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By ECFS

March 16, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57

Dear Ms. Dortch,

On March 12, 2015, Angie Kronenberg and Mary Albert of COMPTEL, Jill Canfield of NTCA – The Rural Broadband Association ("NTCA"), Micah Caldwell of ITTA, Richard Schmalensee and Howard Chang of Global Economics Group, and Markham C. Erickson and Andrew W. Guhr of Steptoe & Johnson, LLP met with members of the Commission's staff regarding the proposed transaction between Comcast Corporation ("Comcast"), and Time Warner Cable, Inc. ("TWC"). A list of the individuals attending the meeting is appended to this letter. At the meeting, COMPTEL, NTCA, and ITTA discussed how the proposed transaction, if approved, would severely harm competition in a number of markets, ultimately slowing the growth of new technologies and new networks. Restricting innovation and competition in this way would negatively impact job creation, consumer prices, and economic growth.

The Proposed Merger Creates Significant Concerns Regarding the Merged Entity's Market Power over Programming. COMPTEL, NTCA, and ITTA raised concerns about the anticompetitive effects of the proposed merger on the video distribution marketplace. Comcast would have unprecedented market power—both as an owner and/or controller of content and as a buyer with tremendous leverage to extract even lower prices for unaffiliated content—that would significantly impair the ability of other facilities-based MVPDs to compete. With its expanded content portfolio, Comcast would have an even greater incentive and ability to engage in exclusionary conduct, such as by driving up the cost of affiliated content, engaging in program tying and coercive channel placement demands, and/or delaying access to or withholding programming altogether. With its dramatically expanded footprint reaching almost 30 million subscribers, Comcast would have negotiating power as a must-have distribution platform for other content providers that would allow it to secure unparalleled cost savings that other MVPDs

would be forced to make up. Ultimately, there would be less choice (as competing MVPDs forgo entry into new markets and in some cases exit existing markets) and higher prices for consumers as a result of this transaction.

The proposed merger's potential harms to the video services market would also be projected into the market for broadband Internet. The ability of telephone companies and competitive cable providers to expand their existing footprints to compete directly against Comcast depends on their ability to provide competitive video service. Comcast's newfound scale and control of programming would give it the ability to interfere with a competitive programming market and immunize it from competition.

Today, consumers prefer to purchase both broadband and video services together in a bundled product.[1] Therefore, competitive cable and telephone company systems have to be able to provide competitive video services in order to compete in the broadband services market, as well. While Comcast appears to make most of its revenue from providing video services,[2] these services are a loss-leader for many small- and medium-sized cable and telephone company providers. They are provided simply to complete the bundle and support the provision of competitive broadband services.[3] If Comcast and TWC are allowed to combine, the new entity's massive scale would make competing with Comcast impossible and prevent the public from benefitting from the competitive forces of new entrants, including other competitive cable and telephone providers.

Concerns about the proposed transaction's effects cannot be understood in a vacuum. Understanding the potential harms to the programming market requires significant analysis of Video Programming Confidential Information ("VPCI"), which is currently being withheld from

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[1] Federal Communications Commission, Connecting America: The National Broadband Plan 38 (2010), *available at* http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf.

[2] In 2013, Comcast earned more than $20 billion in revenue from its video business, more than double the amount it earned from broadband Internet. *See* Comcast Corporation, Annual Report (Form 10-K), at 53 (Feb. 2, 2014), *available at* http://files.shareholder.com/downloads/CMCSA/4065182414x0xS1193125-14-47522/902739/filing.pdf

[3] Even for the largest telephone companies, such as AT&T, the provision of video services is often a loss leader. *See The AT&T/DIRECTV Merger: The Impact on Competition and Consumers in the Video Market and Beyond: Examining the Comcast-Time Warner Cable Merger And The Impact On Consumers: Hearing Before the S. Judiciary Comm., Subcomm. on Antitrust, Competition Policy and Consumer Rights*, 113th Cong. 3 (June 24. 9, 2014) (statement of Randall Stephenson, Chairman, CEO, and President, AT&T, Inc.), *available at* http://www.judiciary.senate.gov/download/06-24-14-stephenson-testimony.

