Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Applications of Comcast Corp., Time Warner Cable Inc, Charter Communications, Inc., and SpinCo for Consent to Assign and Transfer Control of FCC Licenses and Other Authorizations	)	MB Docket No. 14-57

PETITION TO DENY OF NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION

NTCA–The Rural Broadband Association ("NTCA") hereby submits this petition to deny the license transfers associated with the proposed acquisition by Comcast of Time Warner Cable ("TWC"). The proposed transaction would be harmful to competition, to the detriment of consumers and contrary to the public interest.

I. INTRODUCTION

NTCA is a national association of more than 900 members. All of NTCA's members are rural incumbent local exchange carriers, many of whom also provide video, wireless and broadband services to their rural communities. Many NTCA members also act as competitive carriers in other rural towns and outlying areas, offering voice, video, broadband, and wireless to consumers and businesses. Some NTCA members compete directly with Comcast or Time-Warner for voice, video and/or broadband subscribers in at least a portion of these serving areas.

Section 310(d) of the Communications Act directs the Commission to determine whether the proposed assignment and transfer of control of licenses and authorizations held and

controlled by the entities will serve "the public interest, convenience, and necessity."[1] Comcast and TWC must not only show that the public interest benefits, but also that the benefits of a merger outweigh any resulting harm.

Comcast and TWC claim that the merger would not harm competition because they currently serve subscribers in distinct geographic areas and thus do not compete directly with one another. This reasoning ignores the fact that the merged company would exercise substantial control over video markets and have the ability and incentive to discriminate against non-affiliated video and broadband providers. Not only is the merger likely to drive programming costs for NTCA's members to untenably high levels, the combined company will be able to engage in a variety of tactics to price their services below cost to drive out competitors. The proposed merger is thus a threat to diversity, competition and the future viability of independent telcos and other smaller competitors.

The ability to offer video service to subscribers is essential to the viability of rural telecommunications providers. As demand for traditional landline telephone service decreases, rural telecommunications providers are evolving into full-service companies, providing broadband connections to the home and business. It is documented that the availability of video service and the bundling of it with broadband is a key driver in rural broadband deployment and take rates.[2]

Though rural telecommunications providers are actively deploying video service, most complain that access to content on reasonable terms and conditions is the biggest hurdle they face. Small video providers face substantial discrimination in prices and access to programming.

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[1] 47 U.S.C. § 310(d).

[2] Rural carriers that are able to bundle video with broadband services have experienced broadband adoption rates that are nearly 24 percent higher than those rural carriers that offer broadband alone. *See*, National Exchange Carrier Association comments, GN Docket Nos. 09-47, 09-51, 09-137 (fil. Dec. 7, 2009), p. 6.

Ninety-nine percent of respondents to a recent NTCA survey stated that access to reasonably priced programming was a barrier to the provision of video programming, with another 72 percent citing competing with other providers.[3] While it is not common for a rural incumbent telco to face competition in many portions of its service territory, competition in the most densely populated (i.e., most profitable) portions of rural areas does at times exist. For rural telcos to survive and for rural consumers to continue to receive high- quality voice, video and broadband service, competitors must be on relatively equal footing. At the very least, the Commission must not allow the creation of a mammoth full-service provider who controls the prices, terms, conditions and availability of service and content to the detriment of competitors and the consumers they all seek to serve.

II. CURRENT LAWS AND REGULATIONS DO NOT PROVIDE ADEQUATE PROTECTIONS AGAINST THE COMPETITIVE HARMS OF THE TRANSACTION

Current laws and regulations are insufficient to protect consumers from the harms of the proposed transaction. The combined company would not only control a significant share of the MVPD and broadband retail markets, but would also control content from NBC-Universal and related cable channels, regional sports networks (RSNs) owned by Comcast and Time Warner Cable, in addition to a number of NBC owned and operated broadcast stations.[4] The combined company will have the ability to abuse its power to negotiate unfair retransmission agreements, force carriage of undesired programming, and use its substantial size to engage in predatory pricing to undercut its competitors.

