

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

Applications of Comcast Corp.,)
Time Warner Cable Inc., Charter)
Communications, Inc. and SpinCo) MB Docket No. 14-57
)
For Consent to Assign or)
Transfer Control of Licenses and)
Authorizations)

REPLY OF HORRY TELEPHONE COOPERATIVE, INC. TO OPPOSITIONS AND
RESPONSES

Horry Telephone Cooperative, Inc. (“HTC”), by its attorneys and pursuant to the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby submits this Reply to Oppositions and Responses in the above-referenced docket.¹ HTC has urged the Commission to condition any grant of the proposed merger of Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“TWC”) (collectively, the “Applicants”), and divestiture of certain Comcast-TWC subscribers to Charter Communications, Inc. (“Charter”), on the requirements that the merged Comcast-TWC and Charter each commit to offer video programming to small and rural multichannel video programming distributors (“MVPDs”) with 200,000 subscribers or less, at most favored nation (“MFN”) pricing for a minimum period of 10 years.²

¹ See Public Notice, “Commission Announces Extension of Time To File Replies to Responses and Oppositions for its Review 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, DA 14-1446 (rel. Oct. 3, 2014).

² See HTC Petition to Condition Assignment or Transfer of Control of Licenses and Authorizations, MB Docket No. 14-57, at 1 (filed Aug. 25, 2014) (“HTC Petition”) The requested condition for offering video programming at MFN pricing is with regard to programming that the merged Comcast-TWC and Charter each own or control; that is owned or controlled by any affiliate, parent, or subsidiary of the merged Comcast-TWC or Charter, and

The Applicants in their Opposition to Petitions To Deny and Response to Comments have given short shrift to the concerns raised in the HTC Petition.³ Notably, the Applicants have cited to the HTC Petition in two instances, but in both instances the Applicants have inaccurately cited the HTC Petition and have not sufficiently responded to the concerns raised by HTC.⁴

First, with regard to arbitration conditions, HTC has not complained that the arbitration conditions imposed in the Comcast and NBC Universal, Inc. (“NBCU”) merger are inadequate on the basis that they are too costly to use.⁵ Rather, HTC has stressed that adoption of arbitration conditions similar to those in the Comcast-NBCU merger do not address the root problem that the Comcast-TWC merger poses for small MVPDs.⁶ In fact, HTC does not object to the adoption of arbitration conditions, but stresses that arbitration conditions are largely irrelevant to small MVPDs that do not even have the economy of scale to negotiate reasonably competitive prices, terms, and conditions for access to video content that is so highly demanded by customers. Small MVPDs have even less margin to arbitrate disputes about prices, terms, and conditions for access to video content – a point clearly lost on the Applicants.

that is subject to significant influence by the merged Comcast-TWC, Charter, or any of their affiliates, parents, or subsidiaries, with significant influence determined by a collective 30 percent or greater share held by any combination of the merged Comcast-TWC and any of its affiliates, parents, or subsidiaries, or by any combination of Charter and any of its affiliates, parents, or subsidiaries. *See* HTC Petition at 1 and 6.

³ *See* Comcast and TWC Opposition to Petitions To Deny and Response to Comments, MB Docket No. 14-57 (filed Sept. 23, 2014) (“Comcast Opposition”).

⁴ *See* Comcast Opposition at 88, note 249, and at 158, note 490.

⁵ *See* Comcast Opposition at 88.

⁶ Like HTC, Hargray Communications Group, Inc. (“Hargray”), in its Comments, raises the root problem of the proposed Comcast-TWC merger. HTC agrees with Hargray’s concern “[t]he increased dominance of the new entity, and the corresponding weakening of competitive providers, will ultimately harm competition, drive up consumer rates, and limit consumer choice, as small competitive operators like Hargray are driven out of business in the long run.” Comments of Hargray Communications, Inc., MB Docket No. 14-57, at 4 (filed Aug. 25, 2014).

As HTC stated in its Petition, the single-most important concern for small MVPDs like HTC is the impact that the merger of the two largest MVPDs in the United States will have over video programming content in the MVPD market. Without conditions to ensure that small MVPDs have access to essential content at reasonably competitive prices, terms, and conditions, the impact of this merger on small MVPDs could be catastrophic.⁷ As HTC previously stated, arbitration conditions do not solve that problem.⁸ Again, HTC has not argued the arbitration conditions are too burdensome or too costly. Rather, arbitration conditions are not adequate to protect against competitive harm that already exists because small MVPDs do not have market power to command a seat at the bargaining table when negotiating prices, terms, and conditions for video content. Arbitration follows when negotiations fail and the protections provided by arbitration provisions should be a backstop to negotiation failures. However, the value of arbitration has not been realized by small MVPDs, or other competitive MVPDs.⁹

⁷ See HTC Petition at 7-8. Importantly, CenturyLink, Inc. (“CenturyLink”) stresses that “Comcast’s added scale post-merger would widen the gap in programming costs between it and smaller entrants such as CenturyLink. Given that programming is the single biggest variable cost for MVPDs, that disparity would impede competition and, in the long-run, increase costs for consumers, contrary to the public interest.” Comments of CenturyLink, MB Docket No. 14-57, at 2 (filed Aug. 25, 2014) (“CenturyLink Comments”).

