

April 7, 2014

The Honorable Chuck Grassley  
Ranking Member  
U.S. Senate Committee on the Judiciary  
135 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 on Comcast/Time Warner Cable transaction**

Dear Ranking Member Grassley and Ranking Member Lee:

We write to express our general support for allowing commercial enterprises to arrange themselves as they see fit in a free-market economy, and to offer our judgment that the proposed combination of Comcast and Time Warner Cable (“TWC”) poses no harm to consumers or any worrisome accumulation of market power.

We also write to express our belief that the benefits this proposed transaction stands to offer consumers should be the government’s measure of the combined companies’ contribution to the public interest, and that without any clear evidence that consumers would be harmed, the transaction should be allowed to be completed without ancillary conditions or delay.

As advocates for a free market, we believe that the Sherman and Clayton antitrust laws require the government to abstain from intervening in such transactions on antitrust grounds absent any clear showing of actual or potential market failure of which there is none here.

Because Comcast and TWC do not operate in the same markets (and therefore, consumers will face no loss whatsoever of competitive choice in television and video, broadband Internet, and telephone choices) there is no apparent substantive antitrust concern here. The transaction will simply swap one cable company for another in some markets – something which is competitively neutral on its face.

Equally important, the Comcast/TWC transaction poses no harm to the public interest, since it stands to bring consumers appreciable benefits. Our examination of the proposed combined companies strongly suggests that consumers in TWC service territories are likely to get faster Internet service, more video programming options and, potentially, a check on increasing prices.

**First**, consumers in TWC territories stand to get faster broadband Internet service. Comcast offers broadband Internet speeds of 105 to 505 Mbps. In contrast, TWC offers speeds of only 50 Mbps in most places (and only 100 Mbps in a select few). Comcast is on record stating it plans to spend hundreds of millions of dollars a year upgrading TWC's slower networks. Comcast has completed its transition to all-digital networks, while TWC has completed less than 20% of this transition. Since Comcast offers more streaming, high definition, on demand, and mobile video options than TWC, the combined companies would seem to bring significant benefits to TWC customers and offer consumers in TWC territories a new, highly competitive option.

**Second**, the market for broadband Internet service is competitive -- despite some advocacy organizations trying to argue otherwise by arbitrarily defining the market too narrowly. The US is one of only two nations with three fully deployed broadband technologies actively competing for customers nationwide -- cable, telco, and wireless 4G LTE, which offers speeds of up to 20 Mbps). When understood in the context of these other competitive technologies, Comcast would be left, post-transaction, with just a 20 percent market share. And even if one were to (wrongly, from any rational economic perspective) exclude wireless high-speed competitors, nearly 90 percent of the country has a choice of high-speed wireline Internet service provider. There is no monopoly risk here and, again, because Comcast and TWC are not presently competitors, no consumer will face any reduction in choice for broadband providers as a result of the transaction.

**Third**, post-transaction, Comcast would have less than 30 percent of the Pay-TV market (and a lower Pay-TV market-share than it had after any previous transaction, including those with ATT Broadband and Adelphia). This is important because the federal courts have now twice said that the FCC's previously imposed limit of a 30-percent market-share for any single Pay-TV provider was unjustified.

Indeed, cable providers continue to see market-share eroded by other Pay-TV and online video providers. In recent years, satellite providers have added 7 million subscribers and telcos like AT&T and Verizon have added 10.7 million. This, while cable providers lost 10.4 million subscribers. (Cable providers lost 2 million subscribers in 2013 alone.) Additionally, new entrants to the market threaten to further erode cable's market share. Google's fiber service is expanding into 34 new territories offering a new competing service with 150 HD channels. Ninety-eight percent of Americans can choose from three or more multichannel video programming distributors today.<sup>[1]</sup>

We stress that in the real-world, rapidly developing video market, limiting antitrust discussion to Pay-TV alone mischaracterizes the video market by defining it too narrowly. National online competitors -- Netflix, Hulu, Amazon, and YouTube -- are booming, aided in part by their significantly lower overhead costs. A host of others including Roku, Vudu and iTunes video streaming have also flooded into this space. The FCC has noted the "tremendous growth" in this industry and online video revenues have tripled in the last three years.<sup>[2]</sup>

The proposed Comcast-TWC transaction won't limit or constrain this robust competition, but it will provide better service and new choices to existing TWC video consumers. Comcast's X1 operating system and Xfinity platform are market leaders, offering over 300,000 live and streaming video options -- far more than TWC. Industry observers expect the proposed

transaction to bring more high-definition channels, more on-demand options, and more “any device” and mobile video to areas previously served by TWC.

