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

RESPONSE TO APPLICANTS' OPPOSITION TO PETITIONS TO DENY AND RESPONSE TO COMMENTS

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I. **Introduction**

Viamedia, Inc. ("Viamedia") writes in response to Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC")'s September 23, 2014 Opposition to Petitions to Deny and Response to Comments ("Opposition").[1] Comcast and TWC (collectively, "Applicants") make numerous assertions about the spot cable advertising industry, generally, and Viamedia, in particular. The Opposition completely fails to demonstrate how Comcast's acquisition of TWC (the "Transaction") benefits the public interest by purportedly ushering in future improvements and efficiencies in the spot cable advertising market.[2] Indeed, Comcast's acquisitions of advertising sales distribution, ad technology and data would leave them with absolute control of the spot cable advertising market and other markets within the cable advertising industry.

Specifically, the Opposition attempts to deflect from the central issue that the Transaction would allow Comcast to control $4.5 billion of the $5.4 billion spot cable advertising market. Comcast fails to adequately respond to the fact that, through their third party cable representation deals, they control the local advertising for almost 50 million households, and does not deny that it would like to control the local advertising for Charter and Greatland, which would bring Comcast's control to 60 million of 69 million cable households. Thus, this transaction would allow Comcast to apply its past anticompetitive behavior to all of the TWC markets, harming competition and local small business advertisers, and disadvantaging independent multi-channel video program distributors ("MVPDs"). The sheer number of stakeholders that share this concern illustrates the significance of this problem.[3] Unfettered, Comcast could end up

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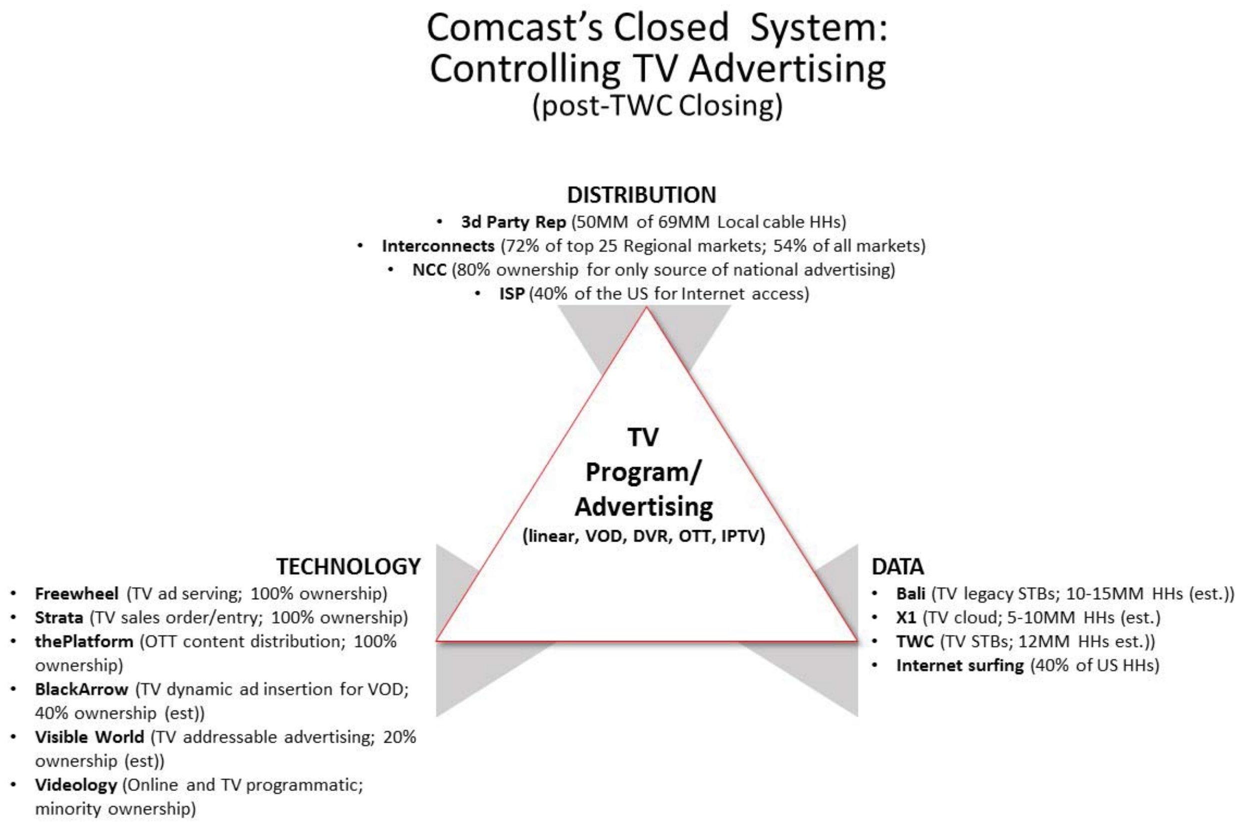
[1] We understand that the reply comment period has been extended indefinitely, *see* Order Suspending Pleading Cycle, MB Docket No. 14-57 (Oct. 22, 2014), nonetheless our preference is not to delay in providing the FCC this updated information.