⁸ See HTC Petition at 8. HTC agrees with CenturyLink that “[w]hile the arbitration remedy is an essential backstop (and deterrent) to bring Comcast to the table and ensure that Comcast cannot refuse to allow carriage of its programming by unaffiliated MVPDs, it has not proven to be a sufficient remedy to ensure that smaller MVPDs have a fair opportunity to reach a commercially reasonable carriage agreement.” CenturyLink Comments at 18.

⁹ CenturyLink appropriately notes that the “arbitration rights that the Commission established when approving the Comcast-NBCU merger have never been invoked as to traditional cable television programming.” CenturyLink Comments at 18 (footnote omitted). Like ITTA, HTC questions the value of the arbitration provisions for small MVPDs. ITTA notes that the “Comcast/NBCU conditions that were designed to ameliorate harms to rival MVPDs, such as the arbitration remedy for program access disputes, are not useful or helpful to smaller and new entrant video providers like ITTA member companies. For such providers, the time and financial resources involved in invoking the arbitration process to remedy the immediate harm

Second, it is disingenuous at best for Comcast to argue that MVPD programming prices are flattening out or to suggest that the MVPD market is constrained by the ease with which video subscribers can switch providers, claiming that a programmer risks less revenue if subscribers switch to the MVPD with lower wholesale pricing.¹⁰ Comcast and TWC are already the 800-pound gorilla and the two-ton elephant in the room. They have power in subscriber size, access to content, and control over content. If the merged Comcast-TWC fears loss of any wholesale revenue through differentiating wholesale pricing between small MVPDs and very large MVPDs, it will only be a short-lived loss in markets where there is only one triple-play competitor for video, Internet, and voice services and that competitor is a small MVPD. If small MVPDs do not have access to video programming at reasonably competitive prices, terms, and conditions, they will no longer be viable and the revenue from their subscribers will most likely end up belonging to the merged Comcast-TWC.

Again, the most critical concern for small MVPDs raised by the proposed Comcast-TWC merger is the further exacerbation of lack of access to essential content at reasonably competitive prices, terms, and conditions, and the ultimate result that small MVPDs will exit the video market to the detriment of consumers with the loss of competitive providers, and in some markets the loss of the only competitive choice for triple play services of video, Internet,¹¹ and

from lack of access to programming make pursuing such relief infeasible.” Petition to Deny of ITTA, MB Docket No. 14-57, at 16 (filed Aug. 25, 2014) (“ITTA Petition”). *See also* Comments of the American Cable Association, MB Docket No. 14-57, at 33 (filed Aug. 25, 2014) and RCN Telecom Services, LLC, Grande Communications Networks, LLC, and Choice Cable TV Of Puerto Rico Petition To Deny Applications Or Condition Consent, MB Docket No. 14-57, at 32 (filed Aug. 25, 2014).

¹⁰ *See* Comcast Opposition at 158.

¹¹ HTC agrees with COMPTTEL that compounding the harms that could result from aggregation of control are “those that may result from the substantial increase in the number of

voice from one provider.¹² The proposed Comcast-TWC merger necessitates, even more so than in the past, that the Commission guard against the initial harm experienced by competitive MVPDs in gaining access to video content, specifically the disadvantages competitors face in negotiating access to video content.¹³ HTC continues to urge the Commission to guard against this harm by conditioning the proposed Comcast-TWC merger on the commitment to offer video programming as stated in HTC's Petition to Condition, or in the alternative to deny the Comcast-TWC application for merger.

customers over whose access to the Internet and Internet content Comcast will exercise bottleneck control." Petition to Deny of COMPTTEL, MB Docket No. 14-57, at 6 (filed Aug. 25, 2014) ("COMPTTEL Petition").

¹² ITTA opposes the Comcast-TWC merger outright, citing the very competitive risks that are of concern to HTC. Specifically, ITTA states that "[i]f this merger is approved, Comcast would control substantially more programming than it did after the Comcast/NBCU transaction, and would have even greater incentives to use that control to raise costs for, or deny access to, affiliated marquee and RSN content. This exclusionary conduct would manifest itself in any number of ways. Comcast could use its increased leverage to withhold programming from competing MVPDs during negotiation impasses either temporarily or permanently. Comcast could force rivals to pay for less popular programming by tying such programming to the purchase of marquee channels. Comcast could use uniform price increases to gain a competitive advantage over its smaller rivals by charging all distributors, including itself, a higher rate for affiliated programming than it would otherwise charge. While Comcast could treat the higher price as an internal transfer it can disregard when setting its own retail prices, competing MVPDs would be forced to pay more for the programming and increase retail rates for subscribers to recoup the increased costs, or forgo purchasing the programming altogether (and risk losing subscribers). What is certain is that Comcast will undoubtedly employ any or all of these tactics when it serves its interest to do so." ITTA Petition at 9.

¹³ HTC agrees with COMPTTEL that "[b]oth Comcast and TWC have independently demonstrated a willingness to engage in exclusionary program access strategies by withholding programming or charging unreasonable rates and imposing unreasonable terms and conditions. The Commission has previously found that its program access rules are insufficient to remedy the harms posed by Comcast's and TWC's ability and incentive to engage in such behavior." COMPTTEL Petition at 39 (footnote omitted).

Respectfully Submitted,

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October 29, 2014

Certificate of Service

I, Donald L. Herman, Jr., hereby certify that on this 29th day of October, 2014, I have caused a copy of the foregoing Reply Of Horry Telephone Cooperative, Inc. To Oppositions And Responses to be served, in the delivery method specified, upon the following:

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