Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of | ) | |
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| Applications of<br>Charter Communications, Inc.<br>Time Warner Cable Inc. and<br>Advance/Newhouse Partnership | ) | MB Docket No. 15-149 |
| | ) | |
| For Consent to Assign or<br>Transfer Control of Licenses and<br>Authorizations | ) | |

To: The Commission

# PETITION TO DENY
# OF
# ENTRAVISION COMMUNICATIONS CORPORATION

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October 13, 2015

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# SUMMARY

The multichannel video programming distribution ("MVPD") industry is undergoing an unprecedented consolidation. As part of that trend toward fewer and fewer MVPDs, Charter Communications, Inc. ("Charter"), Time Warner Cable Inc. ("TWC"), and the Advance/Newhouse Partnership (Bright House Networks) ("BHN") have entered into a proposed transaction that would combine three of the existing handful of such firms. This deal is occurring concurrently with the recently completed acquisition of DirecTV by AT&T Inc., one of the two, nationwide, satellite-based distributors of video content, and Altice Group's deals for acquisition of Suddenlink Communications and Cablevision Systems. Post-transactions, the MVPD marketplace will become a classic oligopoly, consisting of four major, remaining firms and less than a handful of much smaller players.

The elimination of both TWC and the BHN as independent MVPDs will harm competition and, moreover, impact and harm the Latino community—including independent Latino-oriented programmers and advertisers and, ultimately, Latino viewers. As detailed in a supporting economic analysis by antitrust expert, Professor John Kwoka, the merger will expand and cement the combined entities' bargaining power as a large buyer of Latino-oriented programming and ultimately diminish the quantity, quality, and competitiveness of that market. The predictable increase in their bargaining power will be detrimental to the distinct group of consumers that comprise the Latino-market segment, as well as independent programing providers serving those consumers and the associated market for Latino-oriented television advertising. For these reasons, Entravision respectfully asks that the transaction be denied.

## I. INTRODUCTION

Entravision Communications Corporation ("Entravision") respectfully submits this Petition to Deny in connection with the Federal Communications Commission's ("FCC" or "Commission") consideration of Charter's proposed acquisition of TWC and BHN. Entravision is a diversified media company utilizing a combination of television, radio and digital operations to reach Latino audiences and communities across the United States. It provides both network-affiliated and unaffiliated program content that is Latino-oriented and which seeks to meet the entertainment, educational, informational, and community engagement needs of its viewers. Significantly, Entravision also has a strategic relationship with the Latino-owned and Latino-oriented programing network, known as LATV, whose target audience is Latino teenagers and young adults. It is from its unique background in and service to the Latino community that Entravision respectfully requests that the Commission fully consider and investigate the likely detrimental effects of this proposed merger upon Latino programing providers, the Latino community, and the public interest in general and, based on the evidence of harm we present here, deny the instant application.

The multichannel video programming distribution industry is undergoing an unprecedented consolidation. As part of that trend toward fewer and fewer MVPDs, Charter, TWC, and the BHN have entered into a proposed transaction that would effectively combine three of the existing handful of remaining MVPDs. This deal is occurring concurrently with the recently completed acquisition of DirecTV by AT&T Inc., one of the two, nationwide, satellite-based distributors of video content, and Altice comp's proposed deals to acquire cable television operators Suddenlink Communications and Cablevision Systems. Post-transactions, the marketplace will become a classic oligopoly, consisting of four major, remaining firms and less than a handful of much smaller players.

The Commission repeatedly has expressed its commitment to diversity, competition, and better service in the provision of media to the public.[1] When these goals are put at severe risk to an important and growing segment of the United States population, it is incumbent upon the FCC to analyze, searchingly and thoroughly, those risks, and where, as Entravision will show herein, the public interest can be expected not to be served, to deny consent to a transaction.

