Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

To: The Commission

REPLY COMMENTS OF THE TENNIS CHANNEL, INC.

Introduction and Summary

The concerns raised by The Tennis Channel, Inc. ("Tennis Channel") in its initial Comments have been echoed by a number of independent programmers and other marketplace stakeholders, and Comcast has failed to address those concerns in any meaningful way. It is therefore clear that any grant of the applications must be made subject to stringent conditions that will protect competition in the programming marketplace.

Comcast's Opposition to Petitions to Deny and Response to Comments dismisses out-of-hand the competitive concerns raised by the large volume of petitioners and commenters, such as Tennis Channel, characterizing them as "self-serving" and "rent-seeking."[1] It is, of course, self-evident that many participants in the proceeding, including Comcast itself, have interests that are aligned with the positions they are taking in this proceeding. But consideration of these varying private and public interests nonetheless remains the essence of the Commission's responsibility in

[1] *See, e.g.*, Comcast Corp. and Time Warner Cable Inc. Opposition to Petitions to Deny and Response to Comments, at 114, 249 [hereinafter "Comcast Response"].

evaluating whether grant of the application (subject to conditions, if appropriate) serves the public interest.[2]

Thus, Comcast's emphasis on the supposed "motives" of independent programmers appears to be a red herring to distract from the serious concerns presented by the transaction, such as the expanded opportunities the merger will afford Comcast to discriminate against rival programmers, the insufficiency of existing law or conditions to address such risks adequately, and Comcast's ability, through restrictive contractual provisions, to stifle programmers' use of competitive, emerging online distribution technologies in order to reach consumers.

I. The Transaction Would Significantly Magnify Comcast's Opportunities To Discriminate Against Independent Programmers.

If the transaction were consummated, Comcast would expand greatly its already extensive distribution network by acquiring more than seven million additional households and further consolidating its market position in the nation's highest-ranked DMAs, including, notably, in New York and Los Angeles. As a number of independent programmers and others have argued, the transaction would thereby provide Comcast "bottleneck" control over programming distribution, as well as the power to limit the competitiveness of rival programmers for advertising and content rights.[3] It is clear that the merged company would have much greater scale and therefore enhanced

2 *See Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (requiring hearing to consider petitioner's application in determining whether grant of mutually exclusive application is in the public interest).

3 RFD-TV Comments, at 5 ("If Comcast and TWC are permitted to combine, the new entity would become the dominant pay TV provider in the top 10 television markets, and its reach would extend to 23 of the top 25 television markets and 37 of the top 40 television markets."); TheBlaze Comments, at 6 ("As a combined company, Comcast will have the power to silence independent, competitive voices like TheBlazeTV because it furthers Comcast's *business* interests."); Entravision Comments, at 8–9 (describing Comcast's position as a "gatekeeper" for Latino-focused programming); Consumer Federation of America Petition to Deny, at Exhibit I-2 and accompanying text (noting that "the merger results in a 50% increase in (continued…)

leverage over programmers.[4] And as the Future of Music Coalition and Writers Guild of America West, Inc. explained in their Joint Petition, the "[a]pplicants' increased scale in distribution will enhance their power to foreclose programming competitors from their cable systems, by refusing to carry unaffiliated networks temporarily or permanently."[5] This power is magnified by the merged company's dominant presence in all of the top ten media markets, including the two most important media markets in the country for those competing for advertising dollars and content rights, New York and Los Angeles.

Comcast argues that the merged company still may not be large enough to "determine unilaterally the fate of programming networks."[6] Not only is that not the correct standard (the Commission is instead tasked with evaluating whether grant of the transaction would *serve* the

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Comcast's control over the strategic chokepoints in the supply chain" and that "[t]he merger makes Comcast the dominant MVPD not only the largest video markets, but also the two most important media markets in the country").

