

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

In the Matter of	)	
	)	
Application of Comcast Corporation, Time	)	MB Docket No. 14-57
Warner Cable, Inc., Charter Communications,	)	
Inc., and Spinco to Assign and Transfer	)	
Control of FCC Licenses and Other	)	
Authorizations	)	

**MICHIGAN CHAPTER OF THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS (“MI-NATOA”)  
REPLY TO OPPOSITIONS OF COMCAST CORPORATION; TIME WARNER  
CABLE, INC.; CHARTER COMMUNICATIONS, INC.; AND MIDWEST CABLE LLC**

The Michigan Chapter of the National Association of Telecommunications Officers and Advisors (“MI-NATOA”) files this reply to the responses and oppositions of Comcast Corporation (“Comcast”), Time Warner Cable Inc. (“TWC”), Charter Communications, Inc. (“Charter”), and Midwest Cable LLC (“Midwest Cable”). The companies object to the proposed conditions of local governments and others, primarily because the companies claim that: (i) the transactions present no risks to the public or to competition; (ii) the proposed conditions are unrelated to the transactions; and (iii) the cable-franchising process can best address any cable-related concerns. The companies also argue that the Commission cannot make its conditions enforceable locally.

On each of these points, MI-NATOA disagrees. To mitigate the transactions’ potential harms, the Commission should impose conditions that protect local programming, advance broadband deployment and adoption, safeguard the open Internet, and protect consumers. These

conditions should be enforceable locally, and they should apply to all the companies involved in these transactions.

**I. THE COMPANIES HAVE FAILED TO SHOW THAT THE TRANSACTIONS' BENEFITS OUTWEIGH THE HARMS.**

The companies have failed to show that the proposed transactions' benefits would outweigh the harms. After the transactions, ownership of the wireline video and broadband assets that serve the nation's residential subscribers would be concentrated in unprecedented fashion. Comcast would not only swap systems to cement its power geographically, but it would entirely eliminate its largest cable rival, TWC. Even Comcast admits that of the fixed broadband market for download speeds of 10 Mbps or more, its post-transaction share would be 40%.<sup>1</sup> Others estimate that Comcast's share would be even higher.<sup>2</sup> In most of the remainder of the nation, Charter would dominate video and broadband markets, including in MI-NATOA communities, where the company would provide service through an agreement with Midwest Cable.

The companies fail to show that this concentration would not lead to harms. Comcast argues that the transactions would not eliminate potential competition.<sup>3</sup> This is not plausible. For example, if it were to remain in the market, TWC could compete with Comcast and Charter in a variety of ways. First, it could overbuild the companies' systems and compete directly. Alternatively, TWC could offer competing cable service over the Internet. Comcast responds that this is "speculative."<sup>4</sup> It is anything but. Companies are adding "over-the-top" services quickly.<sup>5</sup> TWC could be expected to compete directly with Comcast and Charter, and vice versa.

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<sup>1</sup> Comcast Response at 146.

<sup>2</sup> *Id.* at n.450.

<sup>3</sup> Comcast Response at 177.

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., M. James, *HBO going 'over the top' with Internet streaming service in 2015*, LA Times, Oct. 15, 2014, available at: <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-hbo-to-launch-internet-only-service-20141015-story.html>.

Moreover, because these transactions would give the remaining companies a more dominant position in the broadband market, the companies would be more likely to leverage that power to harm this “over-the-top” competition, to protect their own cable-service revenues. Finally, the transactions would remove a “benchmark” about what is reasonable, by eliminating the nation’s second-largest cable operator. In sum, the transactions would virtually guarantee that the wireline broadband and video markets would not have meaningful competition for the foreseeable future. This will only lead to higher prices and reduced services.

The companies criticize some commenters for not supporting their comments with empirical evidence, and contrast that with their own economic experts. But the “evidence” provided by those experts is far from reliable. It ignores basic economic lessons reflected in decisions of this Commission and cited in some of the initial comments. And it essentially finds no anticompetitive impact based on a theory that because the companies have engaged in concerted efforts to divide markets, the division should be legally endorsed. In any case, the Commission’s public interest test does not turn on who pays more for experts. Even if MI-NATOA and many other local-government groups do not have the resources to present detailed economic studies, their concerns are no less real. Given that many have shown that the transactions present serious risks, the Commission has a duty to review the transactions independently, and to impose appropriate conditions on any approval.

## **II. THE COMPANIES HAVE FAILED TO SHOW THAT PROPOSED CONDITIONS ARE NOT APPROPRIATE OR TRANSACTION-SPECIFIC.**

The companies contend that many conditions proposed by other parties are not appropriate or transaction-specific. We disagree. The Commission should condition any approval on each company’s acceptance of the conditions described below.