As we explain below and in further detail in an attached White Paper, written by an esteemed antitrust expert who has published extensively on the subjects of market power and concentration and vertical integration, Professor John E. Kwoka,[2] those risks for Latino programing providers and the Latino community are very real and troubling. This acquisition will eliminate two of the already small number of significant buyers of video programming, create an especially large buyer of such programming, and result in the very consolidation of the buying side of the video programming market that has long been a concern of this Commission. The resulting increased bargaining power of the new Charter can be expected to reduce the price, quantity, and quality of video programming the new Charter purchases for its programming partners, harming not only programming providers but also advertisers and video consumers.

The proposed transaction under Commission review, moreover, will have a disproportionate impact on the Latino community, the diversity and quality of programming and information they can expect to receive and, ultimately, harm their interest in and use of the

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1 *See, e.g.*, John Sallet, Fed. Comm. Comm'n Gen. Counsel, THE FEDERAL COMMUNICATIONS COMMISSION AND LESSONS OF RECENT MERGER & ACQUISITION REVIEWS, Address at the Telecommunications Policy Research Conference (Sept. 25, 2015)

2 In support of this Comment, we incorporate by reference the White Paper of Professor John Kwoka, ECONOMIC ANALYSIS OF THE EFFECTS OF THE PROPOSED MERGER OF CHARTER COMMUNICATIONS, TIME WARNER CABLE, AND BRIGHT HOUSE NETWORKS ON PROGRAM PROVIDERS SERVING THE LATINO MARKET (hereinafter LATINO MARKET ANALYSIS)—attached as Appendix 1.

media.  The transaction will eliminate yet another two important buyers of Latino-oriented programming and substantially increase the total Latino viewership controlled by the combined companies in an already highly concentrated market.  As a result, the transaction will substantially increase  the merged entity's market power as a buyer of Latino-market programming, with the predictable effects of decreasing Latino-market program acquisition, decreasing the price paid to Latino-market programing providers, and reducing the quality, quantity, and viewer interest.  The merger will expand and cement the combined entity's  power as a buyer of Latino-oriented programming and ultimately diminish the quantity, quality, and competitiveness of that market.  This combination further needs to be assessed in light of the overall trend in the MVPD industry towards consolidation and the detrimental effects of this transaction on specific market segments.

## II.  THE GROWING MARKET FOR LATINO-ORIENTED PROGRAMMING

Latinos are a unique population within the United States.  Their diversity adds to the richness of overall America public expression, culture, intellectual debate and politics.  Latinos are also a recognized and growing, distinct population.  According to the U.S. Census Bureau data, Latinos are the largest minority group in the United States, compromising over 17% of the U.S. population, or approximately 55 million Latinos.[3]  Their use of the Spanish language—some Latinos are bilingual and a substantial portion are Spanish-dominant—obviously sets Latinos apart.   But language is only part of what makes Latinos a recognizable culture.  Latinos have a unique history and current participation in American art, music, literature, entertainment, and viewpoints.  This cultural identity is made manifest in the programming—in all formats—that is created for Latinos, whether broadcast in Spanish, English, or a bi-lingual combination.

[3] *See* http://quickfacts.census.gov/qfd/states/00000.html.

Latino news, sports, entertainment and public affairs programing are evidence that the Latino marketplace is distinct. On the other hand, evidence suggests that non-Latino viewers consume little or no Latino-oriented content.[4] This distinctiveness not only defines the viewer needs and wants of the Latino community, but it necessarily also defines the markets for programming itself as well as local and national advertising.

Professor Kwoka further concludes that, from an economic perspective, these distinctive features and viewership, as well as the likely lack of substitutability between the Latino-market and general market MVPD programming, defines a distinct segment within the larger MVPD market.[5] This distinctiveness exists both at the programming level as well as that of advertising—as both ultimately focus on the unique Latino audience.[6] Consistent with Professor Kwoka's views, both the U.S. Department of Justice's Antitrust Division ("Antitrust Division") and the Commission itself have long recognized the concept of submarkets, especially for differentiated products—which video programming most certainly is. Latino-market television programming, Entravision submits, is such a submarket. As Professor Kwoka contends:

> The evidence supports the conclusion that Latino-oriented video programming constitutes a distinct market segment. Viewers of Latino-oriented programming are dedicated to that format for reasons of language, culture, and product, while viewers of general English-language programming are equally committed to their format. Moreover, given this separation of viewers, advertisers directly seeking Latino consumers are not likely to switch to advertising on general market programs. Viewership of general English-language programming captures a different demographic that is worth significantly less to Latino-oriented

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[4] While television audience measurement services do not measure viewer language or ethnicity, radio audience measurements services do. Their information shows that the Los Angeles marketplace radio stations have only a 5.6% non-Latino audience, for example.