4 ACA Comments, at 2 ("Furthermore, the transaction will, by increasing both Comcast's and Charter's total numbers of subscribers served, increase their bargaining leverage with programmers and result in these companies lowering their overall programming costs."); CenturyLink Comments, at 16 (concluding that "the merger would bring Comcast even greater programming cost advantages over rivals"); NTCA Comments, at 7 ("With more than 30% of all MVPD subscribers, the merged entity will become a 'must have' distribution outlet for programmers."). Indeed, the company has touted its enhanced leverage over programmers as a benefit. *See* Cecilia Kang, *Comcast, Time Warner Agree to Merge in $45 Billion Deal*, WASHINGTON POST (Feb. 13, 2014), http://www.washingtonpost.com/business/economy/comcast-time-warner-agree-to-merge-in-45-billion-deal/2014/02/13/7b778d60-9469-11e3-84e1-27626c5ef5fb_story.html ("With its broader reach, the combined company would have more negotiating power with network broadcasters that rely on cable companies to distribute their content. [Comcast chief executive Brian] Roberts said programming costs would be reduced, but he played down the significance of a combined company's leverage over negotiations.").

5 Future of Music Coalition and Writers Guild of America West, Inc. Joint Petition to Deny, at 34.

6 Comcast Response, at 165.

public interest[7]), but the record is replete with evidence that, even today, Comcast has substantial ability to foreclose rival programmers, and this power will be magnified if the merger were to be consummated. A combined Comcast/TWC would exercise unprecedented bottleneck control over the nation's largest television markets, as well as the distribution market more generally, to the detriment of competition in the programming marketplace.

II. Stronger Conditions Are Needed To Protect Against Comcast's Proven Incentives And Ability To Discriminate Against Rival Programmers.

The well-documented history of Comcast's discrimination against rival programmers and others in the marketplace belies Comcast's claim that the company "has neither the incentive nor ability to act anticompetitively toward unaffiliated national programmers."[8] As described in detail in Tennis Channel's Comments, the Commission's own economists found that Comcast systematically "discriminat[es] against unaffiliated programming in favor of its own"[9] in

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[7] 47 U.S.C. § 310(d). In adopting the 1992 Cable Act, the House Commerce Committee articulated its view of how the Commission should discharge its public interest responsibility: "[T]raditional antitrust analysis has not been, and should not be, the sole measure of concentration in media industries. Both Congress and the Commission have historically recognized that diversity of information sources can only be assumed by imposing limits on the owners of media outlets that are substantially below those that a traditional antitrust analysis would support. In many instances, the Commission's structural regulations are more stringent than those used to analyze consternation under the antitrust laws. The Committee believes that concentration of media presents unique problems that must be considered by the Commission." Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 102-628 at 42 (1992) [hereinafter "*House Report*"].

[8] Comcast Response, at 253.

[9] *Applications of Comcast Corp., General Elec. Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238, at Technical App. ¶ 70 (2011) [hereinafter "*Comcast/NBCU Merger Order*"]. The Commission's economists studied Comcast's carriage decisions across the markets in which it operates, and found that it systematically favors its affiliated programming with respect to carriage and channel placement. *Id.* at Technical App. ¶ 65. Further, in markets with relatively high levels of MVPD competition, the Commission found that Comcast reduces the carriage of its own networks—results that lead to a conclusion that Comcast favors its affiliated programming for anticompetitive reasons. *Id.* at Technical App. ¶ 70.

connection with their review of Comcast's application to acquire NBCUniversal. Since January 2011 when Comcast consummated its acquisition of NBCUniversal, the Commission has found that "Comcast discriminated against Tennis Channel and in favor of Golf Channel and Versus [its two wholly-owned national sports networks] on the basis of affiliation," in violation of Section 616 of the Communications Act.[10] A number of other participants in the proceeding have echoed concerns about Comcast's discriminatory pattern of behavior.[11]

The Commission should disregard Comcast's bland claim that "the competition that Comcast faces in the upstream (video programming) and downstream (video distribution markets) . . . [would make] a discriminatory program carriage strategy against unaffiliated programmers . . . likely . . . unprofitable."[12] This is a dubious assertion in light of the fact that Comcast is the single

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10 *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 8508 (July 24, 2012) [hereinafter "*Tennis Channel Order*"]. Comcast's characterization of the D.C. Circuit's vacatur of *Tennis Channel Order* back to the Commission (and the Supreme Court's denial of certiorari) as "dispositive judicial rulings" mischaracterize the procedural posture of those actions. In fact, as Comcast itself has acknowledged in its submissions to the Commission, the proceeding is before the Commission awaiting further action. *See* Opposition to Tennis Channel's Petition for Further Proceedings and Reaffirmation of Original Decision, MB Docket No. 10-204, at 13 n.74 (March 18, 2014) ("Tennis Channel's claim that the court's ruling vacating the Commission's prior order left 'no final Commission ruling on Tennis Channel's complaint' . . . is true . . . ."). And Comcast ignores that the D.C. Circuit did not (and could not) make any factual findings; rather, the D.C. Circuit left undisturbed the FCC's fact-findings based on a review of the volume of record evidence developed as part of the administrative proceeding.

