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February 17, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: Notice of *ex parte* presentation MB Docket No. 14-57, *Applications of Comcast Corp., Time Warner Cable, Inc., Charter Communications, Inc. and SpinCo For Consent to Transfer Control of Licenses and Authorizations*

Dear Ms. Dortch:

On February 12, 2015, Jim Holanda, CEO, John Gdovin, Executive Vice President and Chief Administrative Officer, and Jeff Kramp, Executive Vice President and General Counsel of Patriot Media; Ross Lieberman, Senior Vice President of the American Cable Association; and Edward A. Yorkgitis, Jr. of Kelley Drye & Warren LLP met with Commissioner Clyburn, her Chief of Staff and Senior Legal Advisor Adonis Hoffman, and Alonzo Keels to discuss issues involved in the above-referenced docket. Patriot Media manages RCN Telecom Services, LLC ("RCN"), Grande Communications Networks, LLC ("Grande") and Choice Cable TV of Puerto Rico ("Choice").

Mr. Holanda described the operations of RCN Telecom, Grande and Choice (collectively "Patriot Media Companies") and explained that RCN and Grande face significant competition from Comcast or Time Warner Cable in the multi-channel video distribution markets in which they operate. He noted in particular that, should the merger be approved, the combined Comcast and Time Warner Cable will compete in over 80 percent of the territory in which RCN and Grande operate. Mr. Holanda next addressed both the vertical and horizontal harms that would result from the proposed combination of Comcast and Time Warner Cable, particularly from the combination of video programming owned by the two applicants and their distribution assets. He then described the remedies that should be imposed to address these harms as conditions to any approval of the merger, including improvements to the conditions accepted by Comcast as part of its merger with NBC Universal in 2011. The improvements include closing loopholes in the existing conditions and enabling effective enforcement. Further, all conditions should remain

in effect for at least nine years after the Comcast/Time Warner Cable merger, if approved, and should not lapse until the applicants demonstrate the merger conditions are no longer necessary to protect consumers or competition. The attached slide deck was used during the meeting and summarizes Patriot Media Companies' presentation.

Please contact the undersigned if there are any questions or if you require further information.

Respectfully submitted,

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Enclosure

cc: Adonis Hoffman
Alonzo Keels

Remedying Harms from the Proposed Combination of Comcast/Time Warner Cable

Presentation to the Federal Communications Commission
MB Docket No. 14-57
February 12, 2015

Overview of Patriot Media

- Patriot Media (Princeton, NJ) manages the RCN Telecom Services, LLC ("RCN"), Grande Communications Networks, LLC ("Grande") and Choice Cable TV of Puerto Rico ("Choice") cable systems on behalf of the private equity investment firms of ABRY Partners and Spectrum Equity Investors

- RCN employs 1,300 people and is a provider of cable, phone and internet services to 450,000 customers in the Chicago, Boston, New York City, Philadelphia, Lehigh Valley and Washington D.C. markets

- Grande employs 625 people and is a Texas provider of the same services to 157,000 customers in North Dallas, San Antonio/San Marcos/Austin, Waco, Corpus Christi, Midland/Odessa

- Choice employs 350 people and is the incumbent triple play cable provider serving 115,000 customers in the southern and western portions of Puerto Rico

Competitive Overlap with Comcast/Time Warner Cable

- **RCN** competes with **Time Warner Cable** in New York City and **Comcast** in Chicago, Boston, Philadelphia and Washington D.C.

- **Grande** competes with **Time Warner Cable** in North Dallas, San Antonio/San Marcos/Austin, Waco, and Corpus Christi

- **Comcast** owns or manages Regional Sports Networks in ***ALL*** **RCN** markets

- **Comcast** owns the local NBC and Telemundo stations in
  - 4 of the 5 **RCN** DMAs
  - 1 of 6 **Grande** DMAs
  - The **Puerto Rico** DMA

Merger Specific Harms

The combination of Comcast/Time Warner will result in increased industry consolidation and concentration of ownership of distribution, programming, and other assets by Comcast, leading to a variety of significant vertical and horizontal harms – especially harms to RCN/Grande

Merger Specific Harms

- Vertical Harms Arising from Increased Ownership of Distribution and Programming Assets
  - Competition in local distribution markets will be harmed as Comcast-affiliated programmers and vendors fail to make local NBC stations, regional sports programming and “must have” Universal programming (USA, E!, Universal HD, Golf Syfy, MSNBC, CNBC, Oxygen, Sprout, Telemundo, Comcast Network) available to MVPDs at reasonable and competitive rates/contract terms