[3] NTCA 2013 Broadband/Internet Availability Survey Report (May 2014).
http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcabroadbandsurveyreport.pdf

[4] *See* Joint letter from the American Cable Association and NTCA to Chairman Leahy and Senator Grassley, p. 1 (April 9, 2014).

A. The transaction would exacerbate problems with the retransmission consent process

The Commission's rules at Section 76.56(b) require that most cable and IPTV providers only carry the local commercial broadcast television stations located in their specified Designated Market Areas (DMAs). Multichannel video programming distributors ("MVPDs") may not look to neighboring DMAs for network programming. Broadcasters' programming is carried by MVPDs according to retransmission consent agreements or must carry at the sole discretion of the broadcasters.

In the past, broadcast television stations relied on advertising revenues to earn a reasonable return on investment and would require MVPDs to carry their in-DMA signals by invoking the "must carry" requirements. No payments between the MVPDs and the broadcasters were exchanged.

Today, broadcasters obtain significant revenues by charging MVPDs for the privilege of carrying the in-DMA signal through retransmission consent agreements. MVPDs need network programming to offer a successful video service and broadcasters threaten to withhold programming during retransmission consent negotiations. The cost of carrying network programming has increased exponentially over the last several years.

The merger exacerbates a situation in which the network is also a MVPD competitor. The new company would have the ability to charge outrageous fees for network programming and the incentive to withhold it from competitors.[5] The combined company will have negotiating power not before seen in the retransmission consent process.

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[5]This transaction would compound the anticipated problems of the Comcast-NBCU transactions during which the Commission expressed concern that the new entity would block video distribution rivals from access to the video content or raise programming costs to its video distribution rivals. Memorandum Opinion and Order in In re Applications of Comcast Corporation, general Electric Company and NBC Universal, Ind. For Consent to Assign Licenses and Transfer Control of Licensees, MB Docket No. 10-56, note 6, at ¶ 29 (adopted January 18, 2011, released January 20, 2011). ("*Comcast-NBCU Order*")

B. The new company will have greater ability to engage in forced tying of programming

NTCA has consistently argued against the program distributor practice of forced tying undesired content with desired content. In order to obtain carriage rights for the 10 most widely distributed basic programmers, small MVPDs must contract for, pay for and distribute 120 to 125 channels. Even when programming is offered on an *a la carte* basis, it is often priced in such a way that taking only desired programming is not really a choice. Forced tying of content is a prevalent and pernicious problem faced by small MVPDs in the market today. There is nothing in law or regulation that prevents or prohibits this tying practice and the problem will be compounded by the proposed merger. Not only does the merged company have the incentive to delay and obstruct content carriage deals, when a content carriage deal is agreed to, it is likely that the merged entity will require a MVPD take ALL of the merged company's content in order to gain access to desired content. Consumers are forced to pay ever-increasing prices for bundled programming that many do not want.

There is also a real danger that the combined company will tie its web content to video content – both positively and negatively. That is, it will require the carriage of web content for access to video content, and withhold web content to gain leverage in negotiations. An MVPD wishing to gain access to desired video content is not only required to take and pay for undesired video programming, it often has to pay for and provide its subscribers access to the merged company's broadband, or other, web-based content. Providers are already requiring that broadband content be made available to all of an IPTV provider's broadband customers, whether or not the customer subscribes to the IPTV service, whether or not the broadband customer is situated within the video service territory and whether or not the customer utilizes the broadband

content. The IPTV provider pays the content provider a set amount on a per broadband subscriber basis, a cost that is ultimately borne by all broadband subscribers.

Video providers often provide access to their content via the Internet. However, when negotiations with MVPDs fail, the combined company will have greater ability to ensure that the MVPDs' customers can no longer access the content via their broadband connection by blocking access to on-line content. It will be able to tie on-line content to its video product, further engaging in strong arm negotiating tactics

Given that the combined company will control significant amounts of web-based content and this is an expected area of growth, there is every reason to believe that the combined company could seek to maximize its profits by tying its video content to its web content in "take it or leave it" agreements, thereby driving the price of service out of reach for many consumers – particularly those served by a broadband/video competitor.