outside experts due to the pending litigation at the D.C. Circuit.[4] But allowing outside experts to review this information is necessary to providing the FCC with a full view of the context and implications of programming terms that may not be readily evident on initial review. As the Commission has previously stated, review of even very sensitive materials by representatives of interested third parties is "necessary to develop a more complete record on which to base the Commission's decision . . . . We are mindful of their highly sensitive nature, but we must also protect the right of the public to participate in this proceeding in a meaningful way."[5]

Analyzing the video programming ecosystem by reviewing the contracts at issue is critical to knowing whether the transaction will impede or eliminate competition from other MVPDs in the merged entity's footprint. Because access to this information by third parties is both necessary and critical to fully understanding the implications of the proposed merger, the merger should not be granted without the opportunity for such analysis to occur.

Comcast Cannot Be Permitted to Harm Innovation in the Set-Top Box Market. COMPTEL, NTCA, and ITTA also raised concerns regarding the potential foreclosure of innovation and competition in the set-top box market as a result of the transaction.[6] The Commission and Congress have long recognized the value of device-level competition as a means of spurring innovation and consumer choice—including in the set-top box market.

Until its announced deal with Comcast, TWC had been actively seeking to enable third parties to develop innovative devices for its cable system that would integrate its own video services with those of third-party OVDs. TWC's efforts to instigate a proliferation of innovative devices and designs were, according to the company, an effort to differentiate itself by empowering consumer choice. Comcast, by contrast, has taken a significantly different view. Rather than encouraging third-party innovation, Comcast has spent significant resources developing its own proprietary, closed X1 platform, which it seems intent on making *the* platform available to its customers and the customers of other cable systems.

The immediate result of this transaction would be to limit, rather than expand, consumer access to competitive set-top boxes. The demise of FanTV immediately upon the announcement of Comcast's announced purchase of TWC, suggests that the transaction has already had a chilling effect on innovation.

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[4] *See CBS Corp. v. FCC*, No. 14-1242 (D.C. Cir. Nov. 21, 2014) (order granting stay pending court review).

[5] Applications of Verizon Communications Inc. and MCI, Inc. for Approval of Transfer of Control, *Order*, 20 FCC Rcd. 10420, 10421 ¶ 3 (2005).

[6] COMPTEL is providing the Commission with additional information on these issues, under separate cover.

The proposed transaction also raises significant concerns as to whether, post-merger, there would be sufficient scale left in the market to allow for competitive STBs to be developed. Given the significant technological and market differences between the United States and the rest of the world with regard to video products, it is unlikely that STB innovations will come from outside the United States. As a result, operators competing with Comcast may be forced into the unenviable position of purchasing low-quality devices or negotiating with Comcast for access to the X1.

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As this evidence shows, the proposed merger of Comcast and TWC would harm the public interest by impairing competition and innovation, and raising prices for consumers. At the very least, the proposed merger would harm the market for competitive set-top boxes or increase Comcast's existing power over the programming market, with significant implications for competing video and broadband providers. Because of the potential for significant harm to the public interest—as identified here and elsewhere—COMPTEL, NCTA, and ITTA urge the Commission to deny the proposed transaction.

Sincerely,

/s/ Markham C. Erickson

Markham C. Erickson
Counsel for COMPTEL

2015-3-13 Ex parte attendees

Name	Bureau
Jon Sallet	OGC
Hillary Burchuk	OGC
William Dever	WCB
Sarah Whitesell	MB
Mary Beth Murphy	MB/PD
Alison Neplokh	MB
Jeffrey Neumann	MB
Elizabeth McIntyre	WCB
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Adam Copeland	MB
William Freedman	OGC
Hillary DeNigro	MB
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Bakari Middleton	WCB
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