Before the

Federal Communications Commission

Washington, D.C. 20554

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

REPLY COMMENTS

OF

HARGRAY COMMUNICATIONS GROUP, INC.

Hargray Communications Group, Inc. (“Hargray”) respectfully submits these reply comments in the matter of MB Docket No. 14-57, in opposition to the Applications of Comcast Corporation (“Comcast”), and Time Warner Cable Inc. (“TWC”) (collectively, the Applicants”), for consent to Assign and Transfer Control of FCC Licenses and Other Authorizations.

After careful review of the Opposition To Petitions To Deny And Response To Comments (“Response”) filed by the Applicants on September 23, 2014, Hargray remains strongly opposed to the joining of TWC and Comcast due to the resulting anticompetitive harms to the industry and ultimately consumers. As a competitor of both Comcast and TWC and a customer of Comcast, Hargray currently experiences inequalities in the marketplace related to contending with these two media superpowers separately. Despite supposition contained in their Response, Hargray strongly believes that the post-merger entity will undoubtedly emerge with even greater, unrivaled market power as both a service provider and programmer.

A prime example of the unrivaled market power that would result from the proposed merged entity is the 846 page Response. Not only does the massive filing attempt to overwhelm parties who filed comments and petitions in opposition, but it provides a preview of how a merged entity will use its multitude of resources to exercise its influence and unparalleled bargaining power to overshadow the legitimate concerns of the dozens of parties in opposition. The ability of Comcast and TWC to use its size and scale to overpower its competitors and customers further erodes the core principals of maintaining a competitive environment and demonstrates the harm that will occur should the merger be permitted. Much of the voluminous Response carries a common theme of "No Harm" while categorically dismissing the legitimate concerns of dozens of parties. The economists engaged to respond in support of this merger are clearly skilled in providing <u>opinions</u> as demonstrated by their listing of more than a hundred published works; however, no one can speak from experience as to the effects on competition and customers of a merger that is of this unprecedented magnitude. Conversely, dozens of respected industry professionals, including legal and economic experts who oppose the merger, have described *real* existing market disparities that need to be adequately addressed and their concerns that a merged entity would tip the scales even further.

In light of the Response filed by the Applicants, the following areas remain key concerns for which Hargray recommends denying this merger. Should the Commission desire to vote in favor of the merger, but limit the risk to competition in the marketplace from the merger, Hargray asks that the Commission, at a minimum, impose enforceable merger conditions designed to alleviate greater harm resulting from this transaction whether intended or unintended.

Given that the Response filed by the Applicants routinely dismisses each concern stated above and categorically refutes any potential harm to competition or consumers, the Applicants should have no objection to supporting important merger conditions that provide adequate protections to those MVPDs and consumers who will be harmed if the merger is approved and finalized. Including such protections will have no negative affect on the Applicants (provided the Applicants experts have accurately predicted that there will be no competitive harms to redress) and minimizes the risk of harm to both competitors, and ultimately consumers.

DISCRIMINATORY PRICING

Comcast routinely offers its larger customers (including the two national satellite distributors) volume discounts that are then offset by charging higher prices to smaller Multichannel Video Programming Distributors ("MVPDs") such as Hargray. This price disparity occurs despite Hargray's participation in the National Cable Television Cooperative, a buying group which was formed in an attempt to help minimize these effects. Moreover, when the higher prices are combined with minimum penetration requirements imposed by Comcast, Hargray, like other smaller MVPDs, is forced to migrate services (and customers) to its most highly penetrated tiers. Ultimately, despite the fact that the cost for Comcast to deliver programming to Hargray is the same as to deliver to the larger distributors, Hargray pays more than those larger distributors that provide the exact same services and is concerned that that there will be greater disparity as the merged entity controls a larger share of the market.

Proposed Merger Condition – Prohibit Comcast from charging discriminatory rates, terms, and conditions for its affiliated-programming and broadcast stations and have an effective enforcement mechanism, particularly one that works for small and medium-sized MVPDs. Develop a process to audit and verify that the rates, terms, and conditions charged by Comcast are non-discriminatory. Finally, require that the net effective rate for Comcast video programming be uniform for all MVPDs.

FORCED WHOLESALE AND RETAIL BUNDLING

Under current practice, Comcast routinely bundles its "must-have" programming with lesser-viewed networks in a "take-it or leave-it" offering that additionally dictates tier requirements and the resulting retail packaging. This practice of forced wholesale and retail bundling results in higher costs for consumers through limited package choices and consumers end up paying for dozens of unwanted channels. Hargray continues to have concern that this forced approach, which requires the purchase of low valued content, will expand under the merger when the TWC programming assets are integrated with Comcast.

Proposed Merger Condition – Broaden the "standalone" offer condition that applies when arbitration is needed to resolve negotiation impasses that involve regional sports networks and broadcast stations. This FCC imposed condition that was placed on the merger between Comcast and NBC Universal should be expanded to include all owned, operated, and/or controlled national cable programming networks to allow true standalone (or “a la carte”) offerings for this programming. Providing such offerings will ultimately enhance competition and provide consumers with more choice and more affordable options.

VOLUME DISCOUNTS

If the FCC allows Comcast and TWC to merge, the larger entity will likely dominate the market with unparalleled market share and bargaining power at the expense of small independent operators like Hargray that will experience even greater inequality in the market as negotiating power weakens. Due to its current size, Comcast receives a favorable competitive advantage in the form of volume discounts from the other large content providers. If the FCC allows Comcast to grow larger as a result of the proposed merger with TWC and volume based discounts continue, the price disparity between the large and small companies will continue to grow. This will make it even more difficult for the smaller providers to meaningfully compete in the market. The net effect will ultimately drive up rates for consumers across the country and limit consumer choice as smaller MVPD operators like Hargray are driven out of business.

Proposed Merger Condition – Provide greater transparency of programming costs by requiring the Applicants to disclose prices, terms, and conditions for cable programming and broadcast content delivered upon the request of an MVPD.

SUMMARY

The Applicants assembled and filed a massive 846 page Response which paints a clear picture of the enormous size and scale of the proposed entity, but did little to address the legitimate concerns of those entities that will suffer harm should the merger be approved. Although, the Response proffering the opinions of several economists physically outweighs the comments of those who oppose this transaction; the opponents provided concise arguments, citing actual experiences and real challenges they currently face. In a show of support for competition and consumer protections, we respectfully request the Commission deny the proposed merger. If the Commission instead approves the merger, we request that our suggested meaningful and enforceable conditions be imposed to help mitigate greater harm to competition.

Respectfully Submitted,

Hargray Communications Group, Inc.
By: /s/ David H. Armistead
David H. Armistead
Vice President/General Counsel
david.armistead@htc.hargray.com
856 William Hilton Parkway
Hilton Head, SC 29938
(843) 686-1275

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