[5] John Kwoka, LATINO MARKET ANALYSIS, at ¶19.

[6] *Id.* at ¶¶ 11-18.

> advertisers. Actual video programming oriented toward Latino audiences confirms this distinctiveness.[7]

The Antitrust Division has evidenced its agreement with Professor Kwoka's approach, having at least twice[8] found Spanish-language media compromises a distinct market in considering the antitrust impact of mergers.

We recognize that this issue of the distinctness of the Latino market segment was vetted—to a limited degree—in an earlier Commission matter, *Hispanic Broadcasting Corp.*,[9] decided by the Commission in 2003. While the result in that matter is distinguishable,[10] most fundamentally, however, that decision failed to analyze the uniqueness of Latino culture and the related demand created for Latino-market programmers—instead, myopically focusing solely upon language and format differentiating factors. The dissenting Commissioners correctly complained that the Commission had failed to conduct a needed and careful analysis and required fact-finding. [11] At very least, the transaction now before the Commission presents an opportunity to do so. Eleven years later, given the dramatic growth in the size of the Latino community, Latino-oriented media, and Latino-oriented programing, the Commission should hold hearings, talk to experts, and gather the data the then majority of Commissioners refused to

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[7] *Id.* at ¶19.

[8] *See* Complaint, *United States v. Bain Capital, LLC* (2008), *available at* http://www.justice.gov/atr/cases/f230100/230167.htm; Complaint, *United Stations v. Univision Communications, Inc.* (2003), *available at* http://www.justice.gov/atr/cases/f200800/200878.htm.

[9] 18 FCC RCD 18834 (2003).

[10] First of all, the *Hispanic Broadcasting* analysis focused on the radio broadcasting industry, which predominately consists of the transmission of licensed musical compositions, not the demand for television programming. *Id.* at 18856. Second, the majority decision of the Commission, in the face of a blistering and meritorious dissent of two Commissioners, based its decision on the absence of record evidence that demonstrated "an identifiable Spanish-language media market that would be adversely affected by the proposed transaction." *Id.* at 18855.

[11] *Id*. at 18864.

do in 2003, despite the urging of the two dissenting Commissioners. In fact, a study of what the Consumer itself has called the "Hispanic television market" has been in progress at the FCC since October 2013.[12] The Commission should hold this proceeding in abeyance pending the results of that study and a determination of how its findings apply here and to MVPD mergers generally.

## III. ENTRAVISION AND INDEPENDENT PROGRAMING PROVIDERS AND THE DIVERSE CONTENT THEY CAN OFFER BENEFIT THE PUBLIC INTEREST

Independent programing providers are an important source of competition, innovation, quality, and format diversity. However, independent programing providers, just like independent broadcasters,[13] have historically faced disadvantages in the communications marketplace, particularly those providers owned or controlled by minorities. Mainstream programing providers have consistently had advantageous channel placement and received better funding through license fees. Meanwhile, independent programing providers often struggle with access to MVPDs' channel lineup slots and license fees.

Entravision is a media company that strives to deliver unique and focused programming for the Latino media consumer. Its principal lines of business consist of the ownership of television stations, radio stations, digital media, and unaffiliated video programming. These

[12] FCC Press Release, FCC Announces New Study Examining Hispanic Television Viewing (Oct. 24, 2013).

