Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Mediacom Petition for Rulemaking	)	
To Amend the Commission's Rules	)	RM-11728
Governing Practices of Video	)	
Programming Vendors	)	

COMMENTS OF COX COMMUNICATIONS, INC.

By its attorneys and pursuant to Section 1.405(a) of the FCC's rules, Cox Communications, Inc. hereby files these comments to support the commencement of a rulemaking to address issues raised in the above-captioned petition filed by Mediacom Communications Corporation.[1]

I. INTRODUCTION

Cox agrees with the premises underlying the Petition – that the wholesale market for video programming is not functioning rationally and that this market malfunction has a negative impact on video consumers across the country. Small and mid-sized cable operators like Cox are being forced to pay unfair rates for programming and lack leverage in the wholesale market to withstand programmers' unfair pricing behavior. Cox has repeatedly urged the FCC to commence a rulemaking to examine some of these issues, and it renews that request here.[2]

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[1] *See* 47 C.F.R. §1.405(a); Petition for Expedited Rulemaking, Mediacom Communications Corp., filed July 21, 2014 (the "Petition"); FCC Public Notice, *Consumer & Government Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Report No. 3008 (rel. July 29, 2014); FCC Public Notice, *Deadline Extended for Comment on Mediacom Petition for Rulemaking To Amend the Commission's Rules Governing Practices of Video Programming Vendors*, RM-11728, DA 14-1167 (rel. Aug. 11, 2014).

[2] *See* Comments of Cox Communications, Inc., MB Docket No. 12-203, filed Sept. 10, 2012, at 6-7, 9 ("Cox Competition Comments"); Reply Comments of Cox Communications, Inc., MB Docket Nos. 12-68, 07-18, 05-192, filed July 23, 2012, at 2-7 ("Cox Program Access Reply Comments").

While Cox does not endorse every aspect of the Petition, it agrees that the FCC should review the wholesale programming market in a thoughtful and holistic manner. This proceeding should include, at a minimum, a full examination of the scope and potential solutions to unfairly disparate "volume discounts," *i.e.* differential pricing for programming between larger and smaller multichannel video programming distributors ("MVPDs"), and programmer policies that prohibit MVPDs from packaging high-priced sports programming separately from basic and expanded basic service. Both of these programmer tactics lead to increased prices and decreased choice for consumers and significant imbalances in the programming market that leave small and mid-sized cable operators like Cox at a severe competitive disadvantage. Cox urges the FCC to commence the requested rulemaking on an expedited basis.

II. THE FCC SHOULD OPEN A RULEMAKING TO CONSIDER VOLUME DISCOUNTS AND SPORTS PROGRAMMING ISSUES.

For the past several years, Cox has been warning the FCC about unfair practices in the wholesale cable programming market that threaten consumers and the competitive market for video services. Cox has long advocated that the FCC commence a rulemaking to examine the practice of programmers offering the largest MVPDs "volume discounts" that are unrelated to any economic advantage gained by scale distribution.[3] The Petition accurately describes this problem, and Cox supports its call for the FCC to examine the problem in a rulemaking proceeding.[4]

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[3] *See* Cox Competition Comments, at 6-7, 9; Cox Program Access Reply Comments Reply Comments at 2-7; *see also* Letter from Barry Ohlson, Vice President, Regulatory Affairs, Cox Enterprises, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 12-203, 05-192, 03-109, 15-5, filed June 13, 2013; Reply Comments of Cox Communications, Inc., MB Docket No. 12-68, filed Jan. 14, 2013 at 1-2 ("Cox Buying Group Reply Comments"); Comments of Cox Communications, Inc., MB Docket No. 12-68, filed Dec. 14, 2012, at 1-5; Comments of Cox Communications, Inc., MB Docket Nos. 12-68, 07-18, 05-192, filed June 22, 2012, at 3-7 ("Cox Program Access Comments").

[4] *See* Petition at 18-24.

