Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and Spinco to Assign and Transfer Control of FCC Licenses and other Authorizations	))))))	MB Docket No. 14-57

Comments of ITIF

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I. Introduction and Summary

The Information Technology and Innovation Foundation ("ITIF")[1] appreciates this opportunity to comment on the pending acquisition of Time Warner Cable Inc. by Comcast Corporation. ITIF supports this transaction with the belief that the deal presents few concerns in terms of competition while offering significant benefits through increased scale that will ultimately flow to consumers. Considering the pace of innovation and change in this sector, regulators should be cautious of chasing narrow, static efficiencies over allowing a dynamic market to innovate at an appropriate scale.

This acquisition poses very few concerns over competition. There is virtually zero reduction in horizontal competition as these companies do not compete in any single market. A

[1] The Information Technology and Innovation Foundation (ITIF) is a non-partisan research and educational institute – a think tank – whose mission is to formulate and promote public policies to advance technological innovation and productivity internationally, in Washington, and in the states. Recognizing the vital role of technology in ensuring prosperity, ITIF focuses on innovation, productivity, and digital economy issues.

combination also does not present significant vertical issues. With only 30 percent of the video market, a combined company presents no fear of real monopsony power, and, furthermore, stronger negotiating power in purchasing content should not be feared, as customers will ultimately benefit.

Vertical competition issues in the broadband space are somewhat more complicated, but are still not cause for alarm. Persistent confusion stems from the comparison of modern IP networks to the "terminating monopolies" regulations created in the phone networks. While it is true that the only way to reach broadband customers of a particular access network is through that network, there are dozens of various ways to get traffic into an access network like Comcast's, alleviating any real concerns about vertical competition in broadband.

The Commission should not overlook the significant technological and economic benefits that would come from a combined, larger company. The improved ability to quickly scale new innovations throughout the country as well as the ability to better recoup the large capital investment needed to innovate, improve, and maintain a large cable plant mean that this transaction is likely in the public interest.

II. The Proposed Transaction Presents Few Competitive Concerns

A. The proposed transaction does not reduce horizontal competition

It is well established that Comcast and Time Warner Cable do not overlap in any geographic markets. Without any reduction in horizontal competition, this transaction becomes much simpler to analyze. There are obvious dynamic and productive efficiencies to be gained by a larger network. For example, it will be easier to recoup the large capital investments needed to maintain, operate, and upgrade a large access network. It will also be easier to support more research and development into better network operation and the development of new functionalities. Other scale economies related to advertising, overall management, and network operations are likely to be accrued. The opportunity to gain these and other efficiencies without any reduction in competition should be celebrated as in the public interest. This transaction will not meaningfully change the number of options consumers have for either video programming or broadband access. Rather than addressing these facts, most opposition to the merger simply reflects an ideological bias against large corporations.

B. The effects on vertical competition will be minimal

Although the vertical effects of a potential transaction are less straightforward than the horizontal, the increased concentration from a combined company is unlikely to compromise upstream markets. Here the Commission should consider the effect of the acquisition on both the video content and broadband or interconnection markets.

First, considering video, it is important to recognize how dynamic this market is. DBS providers, with nation-wide footprints, are strong competitors and maneuvering to supplement their already popular offerings with broadband. Likewise ILEC offerings like Verizon's FiOS and AT&T's U-verse provide substantial and growing competition in the video (as well as broadband) market. AT&T is investing aggressively in its U-verse offering, expanding its video footprint, and is seeing exceptional subscriber growth with its improved broadband speeds.[2] Furthermore, major wireless carriers are developing LTE broadcast technologies that will continue to improve the ability of wireless to compete in the video as well as broadband services.[3] This is a dynamic market the regulator should be cautious in shaping.

[2] AT&T has recorded several consecutive quarters of U-verse broadband net adds that were above 600,000 – in Q1 2014, for example, U-verse broadband net adds were 634,000. *See* AT&T Newsroom, 2014 Q1 Earnings, http://about.att.com/story/att_first_quarter_earnings_2014.html.

[3] *See, e.g.* Jeff Baumgartner, "Verizon CFO: LTE Multicast 'Pivotal' to Mobile Video," Multichannel News (Aug. 12, 2014) http://www.multichannel.com/news/technology/verizon-cfo-lte-multicast-pivotal-mobile-video/383137;

Even simply taking a snapshot of the current market, the combined company would only have about 30 percent of the video market – far from a monopsony for video programming. And recent negotiations have made it clear much of the power still lies on the content side. The recent dispute between CBS and Time Warner Cable is a prime example. Time Warner Cable and independent analysts attributed the steepest quarterly loss of subscribers in television history largely to the CBS blackout.[4] Distributors know that consumers demand a variety of content, and evidence strongly shows that denying it to them, for however long, is dangerous.

Moreover, any increased power to negotiate lower content fees should ultimately benefit consumers. Content costs are a major factor in the increase in cable prices over the years, and many have attributed the pressures for consolidation in the cable industry to rising programming costs. Here we are not so worried about small independent programs making onto the carrier (distributors have incentives for variety and increasingly content providers have over-the-top options), but the appropriate pressure to control costs of large, popular programs. Customers will benefit from a combined company's ability to negotiate lower programming fees.