[2] Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Assign Or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57, at 100-106 (Apr. 9, 2014)

[3] American Cable Association Comments, MB Docket No. 14-57 (Aug. 25, 2014); RCN Telecom Services, LLC, Grande Communications Networks, LLC, and Choice Cable TV of Puerto Rico, Petition to Deny Applications or

controlling the advertising into 87 percent of cable households. Combining that distribution footprint with the control of NCC and Interconnects *in addition to* set top box viewing and Internet surfing data in all Comcast and TWC households *and* the combination of technology companies Comcast has acquired, Comcast would have the incentive and ability to control the future of local advertising. The graphic below shows Comcast's control over the three legs of the television advertising stool:



Similarly, it is our understanding that the Transaction and the mass of distribution through third party cable representation deals enabling Comcast to emulate a national footprint, TV and Internet data, and technology that it placed under Comcast's control would enable Comcast to drive a decrease in cable networks advertising revenues which in turn would increase programming fees to other MVPDs and therefore subscription fees to consumers. It is also likely

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Condition Consent, MB Docket No. 14-57 (Aug. 25, 2014); Comments of CenturyLink, Inc., MB Docket No. 14-57 (Aug. 25, 2014).

that this national footprint will result in Comcast selling more high priced national advertising into the local availabilities, resulting in increased cost to, or the exclusion of small businesses who wish to purchase local spot cable advertising.[4]

Based on these dynamics, it is likely that the Transaction would reduce competition and harm the public interest in a number of ways, which would have the combined effect of making it impossible for other MVPDs and third party advertising representatives like Viamedia to compete as well as the adverse effect on small business advertisers:

- Third Party Representation: By acquiring TWC, Comcast would eliminate a competitor for third party spot cable advertising representation services. Comcast is the largest provider of these services in the United States and TWC is the second largest. Currently, Comcast and TWC compete against each other to represent the same MVPDs for third party representation services throughout the country. For example, an independent MVPD covering multiple geographic areas, like WOW, could solicit bids from both Comcast and TWC today for each of the geographic areas in which it operates. This competition would be eliminated as a result of the Transaction and enable Comcast to bundle horizontally (different markets) and vertically (between national, regional and local advertising) and increase its bargaining leverage versus independent MVPDs, including MVPDs represented by independent third party spot cable advertising representation firms like Viamedia.
- Interconnects: Post-Transaction, Comcast's control of additional TWC Interconnects would increase its leverage vis-à-vis independent MVPDs who need

[4] Interestingly, Discovery Networks has submitted an *ex parte* filing highlighting the issue of Comcast's control of data as anticompetitive to advertising as well. Presumably, Discovery is concerned that Comcast will affect the balance between advertising and programming fees by using data to move national advertisers away from Discovery direct advertising sales to the 2 minutes controlled by Comcast.

access to Interconnects in each geographic area in which they operate. The Transaction gives the combined entity greater market power in negotiating a multi-regional Interconnect deal with independent MVPDs that operate in multiple markets. This increased control of markets through control of the Interconnects across the county would also allow Comcast to expand its current practice of not allowing MVPDs and their third party representation firms into Interconnects if that MVPD does not allow Comcast to represent them in the underlying third party representation deal. (TWC does not have such as closed policy).

- National Advertising (NCC): As a result of the Transaction, Comcast would gain supermajority control of NCC (the only source for spot cable advertising from national advertisers). This would allow Comcast to use NCC as a tool of exclusion against competing third party spot cable advertising representation firms. For instance, Comcast could use NCC as a "Trojan Horse" to have NCC pitch MVPDs directly for national spot cable advertising, as well as to promote the Comcast controlled Interconnects and Comcast Spotlight as a third party representation firm, all while going around existing agreements between MVPDs and their chosen third party representation firm.
- Ad Sales: Comcast is a direct competitor to TWC for spot cable advertising in the following markets: New York; Charleston-Huntington; El Paso, Charleston, SC; Youngstown; and Bowling Green. In each of these markets, Comcast and TWC compete to attract businesses to advertise on their systems. This competition would be eliminated as a result of the Transaction

- Data and Technology: Comcast has consolidated under one business unit previously acquired technology companies (Strata, thePlatform, Freewheel) and will add more technology ownership with the acquisition of TWC. In addition, both companies have substantial ownership positions in other key technology companies (Black Arrow, Visible World and Videology). This control, combined with Comcast's TV viewing and Internet surfing data and the additional TWC viewing data from the Transaction, would allow the combined entity to monopolize a rapidly developing television advertising marketplace.

