Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE

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SUMMARY

On behalf of the Competitive Enterprise Institute ("CEI"), we respectfully urge the Commission to unconditionally approve the joint applications of Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") seeking consent to transfer various FCC licenses and other authorizations.[1] The Commission's prompt approval of the Comcast-TWC applications is likely to serve the public interest by advancing consumer welfare and facilitating robust competition in the dynamic and multi-sided markets for broadband Internet service, multichannel video distribution, and original television programming. And although we cannot say with certainty whether this merger, if consummated, will deliver all the benefits that both empirical evidence and economic theory suggest it can attain, the upside of the deal for consumers is far more promising than its downside is worrisome.

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy and competitive markets. We make the uncompromising case for economic freedom because we believe it is essential for entrepreneurship, innovation, and prosperity to flourish. CEI has previously filed comments with the Commission in numerous proceedings involving license transfers, media ownership, wireless and wireline telecommunications, and other issues.

I. COMCAST AND TWC WILL BE BETTER EQUIPPED TO SERVE CONSUMERS IF ALLOWED TO COMBINE

A. A Merged Comcast-TWC Is Positioned to Offer Americans Superior Broadband Access than Either Standalone Company

As the Commission has repeatedly emphasized, expanding the availability of affordable, high-speed broadband Internet access is a top public policy priority.[2] Indeed, as the Commission has observed, broadband is "*the* great infrastructure challenge of the early 21st century."[3] Although various government agencies have played a limited role in facilitating broadband deployment, the brunt of this work has been done by the private sector.[4] As two of the nation's leading broadband providers, both Comcast

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1. Comm'n Seeks Comment on Applications of Comcast Corp., Time Warner Cable Inc., Charter Commc'ns, Inc., and Spinco to Assign and Transfer Control of FCC Licenses and Other Authorizations, *Public Notice*, FCC MB Docket No. 14-57 (July 10, 2014), *available at* http://www.fcc.gov/document/pleading-cycle-set-comcast-time-warner-cable-charter-transactions.

2. *See, e.g.*, FCC, *Connecting America: The National Broadband Plan*, at 3 (2010), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf.

3. *Id.* (emphasis in original).

and Time Warner Cable have played a crucial role in this process.[5]

If Comcast acquires TWC, the merged company will account for roughly 35 percent of wireline broadband connections in the United States—or 27.9 million residential broadband subscribers.[6] The deal will thus create a company that enjoys greater scale in the residential broadband market than any existing wireline provider. This scale will likely translate into an advantageous cost structure for the merged company and, in turn, more competitive service offerings in terms of price and throughput.[7] Although many of the costs entailed in offering broadband access are a function of each particular neighborhood or region a provider covers, the cost of delivering broadband also turns on a provider's overall footprint.[8]

For instance, each ISP must secure peering arrangements with other network owners to ensure its subscribers have unfettered access to the Internet. Making such deals can be expensive, especially for smaller broadband providers that lack a significant backbone infrastructure. Comcast, however, has reached settlement-free peering arrangements with every so-called "Tier 1" network—that is, networks considered to be at the top level of the Internet in terms of global connectivity.[9] These routes facilitate Comcast's ability to offer its subscribers higher throughput at lower costs than other providers—including TWC, which incurs marginal costs associated with paid peering as its subscribers transfer more content.[10]

These factors help explain why Comcast—which generates nearly thrice the revenue

4. *Id.* ("Due in large part to private investment and market-driven innovation, broadband in America has improved considerably in the last decade. More Americans are online at faster speeds than ever before.").

5. *See* FCC, *2014 Measuring Broadband America Fixed Broadband Report: A Report on Consumer Fixed Broadband Performance in the U.S.*, at 5 (2014), *available at* http://data.fcc.gov/download/measuring-broadband-america/2014/2014-Fixed-Measuring-Broadband-America-Report.pdf (both Comcast and TWC are among the nation's top 14 leading broadband providers by subscribers).

6. *See* Emily Steel, *Dish Asks F.C.C. to Block Comcast-Time Warner Cable Merger*, N.Y. TIMES, July 9, 2014, *available at* http://www.nytimes.com/2014/07/10/business/media/dish-asks-fcc-to-block-2-big-mergers.html?_r=0.

7. *See* SCOTT WALLSTEN, TECH POL'Y INST., AN ECONOMIC ANALYSIS OF THE PROPOSED COMCAST/TIME WARNER CABLE MERGER, at 2 (May 2014), *available at* https://techpolicyinstitute.org/files/wallsten_evaluating%20the%20comcast%20twc%20merger.pdf.

8. *Id.*

9. *See* Jon Brodkin, *Comcast Is the One Who Should Pay For Network Connections, Cogent Claims*, ARS TECHNICA (May 8, 2014, 2:20 PM), http://arstechnica.com/tech-policy/2014/05/comcast-is-the-one-who-should-pay-for-network-connections-cogent-claims/.

10. *Cf.* Sam Gustin, *Netflix Pays Verizon in Streaming Deal, Following Comcast Pact*, TIME, April 28, 2014, *available at* http://time.com/80192/netflix-verizon-paid-peering-agreement/.

of TWC[11]—currently offers at least 25mbps downstream broadband throughput to a higher share of its subscribers than does TWC.[12] If Comcast absorbs TWC's network, the merged company plans to make major upgrades so that it can offer its subscribers the service tiers available to Comcast customers today—which, for many TWC subscribers, will entail significantly faster broadband connectivity without any attendant price increases.[13] In the longer term, the merged company will be better-positioned to make consistent and incremental service enhancements at a faster rate than either standalone company has offered historically.