**Conditions To Protect Local Programming, Including PEG.** The Commission should impose the conditions to protect PEG programming that have been proposed by NATOA,<sup>6</sup> Los Angeles County *et al.*,<sup>7</sup> Alliance for Community Media and Alliance for Communications Democracy,<sup>8</sup> the City of Los Angeles Mayor Eric Garcetti,<sup>9</sup> and the Minnesota Association of Community Telecommunications Administrators. Comcast argues that PEG proposals have “nothing to do with this Transaction.”<sup>10</sup> That is wrong. As discussed, the proposed transactions would increase concentration and thereby reduce the companies’ incentive to respond to local needs and interests.<sup>11</sup> Chief among many communities’ needs are the desires to protect local programming and to ensure that it continues to advance with changes in technology. The companies’ answer that parties may simply rely on the cable-franchising process to protect PEG is, for many Michigan communities, no answer at all. In Michigan, as in many states, legislatures (in an effort to promote competition) adopted uniform franchising systems. In some cases (as in Michigan), the franchise is issued in the name of the local government; in others, the state is the franchising authority. But, either way, Comcast has taken the position that it is entitled to franchises and renewal franchises that include only the terms the state specified in 2006, and that it need not satisfy local needs and interests for PEG or any other matter. While local governments have and continue to challenge this view, the Commission cannot assume that the local franchising process can somehow remedy the problems created by the merger.

**Conditions to Advance Broadband Deployment and Adoption.** The Commission should also require the companies to improve and expand the Internet Essentials broadband

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<sup>6</sup> NATOA Comments at 4.

<sup>7</sup> Los Angeles County Petition to Deny at 25.

<sup>8</sup> Comments at 10-15.

<sup>9</sup> Comments at 9-10.

<sup>10</sup> Comcast Reply at 295.

<sup>11</sup> See Comcast-NBCUniversal Order at ¶ 226.

program as proposed by NATOA,<sup>12</sup> Los Angeles County *et al.*,<sup>13</sup> New York City Mayor Bill de Blasio, City of Boston Mayor Martin Walsh, City of Los Angeles Mayor Eric Garcetti,<sup>14</sup> and others. Comcast claims that criticisms of the program are “irrelevant,” and that it has “never claimed that *Internet Essentials* is the only choice for a broadband adoption program, or that there are no aspects of it that could be improved.”<sup>15</sup> If the Commission is to find that proposed transactions, as conditioned, are in the public interest, it must demand that Comcast and all the companies do better.

**Conditions to Protect the Open Internet.** The Commission should also subject the companies to the conditions to protect the open Internet that were proposed by Los Angeles County *et al.*,<sup>16</sup> City of Boston Mayor Martin Walsh,<sup>17</sup> and City of Los Angeles Mayor Eric Garcetti.<sup>18</sup> As discussed, the proposed transactions would increase the remaining companies’ control over the broadband market, and therefore increase its ability to steer subscribers away from competing online video products.

**Conditions to Protect Consumers.** The Commission should also condition any approval on commitments to improve customer service, as proposed by Los Angeles County *et al.*, and New York City Mayor Bill de Blasio.<sup>19</sup> Comcast argues that concerns about customer service “are not transaction-specific” and are “speculative.”<sup>20</sup> Again, we disagree. The proposed transactions would expand concentration in the industry, and make the companies even less responsive to the day-to-day needs of customers than they are now.

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<sup>12</sup> Comments at 7.

<sup>13</sup> Comments at 28-30.

<sup>14</sup> Comments at 5-6.

<sup>15</sup> Comcast Reply at 54.

<sup>16</sup> Petition to Deny at 28-30.

<sup>17</sup> Comments at 6-7.

<sup>18</sup> Comments at 7.

<sup>19</sup> Petition to Deny at 31-32.

<sup>20</sup> Comcast Comments at 283.

We also emphasize three points about the conditions:

*First*, the Commission should apply the conditions to all the companies—Comcast, Charter, and Midwest Cable—involved with the transactions. Each company would benefit from consolidation and protection from competition; each would be the dominant provider within its territory; each would have incentives to limit local programming that is not under its control and to limit Internet use (directly or through specialized services) to favor its own content. And the underlying agreements are troubling in the extreme. In Michigan, Charter and Comcast systems are near one another, and the transaction will result in market concentration and the elimination of possible future competition. To be sure, many of the Comcast systems will be owned by Midwest/GreatLand. But GreatLand will be effectively operated by Charter, and the two companies will be so intertwined that there is little prospect that one could or would make a strategic decision that presented a business challenge to the other (indeed, Charter will be providing the basic strategic advice to its competitor). From a consumer standpoint, the deals almost guarantee a standstill or reduction in service quality, rather than promoting responsiveness or innovation. Under the Charter-GreatLand services agreement, for example, Charter agrees that the service across GreatLand communities of average quality for Charter, and that customer services will be handled in basically the same way Charter manages its systems. Communities and consumers served by GreatLand and Charter will need to be protected against potential harms from this merger, just as Comcast customers will need to be protected.

*Second*, the conditions should be enforceable locally. Comcast argues that the Commission may not look to local governments to enforce conditions, citing *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004). But, in fact, that case specifically recognizes that the Commission “may condition its grant of permission on the decision of another entity, such

as a state, local, or tribal government,” provided that there is a “reasonable connection” between the entity’s decision and the federal agency’s determination.<sup>21</sup>

And *third*, the Commission should reject Comcast’s argument that conditions are not needed because it is resolving these issues through the franchising process, absent some showing that it has done so in fact. Based on our experience, we suspect that showing cannot be made.

### CONCLUSION

If the Commission approves the proposed transactions, it must establish strong and enforceable conditions that ensure that the alleged benefits of the transaction are realized, and the harms are mitigated.

Respectfully submitted,  
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<sup>21</sup> *Id.* at 567.