Viamedia submits the instant response in order to set the record straight and to reiterate that its proposed transaction-specific structural conditions serve the strong public interest in encouraging open competition, protecting the competitive spot cable advertising market and ensuring that small businesses always have a voice on television.

II. Spot Cable Advertising is a Unique Product Market in Which Competition Would be Harmed by the Transaction

As Viamedia has written elsewhere, the spot cable advertising market is a discrete, $5.4 billion product market, which is relevant to the Transaction.[5] Applicants incorrectly assert that spot cable advertising prices are constrained by robust competition from other local advertising media, including broadcast television, Internet, radio, and newspapers.[6] They cite irrelevant statistics comparing advertiser spending on spot cable advertising with other forms of media.[7] On just the next page, however, Applicants concede that "most advertisers do not regard cable and broadcast advertising to be close substitutes."[8] Further, the Department of Justice has previously found that other forms of media can be distinguished from television advertising. In

[5] Letter from M. Lieberman to M. Dortch in Response to Comcast *Ex Parte* Filing, MB Docket No. 14-57 (Sept. 17, 2014); Viamedia, Inc. Comments in Support of Conditions, MB Docket No. 14-57 (Aug. 25, 2014); Viamedia, Inc. Comments, Case 14-M-0183, N.Y. P.S.C. (Aug. 8, 2014).
[6] Opposition at 273.
[7] *Id.*
[8] *Id.* at 274.

its consent decree settling charges that Gannett Co., Inc's acquisition of Belo Corp. and agreement with Sander Media LLC, the Department of Justice stated that television advertising could be distinguished from advertising in other forms of media: "Television combines sight, sound, and motion, thereby creating a more memorable advertisement. . . . [while] radio spots lack the visual impact; and newspaper and billboard ads lack sound and motion, as do many internet search engine and website banner ads."[9] This reality is borne out by the attractiveness of TV advertising to engage consumers.

A. *Approval of the Transaction would grant Comcast significant power to harm competition*

Approval of the Transaction would grant Comcast significant power with which to harm competition, advertisers, and independent multi-channel video program distributors ("MVPDs") within the spot cable advertising market. At the national level, the Transaction would reduce competition by combining the two largest spot cable advertising representation firms in the United States: Comcast Spotlight and TWC Media Sales. In addition, in regional markets, the Transaction also would eliminate head-to-head competition where both Comcast and TWC offer spot cable advertising representation services to independent MVPDs. In addition, Comcast and TWC both offer spot cable advertising services in the following designated market area(s), as that term is defined by Nielsen Research DMA(s): New York; Charleston-Huntington; El Paso, Charleston, SC; Youngstown; and Bowling Green. In the New York City DMA, for example, where both Comcast and TWC represent MVPDs, an advertiser may have a limited budget and wish to choose a local zone rather than incur the cost to advertise across the entire DMA.

- On one day, Comcast Spotlight may pitch a given advertiser to advertise in its own Comcast zones in the New York City DMA.

[9] Competitive Impact Statement at 4-5, *United States v. Gannett*, Co., Case 1:13-cv-01984 (D.D.C. Sept. 16. 2013) *available at* http://www.justice.gov/atr/cases/f302500/302547.pdf. This case also is cited by Applicants in their Opposition. Opposition at 269, n. 847.

- On the next day, Comcast Spotlight may pitch that same advertiser to advertise in the zones in which Comcast Spotlight represents Verizon in the New York City DMA.
- On yet the next day, TWC Media Sales may pitch that same advertiser to advertise in the New York City DMA.
- And then on another day, TWC Media Sales may pitch that same advertiser to advertise in the zones in which TWC Media Sales represents Verizon in the New York City DMA.

This dynamic allows the advertiser the opportunity to choose between smaller geographic zones within the larger New York City DMA (in particular, local zones in Manhattan and northern New Jersey). If Comcast controls all the zones in the DMA unfettered by competition, it is likely that Comcast will require the advertiser to purchase unnecessary zones, or the entire DMA, as it has already done in the New York City DMA and the Tampa-St. Petersburg-Sarasota DMA. And this decrease in competition in the local zone business would most certainly increase the cost for advertising for small businesses in those zones who now would only have one entity from which to purchase advertising.

