollment that has a mismatch between "service on offer" and "needs that need filling." Comcast has been touting their partnership with Khan Academy as a way to provide more free online education to low-income families... and while that sounds nice, the truth is, low-income kids aren't the ones really using streaming online courses. College-educated men are.

Comcast benefits far more than low-income families do.
The other main problem with Internet Essentials is that it's crap. A download speed of "up to 5 Mbps" is, by the standards of 2014, painfully slow. Those fancy online educational tools that are supposedly the main benefit of the program? Many of them don't work so well on that connection.

In other words, Comcast is giving their low-income customers access to what they pay for — not access on par with what most other Comcast customers can buy. It's both a fifth of the cost and a fifth of the service.

The focus on families with children eligible for free or reduced lunch is also a big problem with the program. Pew found that "internet non-users are heavily dominated by older adults." No kids at home? No connection.

And what about when those kids grow up? Eligibility is directly tied to having children in the home. When Junior, thanks to his reduced-rate Comcast connection, graduates from high school and gets a full scholarship to State U, will Mom and Pop back home still be able to get e-mails from him? Slate wondered about that in a piece questioning Comcast's motives back in January. Comcast exec David L. Cohen immediately fired back with a complete non-answer:

> "As to the issue of families losing access when kids graduate, the piece ignores our commitment to continue to offer Internet Essentials to any family so long as there is a single eligible child in the household."

And as to the issue of families losing access when kids graduate, the executive ignores families' commitment to not producing infinite children, and eventually having a youngest who turns 18 and graduates, thus ending the parents' eligibility.

Comcast, meanwhile, is not acting out of a sense of charity or philanthropy. They'resatisfting federal requirements to help bring broadband access to the poor. And Internet Essentials is only available where Comcast already operates — so Comcast isn't spending a dime to run infrastructure to any place where it doesn't already exist.

They sure get to benefit from looking philanthropic, though. Community outreach is ahuge part of Comcast's extensive lobbying efforts. And in looking to gain the blessing of federal regulators on their impending buyout of Time Warner Cable, "benefit to the community" is one of their best cards to play.

If Comcast succeeds in buying out TWC, they can argue, then that means they can expand the Internet Essentials program to 19 of the 20 biggest cities in the country. Since broadband access is a huge factor in the merger, Comcast wins from being able to claim that expanding their reach equals reducing the digital divide. If the poor and underserved get to benefit just as much as executives do well the merger must be a good idea, right? Right?!

And of course, every added customer for Comcast is, well, another customer for Comcast. Although actual provider choice and competition are terrible for everyone, options can be even more limited for lower-income families. It's not just for reasons of cost; it's because they're generally renters, not property owners. Renters in multi-unit buildings generally have exactly one choice for TV and internet access: the company their landlord has signed a contract with.

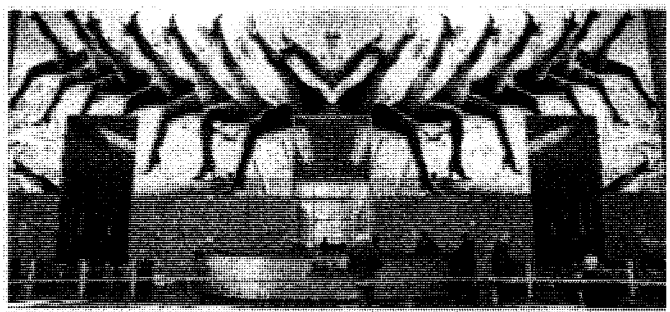
Having Internet Essentials gives Comcast the leverage to go to a community and say, "we have this low-income program; sign more contracts with us so we can help disadvantaged families in your area." And cities do. More reach, more leverage, less competition: a win all around for Comcast.

So is it just window-dressing?
Just because Comcast gets to win all around, of course, doesn't mean low-income families have to lose. A terrible internet connection is still better than no internet connection, and over a quarter million families probably are better off now than they were before. That's not a bad thing.