11 RFD-TV Comments (alleging that Comcast discriminates against rural independent programmers); Sports Fans Coalition Petition to Deny (outlining Comcast's and TWC's "consistent record of anticompetitive conduct in regional sports programming"); see also Consumer Federation of America Petition to Deny, at 36 ("The disputes with Netflix and Conductive in the OVD space and Bloomberg, Wealth TV and the Tennis Channel in the MVPD space make it clear that Comcast will press its advantage up to the limits of the law and beyond.")

12 Comcast Response, at 254.

largest buyer of video programming,[13] as well as the dominant MVPD in each of its cable franchise areas.[14] Moreover, Comcast's suggestion ignores that, in adopting program carriage provisions under Section 616 of the Communications Act, Congress itself found that large vertically integrated operators inherently have the incentives and ability to "abuse [their] locally-derived market power to the detriment of programmers and competitors"[15]—a risk that has been borne out by Comcast's own pattern of discriminatory conduct. While Congress considered banning vertical integration in the cable industry altogether,[16] it ultimately decided to permit cable operators to integrate vertically only if they accepted important limitations on their ability to engage in profit-maximizing behavior. It would be odd, indeed, for the Commission to accept Comcast's claim that the largest and most powerful vertically-integrated company lacks the incentives and ability to discriminate notwithstanding congressional findings to the contrary that are embodied in the Communications Act— the "starting point" for the Commission's substantive review of the merger.[17]

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13 *See* Future of Music Coalition and Writers Guild of America West, Inc. Joint Petition to Deny, at 24–26 (showing dominance of Comcast as compared to other large TV network owners by share of primetime viewers and by revenue).

14 *See* RCN Petition to Deny Applications or Condition Consent, at 8–9 ("MVPD competition, in any given geographic market in which Comcast and TWC operate, comes only from the DBS providers and a [broadband service provider], if there is one. Such limited competition is a direct result of the large cable providers tacitly dividing the national market into a series of geographic clusters, wherein the incumbent retains a local monopoly or near-monopoly on cable service."); *See* Diana L. Moss, Rolling Up Video Distribution in the U.S.: Why the Comcast-Time Warner Cable Merger Should Be Blocked, American Antitrust Institute, White Paper, at 3 (June 11, 2014) ("Moss White Paper").

15 Cable Television Consumer Protection and Competition Act of 1992, S. Rep. No. 102-92, at 24 (1991) [hereinafter "*Senate Report*"].

16 *Id.* at 27 (considering the "appeal" of an outright ban of vertical integration but deciding instead to adopt the restrictions on vertically-integrated distributors embodied in Section 616).

17 Jonathan Sallet, FCC Transaction Review: Competition and the Public Interest, FCC Blog (Aug. 12, 2014), *available at* http://www.fcc.gov/blog/fcc-transaction-review-competition-and-public-interest.

In light of the enhanced risks that Comcast poses to competition in the programming distribution marketplace, Comcast's suggestion that the conditions imposed through the *Comcast/NBCU Merger Order* are sufficient falls flat. It is clear that grant of the transaction would need, at a minimum, to be subject to stringent additional limitations on Comcast's profit-maximizing behavior.[18] The efficacy of the conditions proposed by Tennis Channel is established in its August 25, 2014, Comments and not repeated here, but it is worth noting that Comcast's specific critiques of the program arbitration condition proposed by Tennis Channel and others are not credible and ignore that the Commission has implemented successful arbitration conditions, including recently in the program access arbitration regime it adopted as part of the *Comcast/NBCU Merger Order*.[19] An arbitration remedy and the other substantive and procedural conditions of the kind Tennis Channel has proposed[20] are the minimum steps necessary to ameliorate the risk that Comcast will continue to engage in discriminatory conduct. The existing program carriage framework under Section 616 of the Communications Act and the merger condition that largely replicates Section 616 are not adequate to afford independent networks prompt and efficient resolution of disputes involving Comcast.[21]