B. The Transaction would allow Comcast to dominate key inputs in the spot cable advertising market

The Transaction would allow Comcast to dominate multiple key inputs in the spot cable advertising market (national, regional and local advertisers) due to: (1) supermajority control of NCC Media, (2) spot cable advertising representation of other MVPDs by Comcast Spotlight; (3) control of Interconnects nationwide, and (4) control of key technologies.

NCC. Applicants' statement that greater control of NCC Media is not a transaction-specific concern and that NCC is independently managed gives short shrift to Comcast's involvement in NCC Media's contracting practices. Clearly, Applicants acknowledge Comcast's involvement in the extension of NCC Media's contract to provide spot cable advertising from national advertisers to Viamedia and its partners.[10] Applicants neglect to address the contractual language, which contains an explicit threat that NCC Media is not likely to renew the agreement at the end of the current extension and that requires Viamedia and its partners to seek alternative arrangements when the extension expires. However, Applicants surely are aware that national advertisers have no alternative to NCC Media for placing national spot cable advertising today, and that the only alternative likely to emerge in the future is Comcast itself, which can use the control it has over the majority of subscribers across the country to run national ads simultaneously across its footprint, rivaling the reach of NCC, cable networks or broadcast networks.

Applicants mistakenly cite TelAmerica, CTV, Cablescope, RevShare, Cable Time, Zip Tech Media, WorldLink, ITN, Delivery Agent (The Band), and Audience Xpress as alternatives to NCC Media. These companies are not national spot cable advertising representation firms that can place media on every single ad sales cable system in the country. They are in fact third-party direct-response types of advertising agencies which are not the exclusive contractual and recognized representative of every single MVPD data center head-end in the United States. And, if Comcast had supermajority control of NCC (80 percent as opposed to the current 60 percent),[11] they would be able to roll NCC into Comcast Spotlight and combine the two operations. It is unlikely that Comcast would have the ability to do so without supermajority control of NCC. Lastly, Comcast is currently employing a strategy that uses NCC as a "Trojan Horse" by having NCC directly contact MVPDs that NCC and Comcast know are contracted with Comcast rival turn-key local representation firms. NCC pitches these MVPD's on direct representation by offering higher splits and access into Interconnects which the MVPD's cannot

[10] Opposition at 280-81.
[11] We understand that Comcast recognizes this fact and has been trying to sell of a percentage of NCC to address this problem.

get by being represented by these rival firms. Because NCC does not have the infrastructure to provide full turnkey ad operations such as the ad insertion, traffic and billing necessary to insert advertising into the local availabilities, NCC then attempts to steer the MVPD into Comcast's turnkey representation business.

While many MVPDs have demonstrated they prefer an independent representative for local ad sales, even if it means Comcast will exclude the MVPD from the Interconnect, Comcast is surely aware that those same MVPD's have no alternative to NCC for selling national advertising. Because of this, even if Comcast is unsuccessful in its Trojan Horse approach to obtaining full turnkey representation of advertising sales for an MVPD through an initial agreement with NCC, but NCC is successful in obtaining a contract for national advertising directly with that MVPD, it still has significant benefits for Comcast. The loss of the national advertising revenue as a component of inventory available to independent third party ad sale representative may make it economically impossible for any third party representative to provide local ad sales representation to the MVPD, leaving that MVPD with only one choice for local advertising sales – Comcast.

Interconnects. Comcast would also control the spot cable advertising market by representing competitive MVPDs through Comcast Spotlight and controlling Interconnects nationwide. According to Nielsen data, there are 66.7 million cable households in the United States today. It is our understanding that Comcast controls the Interconnects for approximately 30 million cable households in a total of 67 DMAs, including 26 of the top 50 DMAs. TWC currently controls the Interconnects for approximately 16 million cable households in a total of 41 DMAs, including 14 of the top 50. Post-transaction, Comcast would control the Interconnects for approximately 46 million cable households representing approximately <u>69 percent of all cable subscribers, and approximately 78 percent of the subscribers in top 20 DMAs</u>. This control does not even take into consideration that Comcast would control over 90 percent of the advertising into cable households into some of the largest cities as well as control other TV outlets like regional sports networks, cable networks and broadcasters.[12] This control of Interconnects has allowed Comcast to make it difficult for a third party representation company to service a new MVPD partner when that partner decided to switch a local representation deal away from Comcast Spotlight.