Merger Specific Harms

- Horizontal Harms Arising from Increased Ownership of Programming Assets
  - Competition in local distribution markets will be harmed as Comcast-affiliated national cable networks, NBC O&Os, and Regional Sports Networks jointly negotiate with and charge higher prices to (or impose onerous terms on) competing MVPDs for their large suite of cable and broadcast programming
    - For example, penetration percentage obligations
    - Largest TV DMA, NYC, moves to total Comcast ownership

Merger Specific Harms

- Horizontal Harms Arising from Increased Ownership of Distribution Assets
  - Competition in the programming market will be harmed as Comcast increases its bargaining leverage; programmers in turn will make up any shortfall by increasing prices to other MVPDs or may restrict or otherwise limit access to its programming or technology (e.g., HBOGO) by other MVPDs
    - RCN and Grande have supplied the FCC and DOJ with their per channel pricing to illustrate the size of the current gap

Merger Specific Harms

- Horizontal Harms Arising from Increased Ownership of Distribution Asset
  - Competition in local distribution markets will be harmed as Comcast leverages local, regional, and national sales, installation, construction, and field collections vendors and contractors to either not provide services to competing MVPDs or raise prices to them

Merger Specific Harms

- Horizontal Harms Arising from Increased Ownership of Cable Advertising Assets
  - Competition in cable advertising markets will be harmed as Comcast increases its ownership and control of entities that control national and regional advertising and seeks to extend that into local spot advertising markets
    - For example, RCN's continued participation in New York's Interconnect will be in jeopardy

Proposed Conditions to Address Harms

1. To address harms from the combination of the Applicants' multichannel video distribution and video programming assets, the Commission should:

- Extend conditions accepted by Comcast as part of government approval of the NBCU transaction with modifications to close loopholes and facilitate effective enforcement
  - As part of the enforcement process, the Commission should –
    - Enable an aggrieved MVPD to demonstrate discrimination by comparing itself to a "similarly situated" MVPD regardless of whether the MVPD is the complainant's direct competitor or serves in the same geography;
    - Require Comcast to provide evidence to MVPDs that the rates, terms, and conditions offered are non-discriminatory
    - Permit MVPDs to audit annually the rates, terms, and conditions Comcast's video programmers provide to other MVPDs
    - Prohibit Comcast from withdrawing programming during the pendency of a complaint
    - Permit smaller MVPDs to use bargaining agents (*e.g*. NCTC) to enforce their rights

Proposed Conditions to Address Harms

1. To address harms from the combination of the Applicants' multichannel video distribution and video programming assets, the Commission should:

- Require Comcast to provide access to their video programming at fair market value
  - As part of the enforcement process, the Commission should –
    - Require Comcast provide data and information to the complainant enabling it to determine whether the rate offered by Comcast is at fair market value and to formulate a final offer in an arbitration
    - Require Comcast to submit the initial final offer and permit complainant an opportunity to review this offer before submitting its own
- ***Prohibit Comcast from imposing on MVPDs carrying their video programming mandatory minimum penetration percentages unless it allows for a full "basic broadcast tier" exclusion***
  - This is an "off market" condition that limits MVPDs' ability to sell to customers who can no longer afford or do not want a full bundle of video channels
- Include within the scope of the remedies, all video programming assets in which Comcast has an attributable ownership interest (*e.g.* MLB, NHL, Sprout, Retirement Living, Shop NBC, TV One, Weather Channel, Universal Sports)

Proposed Conditions to Address Harms

2. To address harms from the combination of distribution assets owned by the Applicants, the Commission should:

- Prohibit Comcast from negotiating programming agreements on behalf of Bright House Networks, Midcontinent Communications, or any unaffiliated MVPD as this increases Comcast's bargaining power even further with programmers

Proposed Conditions to Address Harms

3. To address harms from the combination of distribution assets owned by the Applicants, the Commission should:

- Prohibit Comcast from entering into contracts with installation, construction, collections, and sales contractors and vendors and equipment manufacturers that either are exclusive or discriminate in the rates, terms, and conditions offered to competing MVPDs

Proposed Conditions to Address Harms

4. To address harms from the combination of cable advertising assets owned by the Applicants, the Commission should:

- Prohibit Comcast from discriminating against or otherwise harming any MVPD or its third-party agent (e.g., Viamedia) in participating in any regional advertising Interconnect or the National Cable Communications, including by requiring an MVPD to only use Comcast as its representative to sell local advertising

- Prohibit Comcast from excluding or preventing any MVPD or its agent (e.g., Viamedia) access to the Interconnect

Proposed Conditions to Address Harms

5. Duration of the aforementioned proposed conditions: At least 9 years, and the conditions should expire only after the Commission conducts a proceeding and affirmatively determines they are no longer warranted