But as often happens with Comcast, the good news they're selling isn't the whole story. When it comes to the digital divide, and to fairly serving the underserved, there's a long way yet to go.

Comcast: We Don't Have Data Caps, We Have "Data Thresholds"

By Chris Morran April 4, 2014



We like to imagine this terrifying display inside the Comcast HQ lobby in Philadelphia is actually a live feed of the images playing through CEO Brian Roberts' mind (photo: Kevin Burkett)

In its ongoing effort to put lipstick on the pig that is its planned acquisition of Time Warner Cable, Comcast is once again attempting to hide behind double-speak. First, it claimed that it was the greatest supporter of net neutrality around, when it really meant that it was the biggest supporter of what Comcast believes net neutrality should be. Now, another Comcast executive is trying to downplay data caps with the more marketing-friendly term "data thresholds."

In March, the Writers Guild of America came out in opposition to the merger, expressing concern that a post-merger Comcast would use "[data] caps, tiers, metering, or other usage-based pricing" to dissuade consumers from using bandwidth-heavy competitors like Netflix or Amazon, both of which offer consumers an alternative to traditional cable television.

But rather than respond to the actual concerns expressed by the WGA and others, Comcast decides to focus on semantics.

"We don't have data caps — and haven't for about two years," Sena Fitzmaurice, Comcast's VP of government communications, wrote in an e-mail to the International Business Times in response to the WGA filing. "We have tested data thresholds where very heavy customers can buy more if they want more — but that only affects a very small percentage of our customers in a few markets."

A CAP BY ANY OTHER NAME...

And indeed, back in May 2012, Comcast did stop enforcing its standard 250GB/month data cap, but only so it could begin testing 300GB caps — sorry, "thresholds" — that the allows heavy users to buy additional buckets of data at $10 per 50GB. This initial test has since expanded to more markets.

The fact is that it's still a cap; it still represents a maximum amount of data that standard users can access without having to pay more. Call it a threshold, or a limit, or a thingyamdoo, a cap by another name would still smell as, well... whatever caps smell like.

GETTING OFF-TOPIC

This talk of whether or not Comcast is currently testing caps/thresholds is a distraction from the actual concerns expressed by the WGA. The Guild, like many others opposed to the merger, are worried about what lengths a SuperComcast might go to make it less attractive for customers to access disruptive online competitors like Netflix and Amazon.

Merely stating that the company got rid of "caps" in 2012 does nothing to indicate what Comcast plans to do going forward. It's like a spouse claiming they won't cheat in the future by pointing out that it's been a couple years since they last cheated (though they've been doing a lot of "flirting" around the office).

The fact that Comcast has expanded its testing of these kind-and-gentle thresholds seems to indicate that it's been having success with them. To me, it's also a sign that Comcast is more than aware that in a few years' time, a fully-connected household will be brushing up against that 300 GB number more and more frequently.

If Comcast were truly only instituting these thresholds to rein in a small percentage of data-hogging customers, it would have just raised the data cap universally from 250GB to 300GB. These tests are to likely so the company can see how unrestricted customers behave compared to capped customers so that it has a better idea of what to expect when everyone is downloading all of their movies, music, and especially video games, as files for big-name titles for the new Xbox One and PS4 consoles can be several times the size of an HD movie.

THE TRUTH ABOUT CAPS

When pushed on the topic of data caps, ISPs often fall back on the old excuse that these limits are needed to relieve congestion. But the cable industry itself had plainly admitted that they aren't about congestion but about getting heavy users to pay their fair share.

Similarly, the cable industry claims that tiered or usage-based pricing should be the standard so that the grandma who only uses the Internet once a month to send an e-mail to her grandson at summer camp isn't subsidizing the bachelor, who is streaming Netflix while playing a video game online and Skyping with 23 friends all around the world.

But it's been shown that the cost for storing and delivering data continues to drop, while the cost to consumers remains flat or increases, meaning the Comcasts of the world are making larger profits as they drive down their own expenses without passing those savings on to consumers.