Technology and Data. Moreover, Comcast's market dominance extends beyond control over cable households and includes key technological inputs. Comcast-owned Strata[13] has supplied the industry standard software program for buyers and sellers of spot cable advertising for the last ten years. In addition, Strata receives the proprietary code (called "syscodes") from Comcast-controlled NCC. It is the only means by which all cable spot advertising ordering and entry takes place. Ownership of Strata, combined with the new market power gained through the Transaction, would allow Comcast to further foreclose competitors and harm competition. The Transaction will provide Comcast with additional control of subscriber data, set top box data (the emerging new form of ratings data), creating a greater threat to competition and allowing Comcast to dominate other cable advertising markets outside of the spot cable advertising market. The dominance extends to Comcast's ability to demand onerous terms from programmers who have no choice but to contract with Comcast for carriage agreements and data needed to conduct their own advertising. Further, Comcast could withhold this data and disadvantage programmers from competing in other cable advertising markets.

C. The Transaction will disadvantage local advertisers and businesses

Finally, Comcast's assertion that no local businesses are concerned about the Transaction's effect on local spot cable advertising is disingenuous. Many independent MVPDs

[12] Viamedia, Inc. Comments in Support of Conditions, MB Docket No. 14-57, at 10 (Aug. 25, 2014)
[13] It is our understanding that Strata was formed in 1986 and acquired by Comcast in 2005.

have filed comments in this docket demonstrating that this is more than a parochial issue.[14] In addition, small advertisers lack the resources to file formal claims and are intimidated and fearful about Comcast's growing market power. Moreover, small advertisers are concerned about reprisal from Comcast if they voice concerns. It is our understanding that since taking over spot cable advertising representation in certain markets:

- Comcast's and TWC rates for local spot cable advertising increased. In speaking to local advertisers in the New York City DMA who are concerned about retaliation, their advertising rates have increased by 30-70 percent. (There are usually only two minutes an hour available for local spot cable advertising. As Comcast uses this local inventory, which is primarily designed to give small businesses and local advertisers access to spot cable advertising, to focus more on national and regional advertisers across the footprint it controls, there is less inventory available for smaller local advertisers, and at a much higher price).
- Comcast and TWC have required small advertisers to buy zones they do not need as a condition of being able to purchase any local advertising.
- Comcast's focus on national and regional advertising has limited the supply of spot cable advertising for local zone advertisers. (Indeed, Comcast actually proves this point when it states that the Transaction is in the public interest because advertising will be much improved as demonstrated by the support by national media buying agencies such as GroupM and MediaVest. What Applicant's fail to disclose is that these media agencies do not represent any small business advertisers and that their clients are only large national advertisers).

[14] American Cable Association Comments, MB Docket No. 14-57 (Aug. 25, 2014); 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 (Aug. 25, 2014); Comments of CenturyLink, Inc., MB Docket No. 14-57 (Aug. 25, 2014).

In sum, there will be more national advertisers, thereby squeezing out small advertisers seeking to have a voice on television. These advertisers include local auto dealers, small retailers, small start-up businesses, doctors, lawyers and political advertisers.[15]

The Applicants also state that the Transaction would help accelerate advanced advertising across a broader footprint.[16] However, the danger of this dynamic is that, if Comcast is able to close the Transaction without conditions, it could end up controlling the advertising into 60 million of 69 million cable households (their own 30 million households *plus* the current 19 million households through spot cable advertising representation agreements *plus* possibly the Charter and Greatland households). Combining that footprint with the control of NCC and Interconnects *and* the set top box viewing and Internet surfing data in all Comcast and TWC households[17] *and* the software combination of Comcast's Strata for order and entry, Comcast's thePlatform[18] for content distribution and Comcast's Freewheel[19] for ad serving, Comcast would have an unfettered ability to control the future of local advertising, define the future rules of the game, accelerate the demise of the local business advertisers' access to the two minutes of inventory and disadvantage its rivals. See below for graphical depiction.