Although the merged company will be bigger than any existing wireline ISP, the Comcast-TWC acquisition will not reduce the number of broadband choices available to subscribers, for no households are serviced by both Comcast and TWC today.[14] The two companies compete largely in distinct geographic markets, while in the few cities wherein both services are available to a portion of households, only one of the two providers is available to any given property.[15] To be sure, many transactions deliver considerable net benefits despite growing the combined firm's share of a relevant market. Unlike many other recent mergers, however, the Comcast-TWC deal will have no direct effect on consumer choice.

Indirectly, the Comcast-TWC merger may well intensify broadband competition among existing fiber and DSL broadband providers. These providers, which in many markets represent the chief competitor to cable companies such as Comcast and TWC, currently offer fiber-to-the-home in a sizable minority of U.S. communities. Verizon FiOS, for example, now passes almost 19 million U.S. households with its fiber-optic broadband service.[16] In other areas, many DSL providers offer broadband speeds comparable to all but the fastest cable tiers; for instance, AT&T's U-verse

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11. *See* Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc. at 22, Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign and Transfer Control of Licenses and Other Authorizations, FCC MB Docket No.14-57 (rel. July 10, 2014) [hereinafter Comcast-TWC Public Interest Statement], *available at* http://corporate.comcast.com/images/Comcast-Public-Interest-Statement-April-8.pdf.

12. Comcast-TWC Public Interest Statement, *supra* note 11, at 33.

13. *Id.* at 34.

14. New York City Mayor Bill de Blasio, a skeptic of the deal, has conceded that "Comcast and TWC operate cable networks in distinct non-overlapping geographic markets." Ted Johnson, *New York Mayor Calls for Conditions on Comcast-Time Warner Cable Merger*, VARIETY (Aug. 25, 2014, 2:17 PM), http://variety.com/2014/biz/news/new-york-mayor-calls-for-conditions-on-comcast-time-warner-cable-merger-1201289939/.

15. Comcast-TWC Public Interest Statement, *supra* note 11, at 138–39.

16. Jeff Baumgartner, *Verizon Keeps FiOS Fire Stoked in Q4*, MULTICHANNEL NEWS (Jan. 21, 2014, 9:10 AM), http://multichannel.com/news/content/verizon-keeps-fios-fire-stoked-q4/356444.

VDSL now passes over 30 million U.S. households.[17] A more robust cable sector will likely spur these competing providers to continue to improve and expand their offerings.

B. Comcast-TWC Will Also Deliver Better Multichannel Video Programming Service If Allowed to Merge

Comcast and TWC also compete in the market for multichannel video programming distribution ("MVPD").[18] Unlike the residential wireline broadband market, wherein most U.S. consumers have two choices, nearly all Americans have at least three choices among MVPDs—while well over one in three Americans has four MVPD choices.[19] As in the broadband market, the Comcast-TWC merger will not reduce the number of consumer choices among MVPDs, for the two providers offer service to differing sets of households.[20]

Unlike in the broadband market, however, MVPDs do not simply connect their subscribers to a global interconnected network by any means necessary. Instead, MVPDs must bargain for the rights to perform, distribute, and retransmit a discrete set of television channels and programs. As the Commission has noted, "the broadcast and cable networks of seven companies—Disney, News Corp., NBC Universal, Time Warner Inc., CBS, Viacom, and Discovery—account for roughly 95 percent of all television viewing hours in the United States."[21] Although one of these steven companies, NBC Universal, is a subsidiary of Comcast, a merging party, the other six are not. Currently, both Time Warner Cable—not to be confused with Time Warner—and Comcast pay a considerable sum each of these channel-owning companies to distribute their programming to MVPD subscribers.

The costs to acquire this programming are substantial. Indeed, as the Commission has observed, "compared to the smaller and mid-sized MSOs, Comcast, Time Warner Cable, and Charter can better leverage their scale in programming cost negotia-

17. *The AT&T/DIRECTV Merger: The Impact on Competition and Consumers in the Video Market and Beyond: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 113th Cong. 1 (2014) (Questions for the Record Submitted by Chairman Amy Klobuchar for AT&T CEO Randall Stephenson), *available at* http://www.judiciary.senate.gov/imo/media/doc/Stephenson%20Responses%206-24-14.pdf.

18. *See* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Fifteenth Report*, FCC 13-99, 28 FCC Rcd. 10496, para. 33 (2013) [hereinafter *Fifteenth Video Competition Report*], http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-99A1.pdf.

19. *Id.* at para. 36.

20. *See supra* note 15.

21. *Fifteenth Video Competition Report*, *supra* note 18, at para. 329.

tions."[22] By joining forces, Comcast and TWC will account for a moderately greater share of MVPD consumers—and, in turn, will likely enjoy a moderately improved bargaining position relative to large programming vendors, whose popular and differentiated content offerings have traditionally made it difficult for MVPDs to aggressively negotiate on prices.

II. CONCLUSION

Ultimately, the Comcast-TWC merger represents just one transaction in a series of mergers and divestitures that ebbs and flows as the media and telecommunications markets evolve. If the deal is consummated, the combined company will continue to face fierce competition from broadband providers, MVPDs, programming vendors, and Internet-focused companies such as Netflix, Amazon, Apple, and Google. How these rivalries will pan out is impossible to predict, but the virtuous cycle of investment and innovation is all but certain to continue—especially if left undisturbed by presumptuous agency interventions. The Commission should let this merger go forward by unconditionally approving the companies' applications for consent to transfer various FCC licenses and other authorizations.

22. *Id.* at para. 69, n.208 (citing Michelle Ow, *Historical Benchmarks: Cable Margins by Segment, 2007 – Q1'12*, SNL Kagan, *Cable TV Investor: Deals & Finance*, July 31, 2012, at 12-13).