[13] Entravision recalls all too well the history of MVPD carriage of specialty broadcasters in general and Latino-oriented broadcasters in particular. It was only the passage of the Cable Act of 1992 that enabled Latino-market broadcasters to secure carriage, on a must-carry basis, on MVPDs. Even then, MVPDs utilized any arguments they could come up with, most of which were frivolous, in order to delay the carriage of Latino-oriented stations. In the end, after innumerable battles, Latino-serving broadcasters such as Entravision, were able to secure carriage, thereby allowing the Spanish-language broadcasting industry to develop to the vibrant level of today. However, while there is a vibrant Latino-oriented over-the-air broadcasting industry, television viewing today is, for the most part, MVPD-delivered.

ownership interests include 58 primary television stations, 49 owned and operated radio stations, digital media services, and a strategic partnership for the distribution of the LATV Latino-oriented program service. Entravision's broadcast properties operate in 19 of the top 50 Latino markets areas identified by The Nielsen Company, including markets in California, the Southwest, Texas and Florida—states that have some of the largest concentrations of Hispanics.

As a result of these operations, Entravision, which itself is Latino-controlled, has developed extensive knowledge of the needs and interests of Latinos in entertainment, educational, and informational programming. Entravision has recognized the reliance of the Latino community on the media that serve them and has undertaken efforts to assist Hispanics in their civic engagement. These efforts include immigration advice, citizenship procedures, registration for and participation in voting, education resources for children and adults, and navigation advice under new health care laws. For the 2014 political cycle, Entravision scheduled debates on its stations in Colorado and New Mexico, which have substantial Latino communities, among candidates for public offices. These targeted efforts are absent in the general media and represent another reason for the strong attachment between Latinos and the media that make the effort to build bonds with the Latino community

There are unmet needs in Latino-market television programming that Entravision and other independent programmers are focused upon meeting. Entravision, for example, has developed its own Latino-oriented news programs and a weekend public affairs service, Perspectiva Nacional. In nearly all of its stations, Entravision maintains news departments that concentrate their efforts on reporting not found on general media outlets, telling stories that resonate with Latinos. Perspectiva Nacional, produced at Entravision's studios in Washington, D.C., provide Latinos with a weekly report on issues, such as immigration, border control policy, and education, that are considered of significance in the Hispanic community. This programming has been so popular with the Latino community in Entravision's broadcast markets that it is now being expanded to the LATV network.

All of this experience has given Entravision an intimate knowledge of the uniqueness of the Latino population in this nation. Latinos, in particular, are not a monolithic group. They are young and old, native born, or of any number of generations, and new immigrations, with ancestral homes in Mexico, Central America, South America, or the Caribbean. Most speak or understand Spanish, many are as fluent in English as non-Latinos, and a good number are bi-lingual. Female Latinos are a key demographic and they have come into their own in the media, the arts, education, and scholarship, yet are unrepresented in many parts of the media serving Latinos.

Entravision believes that programming to Latinos can no longer be delivered in a one-size-fits-all package. Rather, Entravision submits that while the legacy Spanish-language networks and program services play a major role, there is a pressing need for new and novel programming. These include programming serving the needs of women, Latino youth, urban Latinos, and bilingual Latinos. Independent program producers, often from the very backgrounds of the program services they produce, are the obvious parties to provide these valuable program services.

Entravision has responded to the growth and diversity of the Latino community through its strategic partnership involving the LATV Network. One of the needs perceived by Entravision was that younger and bi-lingual Latinos do not have a program service that offers programming that appeals to their needs and interests, LATV contains a slate of programs that are bi-lingual and offer a unique perspective on entertainment and social issues, with a special emphasis on the viewing interests of Hispanic women. In an effort to promote the self-esteem of the Latino community, LATV has created programming that highlights the many accomplishment of American Latinos. Entravision and LATV are working on other programming initiatives that they expect to be well received by younger and bi-lingual Latinos.