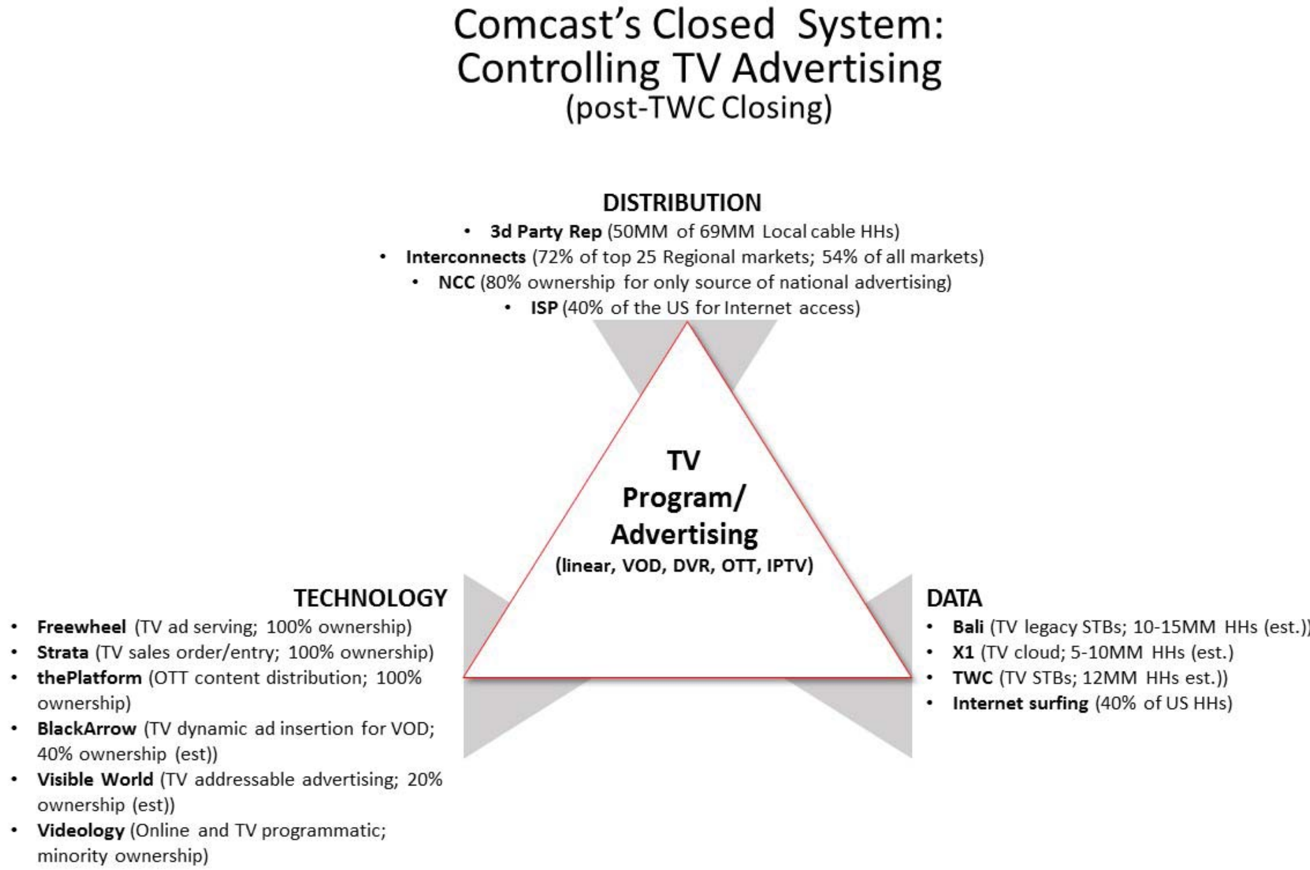
[15] Local cable is a very powerful and unique platform for political advertising. *See* http://www.washingtonpost.com/blogs/the-fix/wp/2014/10/08/1-of-every-5-spent-on-cable-tv-ads-in-september-was-political-per-one-firm/; http://www.cablefax.com/programming/midterm-money-targeted-advertising-helps-cable-grow-political-ad-share

[16] Opposition at 19.

[17] Comcast and TWC have refused to license set top box data to Rentrak, the industry leader in aggregating set top box data for industry measurement of local advertising, a fast emerging alternative ratings solution to Nielsen. http://variety.com/2014/tv/news/rentrak-gets-bigger-in-tv-measurement-by-aquiring-kantar-assets-from-wpp-1201325641/#

[18] ThePlatform is an online video publishing company acquired by Comcast in 2006.

[19] Comcast acquired Freewheel in 2014.



III. <u>Applicants Distort the Spot Cable Advertising Market Dynamics</u>

The Opposition fundamentally distorts the way the spot cable advertising market operates today and has operated in the past. At the heart of the market is the spot cable advertising representation business and the Interconnect. An Interconnect was designed to be a cooperative venture among all MVPDs operating in the same DMA, The Interconnect offers "one-stop-shopping" to advertisers desiring to place ads across the entire DMA. Each MVPD may participate directly, or through a *representative* such as Viamedia or Comcast Spotlight (the representative business owned by Comcast) or TWC Cable Media Sales (the representative business owned by TWC). As an agent, the representative has a duty (in theory) to act in the best interest of the MVPD it represents, sometimes placing advertising through the Interconnect and sometimes dealing directly with advertisers for zone-based advertising – whichever is best for the MVPD. The Interconnect itself is managed by an Interconnect *manager*: while it would be expected that the manager would be independently chosen by all the participants in the Interconnect, in reality that role is most always played by the largest MVPD in the Interconnect – which often is Comcast or TWC.