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18 RFD-TV Comments, at 10 (noting that "Comcast has been able to easily evade the intent of [a condition adopted by the Commission]"); Consumer Federation of America Petition to Deny, at 2 ("Comcast has done as little as possible to deliver on its public interest promises."); Future of Music Coalition and Writers Guild of America West, Inc. Joint Petition to Deny, at 10 ("Comcast has violated conditions, found ways to circumvent the intent of conditions and used the slow enforcement process to its advantage.").

19 *See Comcast/NBCU Merger Order*, at App. A, Section VII.

20 Tennis Channel Comments, at 27–28.

21 The Commission itself has found that the program carriage remedy is "unpredictable and sometimes lengthy." *Revision of the Commission's Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order and Notice of Proposed Rulemaking, 26 FCC Rcd 11494 ¶¶ 19, 26 (2011). Importantly, the D.C. Circuit has injected uncertainty (as yet unresolved by the Commission) with respect to the standards and evidentiary tests applicable to establishing (continued…)

III. Comcast's Ability To Foreclose Unaffiliated Programmers From Distributing Content Through New Distribution Platforms Is Contrary to the Public Interest and Must Be Subject To Stringent Conditions.

The combined entity's significant share of the nationwide broadband market, as well as online distribution platforms and related technologies, would create heightened risks for competition and diversity in these emerging markets. As numerous participants in the proceeding, ranging from independent programmers to online video distributors, have documented, the merged company would be able to restrict independent programmers from distributing content through alternative distribution platforms through the use of restrictive contractual provisions.[22] The Commission must examine broad "most favored nations" provisions that restrict a programmer's ability to monetize content online (for example, by affording rights to post-season distribution to another distributor), as well as restrictions that directly preclude online distribution (which Comcast refers to as "alternative distribution methods" or "ADM" provisions[23]).

Both Congress and the Commission have long been concerned about the ability of vertically integrated incumbent video providers to stifle competition from new, upstart competitors. In 1992, Congress was concerned about the ability of vertically integrated companies to damage then-nascent competitors such as overbuilders and the not-yet-launched Direct

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discrimination "on the basis of affiliation or nonaffiliation . . . in the selection, terms, or conditions for carriage"—whether under Section 616 or a condition using this same language and that is therefore susceptible to the same judicial gloss and interpretation. *Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013). Of course, in the context of a merger the Commission has the option of adopting tailored or new procedures to address the problems it identifies.

22 *See* Discovery Communications Ex Parte (Sept. 4, 2014) (identifying as concerns Comcast's ability to "interfere with the developing use of alternative content viewing devices and services" and to "impose broader 'most favored nation' ('MFN') clauses in agreements with programmers"); Dish Petition to Deny, at 85–86; TheBlaze Comments, at 9–10, 13–15; AAI Comments, at 16–19.

23 Comcast Response, at 169.

Broadcast Satellite industry.[24] "[T]he Committee received testimony that vertically integrated operators have impeded the creation of new programming services by refusing or threatening to refuse carriage to such services that would compete with their existing programming services."[25] In response to that substantial concern, Congress adopted a number of provisions designed to promote competition from new, upstart competitive platforms.[26]

In this decade, the Commission has confronted the same problem but now involving this age's new, upstart competitors: online distributors.[27] In connection with its review of the Comcast/NBCUniversal merger, the Commission found that Comcast already has substantial

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[24] *See* Tom Wheeler, *Tech Transitions, Video, and the Future*, FCC Blog (Oct. 28, 2014, 1:48 PM), http://www.fcc.gov/blog/tech-transitions-video-and-future ("Congress realized that the then-nascent satellite industry would have a hard time competing because much cable programming was owned by cable companies who frequently kept it from competitors. Congress mandated access to cable channels for satellite services, and competition flourished.")