As Cox has noted, and as the Petition properly emphasizes, so-called "volume discounts" that bear no relation to the economic benefits of large-scale distribution hurt consumers by depriving them of the price and service quality benefits that are supposed to flow from competitive markets. Moreover, they encourage smaller operators to pursue consolidation as a way to get big enough to command lower programming rates to keep up with the largest providers.[5]

With the proposed merger of AT&T and DirecTV, these are no longer theoretical harms.[6] In their merger application, AT&T and DirecTV frankly explain that a main motivation for the merger is to reduce programming costs by as much as 20%, or nearly $1.6 billion over the first three years of the merger.[7] These predicted savings are not claimed to come from any service improvements or cost savings for programmers; they will merely be the benefit AT&T and DirecTV expect to realize from the increased bargaining leverage that comes from getting bigger. Of course, as Cox has pointed out in the past, other operators will have to pay for these price reductions for the merged AT&T and DirecTV, and if history is a guide, those other operators will be small and mid-sized cable operators like Cox.[8] The result will be higher prices for small and mid-sized cable operators and their customers. And small and mid-sized operators

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[5] *See id.* at 22-24; *see also* Comments of Cox Communications, Inc., MB Docket No. 14-90, filed Sept. 16, 2014, at 14 ("Cox AT&T/DirecTV Merger Petition").

[6] *See* Commission Seeks Comment on Applications of AT&T Inc. and DirecTV To Transfer Control of FCC Licenses and Other Authorizations, *Public Notice*, MB Docket No. 14-90, DA 14-1129 (rel. Aug. 7, 2014).

[7] *See* Application of AT&T Inc. for Transfer of Control of Satellite Space and Earth Station Authorizations, File No. SAT-T/C-20140611-00060, filed June 11, 2014, Exhibit A, at 36 (citing Declaration of Rick L. Moore, Senior Vice President, AT&T Inc. at ¶ 18). *See also* AT&T Inc., SEC Form 8-K, filed June 3, 2014, *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271714000049/qa8k.htm.

[8] *See, e.g.*, Cox Program Access Reply Comments at 2 (citing Comments of the American Cable Association, MB Docket No. 10-56, filed June 21, 2010, at 38-39).

will have fewer resources available to innovate and provide new and better services to customers.[9]

Thus the AT&T/DirecTV merger shows that the volume discount problem is accelerating and that the FCC needs to address the issue before it spirals out of control and creates an irreversible distortion in the MVPD market. Cox agrees that the FCC should give this issue expedited treatment.[10] Indeed, Cox would support an immediate rulemaking to isolate and address the volume discount problem, with a follow-up rulemaking to address whatever other issues raised by the Mediacom petition the Commission deems worthy of attention.

Cox also urges the FCC to investigate the issues raised in the Petition regarding programmer practices with regard to sports programming. As the FCC has recognized, sports programming is some of the most important and valuable programming in the marketplace – for some customers.[11] Many other customers don't want or need large amounts of sports programming. For these customers, the proliferation of costly regional sports networks ("RSNs") and the programmers' demands that these RSNs be distributed to all or almost all customers create a considerable and unjustified expense. Operators like Cox should be able to respond to what consumers want, but Cox lacks the leverage with RSNs to achieve this needed flexibility. The FCC should examine whether rules are necessary to ensure that the high value

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[9] Cox has sought conditions on the AT&T/DirecTV merger to address the transaction-specific harms to the wholesale video market that the merger will cause, including exacerbating the volume discount problem. *See* Cox AT&T/DirecTV Merger Comments at 13-17. Commencing a rulemaking in response to the Petition is not a substitute for adopting Cox's proposed conditions. Instead, the FCC should adopt conditions on the merged entity that can be adjusted, if necessary, following the results of the rulemaking proceeding.

[10] *See* Petition at 1, 16, 34, n.7.

[11] *See, e.g.*, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Fifteenth Report*, 28 FCC Rcd 10496, 10657 (2013).

that *some* customers place on sports programming does not lead to increased prices and decreased choice for *all* customers.

Since sports programming is unique – and uniquely expensive – the FCC may need to consider whether special rules are necessary that would permit video distributors the flexibility to tier and price those services separately from other programming services. As demonstrated by the current dispute in Los Angeles over distribution of SportsNet LA, issues with the high cost of sports programming are intensifying and in need of FCC attention.[12] The FCC should take this opportunity to examine the sports programming issues raised by the Petition to ensure that similar problems do not arise in the future.

III. CONCLUSION

For these reasons stated above, Cox urges the Commission to open an expedited rulemaking to address the issues discussed herein.

Respectfully submitted,

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/s/

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September 29, 2014

[12] *See* Meg James, *L.A. Mayor Garcetti Seeks FCC Review of Dodgers Channel Impasse*, LOS ANGELES TIMES, Aug. 26, 2014, *available at* http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-comcast-dodgers-garcetti-20140826-story.html; News Release, *FCC Chairman Tom Wheeler Statement on Time Warner Cable's Agreement with KDOC To Broadcast Dodger Games*, rel. Sept. 15, 2014.