However, these are not program offerings with obvious demographics attached to them. They are new and different and need to be given the opportunity to develop in the hothouse of the media world. But, no development is possible unless they are planted on channel lineups and are given a chance to thrive. Entravision knows these struggles well. Despite its in-depth and expert understanding of Latino viewers, Entravision has a long history of struggling to get carriage on MVPD lineups. And Entravision is by no means unique in this fashion. As this transaction and transaction like it will only make it harder for independent programing providers to get carried, the Commission should take great care while it examines the long-term implications of this and other deals on programmers. Simply put, this proceeding is critical to the future of independent Latino programming and whether there will be a closed programming world of a limited number of programming gatekeepers, including Charter, or an open environment in which experimentation, such as that offered by LATV and Entravision, is permitted to take root and grow.

## IV. THE MERGER WILL INCREASE THE COMBINED COMPANIES' BUYER MARKET POWER TO UNACCEPTABLE LEVELS IN MARKETS WITH SIGNIFICANT LATINO POPULATIONS

There is no question that the transaction will increase significantly Charter's control over access to Latino viewers, and, therefore, its bargaining power over Latino-oriented content providers. First, even as measured by general audience, this transaction is but part of the trend toward concentration of MVPDs in the industry. If all current MVPD deals before the Commission close, the four largest MVPDs would control almost 80% of access to cable television households.[14] The new Charter would be the third largest MVPD with around a 17% share. Significantly, Comcast, which already has both the incentive and ability to harm rival Latino-oriented networks (because of the rival Latino networks it acquired though its acquisition of NBCUniversal), would be the second-largest MVPD. The new AT&T is the largest at almost 26%. In counter-distinction, Latino-oriented networks are small and exist within a relatively unconcentrated industry.

To understand how increased concentration in the MVPD market affects Latinos, however, it is necessary to examine the Latino audience. According to an analysis undertaken by Professor Kwoka of the major Hispanic DMAs as developed by The Nielsen Company, just over two-thirds of all Latino viewing households are located within twenty DMAs.[15] Those same DMAs, by comparison, only represent 38% of all general population households. It is reasonable, as Professor Kwoka explains, to analyze likely effects on a Latino-oriented programing market by looking at the DMAs in which Latinos are most represented.[16]

In that market segment, the new Charter will control access to 15.5% of all MVPD subscribers in the top twenty Hispanic markets and, therefore, the relevant Latino-oriented video programing market.[17] Moreover, the new Charter would be the dominant MVPD in six of these critical DMAs, including the Los Angeles DMA, the largest Latino DMA. In New York, the

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[14] John Kwoka, LATINO MARKET ANALYSIS, at ¶¶22-25 & TABLE 2.

[15] *Id*. at ¶28 & Table 3.

[16] *Id*. at ¶¶26-27.

[17] *Id*. at ¶26.

second largest Latino market, the new Charter will dominate three key New York boroughs (Manhattan, Brooklyn, and Staten Island), covering over a million Latinos. Access to these two key markets is therefore imperiled.[18]

The change in market concentration is not just about the numbers. As Professor Kwoka explains, bargaining theory—an analytical approach the Commission has applied in past MVPD transactions—predicts that new Charter's buying power and negotiating leverage over content providers, including Latino-oriented networks, will result in lower prices, broadly defined.[19] This transaction—as well as the other MVPD mergers—will shrink the overall number of MVPDs as well as greatly increase the size of several of them, including the new Charter. Economics predicts that as a distribution market consolidates and certain buyers become more critical distribution paths, the transaction price negotiated between the MVPD buyer and the content provider seller will shift in favor of the MVPD, in the form of lower license fees to programing providers, a greater allocation of advertising spots to MVPDs, or otherwise.[20]

The likely detrimental effects of increased buyer power, through bargaining power or monopsony power, are well recognized. Sufficient market power diminishes the dominant firm's need to pay competitive prices and, in the short run, may result in less overall output and, subsequently, less production of the affected good. Also, because there are less input goods purchased and those that are purchased receive a lower price, over time, the input market shrinks and there is less incentive for those manufacturers to produce, innovate, or invest.

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[18] *Id*.

[19] *Id*. at ¶¶35-38.

[20] *Id*. at ¶¶32-34.