[25] "The Committee received testimony that vertically integrated companies reduce diversity in programming by threatening the viability of rival cable programming services. Submissions to the Committee allege that some cable operators favor programming services in which they have an interest, denying system access to programmers affiliated with rival MSOs and discriminating against rival programming services with regard to price, channel positioning, and promotion. Submissions to the Committee also suggest that some vertically integrated MSOs have agreed to carry a programming service only in exchange for an ownership interest in the service. In addition, the Committee received testimony that vertically integrated operators have impeded the creation of new programming services by refusing or threatening to refuse carriage to such services that would compete with their existing programming services." *House Report* at 41.

[26] "In order to stem and reduce the potential for abusive or anticompetitive actions against programming entities, the legislation prohibits multichannel video programming distributors from coercing programmers to provide exclusivity for video programming against other multichannel video programming distributors as a condition of carriage on a cable system; from requiring a financial interest in a program service as a condition of carriage; and from discriminating against non-affiliated cable programming services with respect to terms and conditions of carriage." *Id.* at 27. *See also Senate Report* at 27–28 (discussing similar provisions in Senate bill).

[27] *See Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, at ¶ 4 MB Docket No. 14-261 (2014) (discussing importance of encouraging competition in a technology-neutral manner); *id.* at 23 ("[W]e believe that Congress's goals are best served by an interpretation of MVPD that accommodates changing technology.").

"leverage to negotiate restrictive online rights from third parties, . . . to the detriment of competition"[28]—leverage that will increase dramatically if Comcast is permitted to acquire TWC. Comcast claims that "even before the NBCUniversal transaction, it ceased proposing provisions that broadly prevented programming from distributing programming online."[29] However, it is clear that many contracts still include such language, and if Comcast no longer seeks to enforce such provisions, as it has suggested to the Commission in connection with this merger review, then Comcast should not resist conditions that prevent it from doing so subsequent to consummation of the transaction.

Further, while the condition adopted by the Commission in connection with the *Comcast/NBCU Merger Order* is helpful,[30] it is not sufficient to address the substantial ability of a combined Comcast/TWC to stifle programmers' use of emerging video distribution platforms. First, due to exceptions in the merger condition, Comcast is not prohibited from imposing online restrictions in important circumstances. Indeed, Comcast recently has *defended* its rights and ability to impose online exclusivity provisions on independent programmers in testimony to Congress, stating that, "[u]nder both the DOJ Consent Decree and FCC Conditions, Comcast (in

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28 *Comcast/NBCU Merger Order* ¶ 73.

29 Comcast Response, at 170.

30 *Comcast/NBCU Merger Order* ¶ 70 (recognizing Comcast/NBCU's "incentive[s] . . . to withhold or otherwise discriminate in providing online rights to video programming in order to prevent Comcast's [distribution] rivals from competing aggressively with it"). It is, of course, anomalous for Comcast to be able to foreclose unaffiliated programmers from distributing content through alternative competing platforms when it is not free under the Communications Act to restrict them from distributing such content to traditional cable and satellite distributors. However, there is a pending proceeding related to circumstances in which online video distributors should be considered multichannel video programming distributors for certain purposes. *See* "*Permit but Disclose" Ex Parte Procedures Established for Docket Seeking Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" As Raised in Pending Program Access Complaint Proceeding*, Public Notice, MB Docket No. 12-83 (Sept. 30, 2014).

this case, specifically, Comcast Cable) is permitted to obtain exclusive rights to show a program if the period of exclusivity is 14 days or less; and online exhibition for free of content for which Comcast pays a license fee can be prohibited for the 30-day period after the content has first aired."[31] That exception vitiates the competitive vitality of some of a program entity's most attractive and therefore most competitive programming. There is no reason why Comcast should be able to preclude independent programmers from distributing content to competitive over-the-top services—just as there is no reason for it to impose restrictions on content offered through competitive DBS providers and other MVPDs.