**Fourth**, some have questioned whether a larger Comcast may be too powerful in carriage negotiations with programmers. But antitrust law is intended to protect consumers, not to pick winners or losers in business negotiations. Consumers might well benefit if a larger Comcast will be in a stronger position to negotiate lower prices for programming, which have been increasing at a rate of 10 percent a year.<sup>[3]</sup> Programmers themselves dominate many of the carriage negotiations. It is not possible to run and operate a Pay-TV service today without properties such as ESPN, NFL games, and “event” shows like *Breaking Bad*. Programmers have the enormous power to “black out” signals when cable or satellite companies try to resist carriage-fee increases. (TWC lost 300,000 subscribers in a month when CBS pulled its signal in a fee dispute last year.<sup>[4]</sup>)

What’s more, according to many independent programmers themselves, Comcast has benefitted competitive programmers by supporting dozens of new and independent channels. Industry executives such as entrepreneur Mark Cuban (of AXS TV, *Shark Tank*, and the Dallas Mavericks) have hailed Comcast for providing opportunities and channel space for new and independent networks. Cuban says the transaction would be a “huge positive” for channels like his.<sup>[5]</sup>

**Fifth**, Comcast will acquire only a very small amount of new programming from TWC so there would seem to be no threat of vertical integration in the deal. And as for its own programming, Comcast has a strong track record widely licensing its own content to competing services and distributors.

**Finally**, concerns about Comcast serving as an Internet “gatekeeper” are misplaced. While we believe the 2010 open Internet (or “network neutrality”) rules represented an unwarranted and unnecessary overreach of government regulators into a fully functioning marketplace, Comcast agreed to support the rules and has pledged to honor them even after the courts struck them down. Since the proposed transaction will extend these now-invalidated rules into TWC territories, any claim that the proposed combination would *increase* a “gatekeeper” threat is wholly unconvincing. In fact, if the “gatekeeper” threat is real, extending Comcast’s agreement on open-Internet rules to TWC territory would have precisely the opposite effect.

We believe that absent clear evidence of market failure, the market will allocate resources in a manner that is the most pro-consumer. Here the record shows a strong, well-functioning and fluid market with many large and successful firms actively competing for customers. And the proposed transaction poses no loss of competition but instead promises improvements to consumer choice, service quality, and options.

We therefore call on all Members of Congress, the FCC and DOJ to show restraint and to allow the free market to function properly here without interference. That is the best way to ensure that market competition will thrive and consumers will be served.

Sincerely,

Grover Norquist, Americans for Tax Reform  
Phil Kerpen, American Commitment  
Tim Lee, Center for Individual Freedom  
Wayne Crews, Competitive Enterprise Institute  
Tom Schatz, Council for Citizens Against Government Waste  
Katie McAuliffe, Digital Liberty  
Hance Haney, Discovery Institute  
George Landrith, Frontiers of Freedom  
Tom Giovanetti, Institute for Policy Innovation  
Duane Parde, National Taxpayers Union  
David Williams, Taxpayers Protection Alliance

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<sup>[1]</sup> [American Action Forum, 2/19/14.](#)

<sup>[2]</sup> [FCC Fact Sheet, February 2014.](#)

<sup>[3]</sup> [Bloomberg, 2/13/14.](#)

<sup>[4]</sup> [CNN, 10/13/13.](#)

<sup>[5]</sup> [MultiChannel News, 2/17/14.](#)

cc:

The Honorable Orrin Hatch  
The Honorable Jeff Sessions  
The Honorable Lindsey Graham  
The Honorable John Cornyn  
The Honorable Ted Cruz  
The Honorable Jeff Flake