Consumers are also increasingly turning to over-the-top services for video. The proposed transaction raises a number of questions about a combined company's ability to affect upstream broadband services and providers. The most salient issue here is that of interconnection, an area complicated by the rightly confidential nature of interconnection agreements. The Commission is right to seek information on these agreements, but ITIF is confident, given the economics of

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for an introduction to the technology and its business case, see Qualcomm, "LTE Broadcast – A revenue enabler in the mobile media era" (Feb. 2013), https://www.qualcomm.com/media/documents/files/lte-broadcast-a-revenue-enabler-in-the-mobile-media-era.pdf.

[4] *See, e.g.*, Brian Stelter, "Time Warner Left Bruised in Fee Battle with CBS," *New York Times* (Oct. 31, 2013) http://www.nytimes.com/2013/11/01/business/media/time-warner-reports-record-quarterly-loss-of-tv-subscribers.html?_r=0.

interconnection, that a combined company would not pose an anti-competitive threat to broadband services or other Internet providers.

Take, for instance, the recent dispute Netflix had with a few ISPs. Netflix chooses a handful among of dozens of possible paths to deliver its traffic into last-mile networks. Soon after Netflix turned on its "Super HD" video streaming,[5] many of the interconnection ports they had relied on under a settlement-free peering arrangement became congested, affecting some consumers' streaming. Reports indicate that Netflix is in the process of negotiating multiple interconnection deals with ISPs to ensure this unprecedented amount of data can reliably be delivered onto access networks. It is likely that, given the tremendous volume of data Netflix users draw onto access networks, these sorts of paid interconnection arrangements are economically efficient.

There is little concern that access networks will be able to leverage their last-mile status to extract anti-competitive rents from interconnection arrangements because of simply how many paths there are into the network. Access networks are already well interconnected with the rest of the Internet – these simply are not like the terminating monopolies of old where you had to get equipment into a central office in order to interconnect. Instead, numerous possible arrangements will allow for a great deal of flexibility for edge providers to find the most economically efficient route onto the combined company's network. There are already several CDNs that have negotiated deals to deliver large amounts of data within these networks, and numerous transit providers compete fiercely to provide access to the Internet.

Indeed, it has been well established that the highly-competitive transit market functionally provides a price ceiling to deliver data to a last-mile access network.[6] This is a key

[5] Netflix, "Highest Quality HD Now Available to all Netflix Members," (Sept. 26, 2013), http://blog.netflix.com/2013/09/highest-quality-hd-now-available-to-all.html.

[6] See David Clark et al., "Interconnection in the Internet: the policy challenge," 39th Research Conference on Communication, Information and Internet Policy, (Aug. 2011).

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point – the highly competitive transit and CDN markets will continue to provide an alternative to paid interconnection, ensuring that the sort of arrangements Netflix is seeking are very unlikely to be anti-competitive.

III. A Larger Combined Company Can Better Serve Consumers

The Commission should not overlook the significant technological and economic benefits that would come from a combined, larger company. A larger footprint and increased economies of scale will allow the company to spread high fixed costs over more customers. Not only do these costs include the important capital expenditures required to expand, maintain, and upgrade parts of its network, but also the expenses of developing innovative new offerings, developing marketing materials, ensuring network security, overall management and other services. Having a larger footprint allows the company to spread these fixed costs over a larger revenue base, thus increasing economy-wide productivity.

Many innovations in this sector are moving to the fast-paced, iterative design process of software. For example, Comcast's X1 platform allows the company to quickly refine the user interface without having to wait for a re-designed cable box. There is also pressure to transition network equipment to "Software Defined Networking" with generalized components and a control plane abstracted into software. These types software-based innovations can be very quickly scaled out throughout entire networks, meaning a combined company would be in a better position to not only innovate more quickly, but, more importantly, scale those innovations out to more consumers with lower fixed costs than if two companies were developing them.

Many critics of the proposed transaction point to poor customer service ratings of these companies as a reason to reject the deal. Ignoring the fact that these issues are not merger specific, it is important to remember that these are complex industries where much can go wrong. As ITIF has pointed out, consumer ratings of UK broadband offerings are similarly low,

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despite much more competition due to separation of wholesale and retail networks (e.g., Open Reach).[7] Consumers rightfully have high expectations but often under-appreciate the difficulty in managing an large, advanced network, some of which is out “in the wild,” strung on poles or buried underground, where much can go wrong. There are also often problems in the computers or routers of the consumer, over which access networks have no control. Indeed, other complex, network industries, such as airlines, also rank low in customer satisfaction and telecom companies consistently rank low across the world. Notwithstanding that this merger would not change the competitive pressures on the combined company, consumer satisfaction is simply not a good ground to question this transaction.

IV. Conclusion

The broadband and video markets that Comcast and Time Warner Cable operate in are complex network industries that depend on scale and innovation. Regulators should be cautious about interfering on the basis of static efficiency presumptions without considering the longer term dynamic competition pressures that may motivate a transaction. The proposed transaction offers little concern over reduction in competition – by offering increased scale without reducing competition, the deal is in the public interest.

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[7] Adams Nager, “How to Misuse American Customer Satisfaction Index Data to Try to Block a Merger,” *The Innovation Files* (Mar. 24, 2014), http://www.innovationfiles.org/how-to-misuse-american-customer-satisfaction-index-data-to-try-to-block-a-merger/.