At the same time, you have former FCC Chair-turned-face of the cable industry Michael "Yes, my dad is Colin, but I swear I deserve this job" Powell urgently exhorting the cable companies to switch to usage-based pricing before it's "too late for businesses to change consumers' minds that tiered pricing is a good thing."

ISPs have been monkeying around with tiered pricing for years, and have been licking their lips as they watch their cousins in the wireless world reap the benefits of their many data tiers. And barring regulation or legislation that puts a cap on data caps, it seems inevitable that ISPs will at the very least follow Comcast's lead and establish what currently appear to be reasonable limits, but which will soon be par for the course once even the aforementioned granny learns she can watch Matlock reruns online.

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Testimony of Eric Sherman, Chief Executive Officer, Veria Living
To the Senate Judiciary Committee, for its Hearing, April 9, 2014,
"Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers"

Mr. Chairman, Senator Grassley, and members of the Committee, thank you for the opportunity to comment on the pending merger of Comcast and Time Warner Cable. I am Eric Sherman, Chief Executive Officer of independent cable TV network Veria Living We are the only U.S. network offering 100 percent original programming 24/7 focused on health and wellness.

Veria is taken from the Latin "*veritas*", or truth, and I am here today to discuss a simple truth: The future of independent cable networks will be in jeopardy if the Comcast merger is allowed to proceed without specific government-imposed conditions. Few advertising-supported independents will survive if Comcast shuts them out of its new territory – one that includes 28 of the nation's top 30 markets.

A quick bit of history... Veria Living was launched seven years ago on DISH Network and has since expanded to Cablevision/Optimum, FiOS, GCI, RCN and others, but not to Comcast or Time Warner.

We've pursued Comcast on a regular basis, but their message has been plain, namely, that they will meet with us as many times as we like, but not give us a deal.

Comcast's manner of compliance with the FCC NBC Universal consent decree raises doubts about the company's commitment to supporting truly independent, creative, entrepreneurial networks. Under the decree, Comcast launched channels of limited original content, opting for endless sitcom reruns and music videos already widely available on TV. In at least one instance, Comcast appears to have some ownership interest in a network it chose to carry under the decree. The public deserves more robust evidence that Comcast is not discriminating against independent programmers.

If the merger is to be approved, Congress as well as the Department of Justice, Federal Communications Commission and Federal Trade Commission should press Comcast for enforceable guarantees and impose specific conditions requiring the new cable giant to assure fair access for independent networks. That means allocation of ample bandwidth for linear video channels, transparent evaluation and selection processes, inclusion of diverse voices, and good-faith negotiation of fair and non-discriminatory terms and conditions. It is in the public interest that Comcast carry independent

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networks whose programming is original and diverse as well as entertaining. The government should also ensure that Comcast carries independent networks on similar or equitable terms as those enjoyed by networks carried under the Comcast-NBCU consent decree (e.g., Aspire, El Ray and Revolt Networks).

Veria Living embodies the best of independent programming. We all recognize that there is a health crisis in the United States, yet there are only two TV networks that claim to focus on healthy living: Veria Living, with 100% healthy lifestyle original content, and Discovery Fit & Health, which delivers shows like "Secret Sex Lives: Swingers", "Extreme Cheapskates" and "Long Island Medium". Diabetes, obesity and heart disease are ravaging America and particularly our inner cities. Television has the power to inform, educate and literally save the lives of millions with timely, actionable tips and advice delivered in an entertaining fashion. Veria Living does this, but only in those homes where cable systems allow us carriage.

Our daily line-up includes "Good Food America", "Workout from Within", "Peggy K's Kitchen Cures", "Rock Your Yoga", and "Veria Living Live", which recently hosted a senior Administration figure explaining the ins and outs of the Affordable Care Act.