Applicants' posit that wherever Comcast serves as the Interconnect *manager*, Comcast Spotlight, is exclusively entitled to act as the *representative* for all of the MVPDs that participate in the Interconnect. Applicants' further assert that Viamedia is a mere opportunist, or "free rider," for trying to compete for that business.

In their attempt to make this claim, Applicants portray the business of a *representative* and the business of an Interconnect *manager* as though they are one – they are not: "Interconnects are typically managed by the largest MVPD in each DMA, *and participating MVPDs use the representation services (and nearly always sales services) provided by the managing entity*. Indeed, these are key efficiencies provided by an [I]nterconnect."[20] Applicants even go so far as to refer to the Comcast-managed Interconnects as now "Comcast's advertising [I]nterconnects."[21] However, contrary to the assertion that Comcast has made substantial investment in these Interconnects,[22] the local MVPDs who participate in these Interconnects and/or their spot cable advertising representation firm pay Comcast a substantial amount of money to be the manager of the Interconnect.[23]

The problem with Comcast's description is that it pretends that the Interconnect *manager* itself provides *representative* services for local zone-based advertising, when in fact the two are distinct. Comcast Spotlight offers spot cable advertising representation service and Comcast

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[20] Opposition at 279 (emphasis added).
[21] *Id.* at 19.
[22] *Id.* at 278.
[23] For instance, Viamedia paid Comcast $18 million on behalf of WOW and RCN in Chicago and Detroit over 10 years.

entities have assumed the position of manager in a majority of the Interconnects, but the *manager* of an Interconnect does not have the prerogative to reserve the role of *representative* exclusively to itself. Interconnect managers enjoy no such entitlement. Contrary to Applicants' assertion of Viamedia as a "free rider," an important part of the role that Viamedia provides as representative is to ensure that Comcast, in its role as manager, is acting on behalf of the Interconnect and not only in its own best interest. This is why smaller MVPDs within an Interconnect understandably may prefer to be represented by an independent entity rather than the largest competitor MVPD in a market, and which also controls the Interconnect. Applicants call Comcast's intention to commandeer the roles of both *manager* and *representative* a key "efficiency" provided by an Interconnect. In fact, this scenario offers an advantage only to Comcast, not an efficiency for the marketplace or other MVPDs trying to compete against Comcast in the same DMA.

Based on this false premise, Applicants go on to assert that "even a monopolist has no general obligation to deal with competitors[,]"[24] but it is Comcast as the Interconnect *manager*, not Comcast Spotlight the *representative*, that is refusing to deal with MVPDs and their chosen spot cable advertising representation firm, Viamedia. Comcast cannot assert that these roles are one and the same. The result is that the Interconnect manager's refusal to deal with Viamedia harms competition in the spot cable advertising market and disadvantages advertisers and MVPDs that are forced to deal with Comcast Spotlight for spot cable advertising representation services.

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[24] *Id.* at 278, n. 879. Regardless of its "general obligation to deal with competitor[s]", in testimony before the U.S. House of Representatives in May, Comcast's Executive Vice President David L. Cohen pledged that Comcast is "not going to exclude competitors" from the Interconnects it controls. U.S. House of Representatives Judiciary Subcommittee on Regulatory Reform, Commercial, and Antitrust Law Hearing on the Comcast-Time Warner Cable Merger (May 8, 2014).

A. Comcast's Interconnect policy disadvantages competitors and harms competition

Applicants also misrepresent Comcast's Interconnect policy. On one hand, Applicants state that Comcast generally has accepted every interested MVPD into the Interconnects it manages.[25] They cite Comcast Executive Vice President David L. Cohen's testimony to Congress confirming Comcast's "policy of admitting all MVPDs to any [I]nterconnects that it manages."[26] On the other hand, Applicants bury in a footnote an acknowledgment that some MVPDs, such as WOW and RCN, are prohibited from using a Comcast-controlled Interconnect if they also contract with Viamedia for spot cable advertising representation services.[27] And despite Comcast acknowledgement that Viamedia is a competitor to Comcast Spotlight,[28] Comcast has not lived up to Mr. Cohen's commitment that Comcast would not exclude any competitors from any Interconnects.[29] Instead, Applicants' proclaim that competitors to Comcast Spotlight, "merely add costs to the [I]nterconnect and benefit neither MVPDs nor advertisers."[30]