C. The combined company will have greater ability to engage in the forced tiering of programming

Closely related to the problem of forced tying is the practice of tiering and minimum penetration requirements. Not only are competitive MVPDs required to take and pay for unwanted programming, but programming vendors require that programming be placed on a specific tier or require that a certain percentage of subscribers receive the service, forcing small providers to provide the channel to the most widely subscribed tier or tiers of service. Ninety-four percent of participants in a NTCA video poll reported that video programming providers have required them to place their programming in their most highly subscribed tier of video service. The combination of Comcast and TWC threatens to exacerbate this problem due to the combined firm's increased power in the market and negotiating position.

The combination of bundling and forced tiering make it impossible for a small MVPD to offer a truly basic, stripped down package of affordable service. It also prevents small MVPDs from competitively distinguishing themselves, which will further protect the merged company's market share.

D. The new merged company will have greater ability to engage in predatory pricing

A combined company could increase its market share and profit margin even further by abusing market conditions and undercutting its competitors. Given its huge market share, it will have unprecedented negotiating power and will pay less for virtually every service and product than its smaller counterparts. 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.

A merger would also enhance the combined entity's ability to cross-subsidize its products, lowering its prices in select markets to drive out consumer choice. The price sensitive nature of the industry ensures that smaller providers could lose customers to the merged entity due to predatory practices.

Also, cross-subsidization by the combined entity is likely to occur in a variety of circumstances, each designed to gain customers from other providers. The larger company can offer extremely low priced introductory offers to attract customers. It can absorb the lost profits in one market simply because its huge customer base ensures overall profitability. The combined entity could also subsidize its voice service, offering it for free as part of a larger bundle, knowing that regulatory constraints prevent a rural telco from making a similar offer. The combined entity is likely to choose markets with the intent to destabilize competition, moving to new markets when its goal is attained.

The combined entity will almost certainly seek to gain regulatory favor and public relations points by offering to provide service for free to municipalities, schools, libraries and other public anchor institutions. Such promises play well to the intended audience, but this form of cross-subsidization too is particularly harmful to rural competitors and ultimately, rural consumers. Small, rural telcos serve geographically remote areas, with few, if any, large business customers. Its largest and most profitable customers are often the municipalities, the schools, the libraries, the health care and public safety institutions. Providing "free" service to these institutions would not impact the overall profitability of the merged entity, but a rural telco lacks the subscriber base to make such an offer and loss of these customers would be devastating. It would ultimately result in fewer offerings and higher prices for the entirety of these small rural communities – including the institutions that might benefit in the short-run from the "gifts" from the combined Comcast-TWC.[6] Moreover, if selected larger institutional consumers in rural towns that happen to be "on-net" for Comcast-TWC receive such benefits, this will leave more

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[6] Despite its substantial market share, surveys consistently rate Comcast and TWC low for customer satisfaction (see Petition to Deny of Consumers Union and Common Cause, pp 7-9). Comcast is also rated low by NTCA's members for rural call completion. Comcast and TWC regularly fail to properly complete calls to rural areas.

rural and remote customers not served by the merged entity with little more than fewer services and higher prices.

III. CONCLUSION

The harms arising out of the combination of Comcast and TWC are likely to outweigh any potential benefits for American consumers as a whole, and for rural Americans in particular. The combined entity would have the ability and incentive to exercise its market power to control video markets and to discriminate against non-affiliated video and broadband providers. Not only is the merger likely to drive programming costs for smaller competitors such as NTCA's members to untenably high levels, the combined company will be able to engage in a variety of tactics to price their services below cost to drive out competitors. The proposed merger is thus a threat to diversity, competition and the future viability of independent telcos and other smaller competitors. Comcast and Time Warner cable have failed to meet their burden of demonstrating that this transaction is in the public interest. For the foregoing reasons, NTCA urges the Commission to deny the proposed merger of Comcast and Time Warner Cable.

Respectfully submitted,

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