Attesting to the unique public health value of Veria Living, the Chief Executive Officer of the American Association of Naturopathic Physicians, Jud Richland, MPH, wrote Chairman Leahy (excerpts follow):

> "I hope you will extract from Comcast an assurance that public health messages, including those from natural healthcare providers, will not be stifled in a post-merger media world. This is of direct concern to the nation's 4,400 licensed naturopathic physicians -- graduates of accredited four-year naturopathic medical schools, dedicated to prevention-oriented, whole-person care.
>
> "Outnumbered by and working with fewer financial resources than entrenched medical societies and the pharmaceutical industry, naturopathic physicians are at a disadvantage in seeking positive exposure in news and entertainment programming on major networks. We have, however, found an important ally in the independent cable network, Veria Living.
>
> "This relationship of a network with the natural health profession is unique and important, not only to the public and to naturopathic physicians, but to

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> the economy as well. Given the rising costs of health care, the anticipated shortage of primary care physicians, and the ever-expanding interest in holistic health and wellness, the public deserves to know more about naturopathic medicine.
>
> "We respectfully request that you, the committee and Congress press Comcast for an ironclad assurance that it will carry vital independent content providers like Veria Living without imposing unreasonable terms and obstructions."

In the absence meaningful conditions, Comcast will reject fare like ours and instead favor those networks it owns or controls, directly or indirectly, and opt for more-of-the-same: sports, movies, reruns and little original, quality programming. Minority voices will continue to be underrepresented. Alternative messages will continue to be stifled. All we ask for is a fair and equitable opportunity for carriage.

Veria Living, it should be noted, may be the most vocal independent network on the subject of the merger, but we are just one of many independents not being carried by Comcast. Others include AWE, Rural TV, Blue Highways, Entertainment Studios Networks (Cars.TV, Recipe.TV, etc.) and more. All deserve to be considered on their merits.

Our chairman wisely insists that all Veria Living employees ask themselves a question as they make each business decision: *Have I helped someone today?* Mr. Leahy and committee members, I applaud the work you are doing today to help the American viewing public and the nation's free market of commerce and ideas.

I will be pleased to respond to any questions.

Thank you.

Eric Sherman
CEO, Veria Living

SUBMISSION FOR THE RECORD

National FFA Center
6060 FFA Drive
P.O. Box 68960
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 7, 2014

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

To Whom It May Concern:

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 Senate 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 communications 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 requirc that agriculturc havc 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 Senate Judiciary Committee for its diligence in safeguarding the public's interest as it considers the merger between Comcast Corporation and Timc 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 Exccutive Officer
National FFA Organization
National FFA Foundation

SUBMISSION FOR THE RECORD

April 7, 2014

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building,
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building,
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

In anticipation of your upcoming hearing entitled *Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers*, 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.

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,

James L. Winston

Director
NAACP Washington and
Senior Vice President for Policy and Advocacy

NABOB Executive Director and
General Counsel

cc: Full Senate Judiciary Committee

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RURAL MEDIA
GROUP

RFD-TV – Rural America's Most Important Network

Connecting City With Country

RFD-TV is recognized as one of America's leading independent cable television channels. Launched in December 2000 as a direct result of the FCC's mandate for Direct Broadcast Satellite ("DBS") providers to set aside 4% of their channel capacity for noncommercial educational or informational programming, RFD-TV has now grown to have a master affiliation agreement with nearly every major cable operator, enjoying distribution into over 41,000,000 U.S. homes. Nielsen rated, RFD-TV is currently ranked as the nation's #1 cable channel for Adults 50+, #1 in C&D County Viewership, and #1 Time Spent Viewing as a percentage of the Adults 50+ Audience Composition, plus was voted the #1 Bargain over all 400+ cable channels by the Independent Cable News 2013 survey of independent operators.

RFD-TV signed its first distribution agreement with DISH Network, and then also added full carriage on DIRECTV in 2002 due to the same FCC mandate from the Cable Television Consumer Protection and Competition Act of 1992. Since then, what has followed is truly an American success story. Given the opportunity, RFD-TV quickly found a large audience with its original and unduplicated 24-hour schedule, filling a void for viewers seeking programming devoted to agriculture, equine, rural lifestyle, and traditional family-oriented music and entertainment.