It is important to note that *no* other manager of Interconnects (including TWC, Brighthouse and Cox) excludes independent spot cable advertising representation firms. And Comcast itself has never been excluded from any Interconnect even when it is acting as spot cable representation firm. Thus, Comcast's statement that it does not typically allow any "middlemen" into an Interconnect is misguided.[31] Regardless, however, independent advertising representation firms, such as Viamedia, add significant value to independent MVPDs and small advertisers – which is exactly why companies such as WOW, CenturyLink and RCN select

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[25] Opposition at 277.
[26] *Id.*
[27] *Id.* at 277, n. 876.
[28] *Id.* at 19.
[29] U.S. House of Representatives Judiciary Subcommittee on Regulatory Reform, Commercial, and Antitrust Law Hearing on the Comcast-Time Warner Cable Merger (May 8, 2014).
[30] Opposition at 277, n. 876.
[31] *See id.*

Viamedia to represent them for local spot cable advertising and to also act as their representative in the an Interconnect. It is unsurprising then that independent MVPDs want independent spot cable advertising representation, rather than turn to a competitor for representation.

Comcast also asserts that an MVPD's use of an independent spot cable advertising representative is unnecessary because "revenue share in an [I]nterconnect is often the same for all participants, and fairly standardized across [I]nterconnects."[32] However, under Comcast's plan, if it controls the vast majority of Interconnects and excludes independent spot cable advertising representations, Comcast alone would determine what is a fair allocation. Similarly, Comcast could decide to charge a 50% higher Interconnect fee at the end of the Interconnect term. Thus, by virtue of competing for advertisers against Comcast in a DMA, and challenging allocations of revenue that Comcast unilaterally determines as manager with regard to advertising placed through the Interconnect in that DMA, independent spot cable advertising representatives provide a check on Comcast's dominance. Independent spot cable representation firms keep Comcast honest and accountable by ensuring that their MVPD partners are compensated by an amount that the independent MVPD determines to be a fair share of the Interconnect revenues.

Finally, independent spot cable representation firms provide their MVPD partners with a strategic partner. Viamedia, for example, does not compete against its MVPD partners in any video or broadband service markets. As a result, independent MVPDs enjoy a level of trust when seeking to schedule and run marketing campaigns, which they would not if these services were provided by Comcast Spotlight or TWC Media Sales. (The spot cable advertising

[32] *Id.* at 279, n. 883.

representation firm actually runs the marketing spots for video services on behalf of the MVPD. Clearly, many do not want Comcast to have visibility into this sensitive information).[33]

IV. Viamedia's Proposed Conditions are Transaction-Specific and Serve the Public Interest By Maintaining Fair Competition in the Spot Cable Advertising Market

On behalf of independent MVPDs, Viamedia has respectfully requested that, if the Commission approves the Transaction, the agency impose the following transaction-specific conditions referenced in Viamedia's earlier filing,[34] all of which serve the public interest by protecting the competitive spot cable advertising market. (We do not believe that behavioral conditions will work given Comcast's inability to self-regulate and in light of past and current anti-compete behavior).

These conditions serve the public interest by:

- ensuring NCC and the Interconnects are independently managed so that there are no risks of conflicts of interest;
- limiting Comcast's post-Transaction ability to foreclose competitors from key inputs, such as NCC Media and the Interconnects;
- preserving the choice that local advertisers and independent MVPDs enjoy today; and
- ensuring that small business and local advertisers would have a voice in local television advertising.

By protecting the spot cable advertising market, the Commission will maintain existence of numerous alternatives to Comcast, which would compel Comcast to operate on a level playing field like everyone else. With Commission action, Comcast would be more-inclined to treat competitors and other market constituencies fairly. By ensuring a competitive market, the Commission would also benefit advertisers, who would continue to enjoy both competitive rates for local spot cable advertising and greater inventory for local availabilities. The Commission would encourage fair and efficient distribution of advertising inventory by ensuring that an

[33] 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 28 (Aug. 25, 2014).
[34] Viamedia, Inc. Comments in Support of Conditions, MB Docket No. 14-57 at 18 (Aug. 25, 2014).

Interconnect is managed transparently in the best interest of all of the MVPDs in a market, rather than for Comcast's sole benefit.

Finally, by imposing these conditions, the Commission would prevent Comcast from constraining the development of new television advertising technologies. Technology innovators would have other viable avenues to test and sell these new technologies in the spot cable marketplace without worrying that there is only *one* spot cable outlet. Left unchecked, any innovation in the marketplace would have to pass through Comcast's gate in order to succeed, which would stifle innovation or allow Comcast to purchase the technology and act as the industry gatekeeper.

V. Conclusion

In furtherance of the public interest in preserving the benefits of the competitive spot cable advertising marketplace, Viamedia respectfully petitions the Commission to condition the proposed Transaction.

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