Second, a combined Comcast/TWC's ability to limit rival programmers' distribution of content to viewers through alternative platforms is not limited to express exclusivity restrictions. Comcast can undermine competition and diversity for content in a number of other ways, all of which will be made more potent by consummation of the merger. For example:

- A common business model for independent networks seeking to distribute content through their own websites, mobile applications, and "smartTV" applications makes content available to authenticated pay-TV subscribers and therefore depends on the willingness of pay-TV providers, like Comcast, to authenticate their subscribers on the network sites. To undermine a rival video programmer, Comcast can refuse to authenticate its subscribers to access a video programmer's content via the programmer's websites and applications or those of third-party distributors. Alternatively, Comcast can condition its willingness to authenticate subscribers on unreasonable and/or anticompetitive terms and conditions designed to undermine the user experience and make the platform less attractive to consumers. While Comcast pays lip service to its and TWC's efforts to provide authentication with respect to a small number of program networks and device platforms, it appears to justify refusals to authenticate subscribers on non-Comcast platforms when it says, "Comcast believes that customers value the ability to access a wide range of TVE content through one aggregated source, rather than having to jump from one programmer

[31] *See Hearing on the Comcast-Time Warner Cable Merger Before the S. Comm. on the Judiciary*, 113th Cong. (Apr. 9, 2014) (response of David L. Cohen, Executive Vice President, Comcast Corp., to written question of Sen. Charles Grassley), *available at* http://www.judiciary.senate.gov/imo/media/doc/April%209,%202014%20-%20Cohen%20Responses.pdf (last visited Aug. 23, 2014).

app to another."[32] This mindset is antithetical to the policy objective of putting consumers in charge of determining what they watch, on which screen and over what platform.[33]

- Comcast can extract aggressive "most favored nations" clauses that apply to all of a programmer's content on all distribution platforms and across all business models. These clauses may obligate programmers to provide to Comcast nearly all content made available online, including post-season library content from the applicable network as well as content that has never aired on the network. Under such a regime, programmers cannot maximize the value of their library content, which is most prized when provided on an exclusive post-season basis. Likewise, to the extent a network seeks to distribute content designed specifically for an alternative platform (for example, special mobile content or interactive content), or on innovative terms (such as through a revenue share), these provisions effectively inhibit the network from doing so altogether or permit it to do so only if the content also is made available to Comcast platforms. Such demands necessarily undermine the online distribution of content and the development of new and innovative content, programming, and distribution services.

- Comcast also will have significant (40 percent nationwide) broadband penetration and large financial stakes in video advertising technologies and services that will be enhanced by the proposed transaction, and these interests provide Comcast additional opportunities to foreclose competition. The Commission previously has found that broadband providers have the incentive and ability to discriminate in the delivery of content via broadband-based distribution platforms,[34] and Tennis Channel agrees with the many commenters that expressed concern about Comcast's ability to use its incentive and ability to restrict the broadband delivery of unaffiliated content to its broadband subscribers.[35]

In sum, Congress in 1992 adopted important safeguards that gave birth to the DBS industry and enabled telephone companies to enter the video distribution business. The Commission has done its part by implementing and enforcing those laws. The Commission is now

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32 Comcast Response, at 184.

33 *See* Statement by FCC Chairman Tom Wheeler on the FCC's Open Internet Rules (Feb. 19, 2014), *available at* http://www.fcc.gov/document/statement-fcc-chairman-tom-wheeler-fccs-open-internet-rules ("We will carefully consider how . . . we can ensure . . . that consumers can continue to access any lawful content and services they choose.").

34 *See Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905 ¶ 22 (2010), *aff'd in part, vacated and remanded in part subnom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

35 *See, e.g.*, WeatherNation Comments at 2–3 (arguing that the merger would provide Comcast with increased incentive and ability "to interfere with the online access of the merged entity's broadband subscribers to WeatherNation").

presented with the same problem it first confronted in the early 1990s—only the names of the latest technologies have changed. The Commission should take this opportunity to ensure that this generation's disruptive technologies have a chance to succeed. While evolving alternative distribution platforms and business models have tremendous promise for competition and diversity in video programming, the proposed transaction raises serious questions about whether that promise will be realized, at least in the absence of stringent and enforceable conditions that ensure Comcast is not permitted to undermine the growth of a competitive distribution and programming marketplace.

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For the foregoing reasons, if the Commission determines that the public interest would be served by permitting Comcast to acquire TWC, the transaction should be subject to detailed and focused conditions that strengthen and expand on those adopted in connection with the Commission's approval of the Comcast/NBCU combination. Tennis Channel's proposals with respect to such specific merger conditions are discussed in depth in its Comments in this proceeding.

Respectfully submitted,

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December 23, 2014