In 2007, because those same public interest mandates were not in place with major cable operators, and in order to grow and position the network to obtain affiliation agreements with Multichannel Video Programming Distributors ("MVPDs") in urban markets who were requiring commercial insertion as a standard term to be considered for carriage, 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 agreements with DISH Network and DIRECTV.

Since then and until 2013, Rural Media Group, Inc. has experienced explosive growth, which included:

- Established RFD-TV The Theatre in Branson, Missouri in March 2007.
- Launched RURAL TV in 2008, the first international channel devoted to rural programming.
- Surpassed 200,000 paid subscribers in 2010 for RFD-TV The Magazine.
- Purchased FamilyNet in August 2012, the company's second channel devoted to family-oriented programs, which provided access to 15,000,000 new homes, primarily in urban markets.
- Made the largest single, unrestricted cash donation to the Future Farmers of America.
- Launched RURAL RADIO on SiriusXM Channel 80, in July 2013, North America's first 24/7 radio channel devoted to agriculture and western sports in the U.S and Canada.
- Produced & broadcast The American, the world's largest one-day rodeo in March/2014.

Most importantly, RFD-TV has been able to establish its own, dedicated news bureaus in Washington, DC and Chicago and now produce over 30 hours of "live" news each week. Market Day Report and the RURAL EVENING NEWS cover news, weather, and markets from the rural perspective that is not available from the urban-based news channels. RFD-TV provides an important link to city viewers who desire to keep informed on rural issues and stay connected with their rural roots, witnessing firsthand the farmers/ranchers who work so hard to produce the food that is consumed each day by all.

RFD-TV Rural America's Most Important Network RURAL TV TELEVISION FOR A GROWING WORLD FAMILYNET RURAL RADIO

On August 13, 2013, despite strong ratings and over the vehement objections from thousands of supportive RFD-TV viewers, Comcast dropped RFD-TV on all its cable systems in Colorado and New Mexico. RFD-TV lost 399,560 homes in Colorado and 70,461 subscribers in New Mexico – 43% of its very limited Comcast distribution. Comcast launched another programming network on these same Colorado/New Mexico cable systems on August 15, 2013 – Al Jazeera America.

RFD-TV worked diligently to understand Comcast's decision and to find a solution. The City of Pueblo, Colorado and Governor Jim Hickenlooper mobilized significant efforts to persuade Comcast to reverse its decision and return RFD-TV's popular, 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 a meeting with Comcast's programming executives in Philadelphia was granted where RFD-TV's most recent Nielsen weekend prime-time ratings were presented, along with emails from over 4,000 Colorado/New Mexico customers requesting RFD-TV's return. The request was denied.

Comcast's decision to drop RFD-TV is not supported by RFD-TV's ratings or cost issues, as RFD-TV has one of the lowest per subscriber carriage rates among all programing networks:

- RFD-TV was ranked #72 in Denver (out of 289 channels), #42 in Colorado Springs/Pueblo, and #63 in Albuquerque, NM markets as measured by Nielsen Market Research in May/2013.
- No rate dispute – RFD-TV's carriage agreement with Comcast does not expire until December 31, 2015 and the channel has never raised its rate with Comcast, or any other cable provider.
- Comcast currently distributes RFD-TV into only 643,000 of its 21,700,000 homes served, and refuses to carry RFD-HD in many markets.

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 NBC Universal. 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 22 of the top 24 Nielsen-rated television markets in the United States. 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 this network for its 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.

RFD-TV is a public interest set-aside success story. Comcast has not been responsive to the concerns of consumers, independent programmers or local and state government officials. Rural Media Group respectfully requests that Comcast reverse its decision to stop carrying RFD-TV, and instead begin distributing RFD-HD in all franchised areas to the benefit of all. Moreover, additional measures are needed to ensure that independent programmers are protected against MVPD consolidation in the future, to reinforce the goals of Congress and the FCC to foster the development of independent programmers.