Here, as Professor Kwoka explains, the combined companies, as a more dominant buyer of Latino-oriented programming, can be expected to purchase programming at lower prices to than in a competitive market.[21] Indeed, as detailed, in Professor Kwoka's analysis, current empirical evidence demonstrates already that greater MVPD size leads to an inverse relationship with programming costs per subscriber.[22] The lower price to programmers diminishes the returns to those in that business, jeopardizing quality, improvements, and viability. For example, there will be less ability and incentives for independent programming providers to develop new and innovative programming, like LATV. The smaller quantity of Latino-market programming only drives up the price to advertisers seeking out such programming. Less programming adversely affects Latinos by offering less program choice and variety than under the competitive standard. As a result, the Latino programming market is imperiled and Latino subscribers are bound to suffer.

## V. CONCLUSION

Harms to the public interest, especially harms that fall disproportionately on an important class of citizens, must be remedied if the public interest is to be promoted. The public interest requires that both competition and diversity be protected. Here, Latino-oriented program providers are especially vulnerable to the effects of this acquisition and the predictable effect of this acquisition will be to confront Latino-oriented program providers with new or enhanced buyer power. Latino-oriented programmers would face fewer buyers, diminished sales opportunities, and lower prices, all of which are the hallmarks of buyer power. If the Latino-oriented programming ecosystem is to be preserved, protecting and promoting diverse Latino

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[21] *Id*. at ¶39.

[22] *Id*. at ¶¶40-42.

programming, access, speech, political participation, and pocketbooks, the Commission must seriously and fully develop a factual record and determine if the acquisition is in the public interest. For the forgoing reasons described in this Petition, Entravision respectfully submitsthat the record will show that the public interest is not served by the proposed merger and that Commission must deny consent to this Transaction.

Respectfully submitted,

/s/ Barry Friedman

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October 13, 2015

# DECLARATION

I, Walter F. Ulloa, declare, under penalty of perjury:

1. I am the Chairman and Chief Executive Officer of Entravision Communications Corporation ("Entravision").

2. Entravision, through its wholly-owned subsidiary, Entravision Holdings, LLC, is the licensee of broadcast television stations that operate in DMAs where the parties to this transfer of control proceeding have operated as multichannel video programming distributors and will continue to operate as multichannel video programming distributors should the transfer of control be consented to. These DMAs include, but are not limited to, San Diego, Palm Springs, Corpus Christi, Laredo, Tampa-St. Petersburg, and Orlando-Daytona Beach-Melbourne.

3. I have read the foregoing Petition to Deny.

4. The facts stated in the Opposition to Petition to Deny are true and correct, to the best of my information, knowledge and belief.

Executed at Santa Monica, California on the 13 day of October, 2015.

Walter F. Ulloa

# ECONOMIC ANALYSIS OF THE EFFECTS OF THE PROPOSED MERGER OF CHARTER COMMUNICATIONS, TIME WARNER CABLE, AND BRIGHT HOUSE NETWORKS ON PROGRAM PROVIDERS SERVING THE LATINO MARKET

**John Kwoka**

**Professor of Economics**

**Northeastern University**

**October 13, 2015**

## I. QUALIFICATIONS AND ISSUES

### A. QUALIFICATIONS

1. My name is John Kwoka. I hold the title of Neal F. Finnegan Distinguished Professor of Economics at Northeastern University, where I have been on the faculty since 2001. I previously have held positions on the economics faculty at George Washington University and the University of North Carolina at Chapel Hill, as well as visiting positions at Northwestern University and Harvard University. I have also had visiting positions at the Brookings Institution and the John F. Kennedy School of Government at Harvard. I earned my PhD in economics from the University of Pennsylvania.

2. My non-academic positions include positions at the Bureau of Economics of the Federal Trade Commission, at the Economic Policy Office of the Antitrust Division of the Justice Department, and as Special Assistant to the Director of the Common Carrier Bureau of the Federal Communications Commission. I am currently on the Board of Directors of the Industrial Organization Society and have been President of the Industrial Organization Society, Vice President of the Southern Economic Association, and General Editor of the Review of Industrial Organization.

3. My field of expertise is industrial organization economics, which I both teach and conduct research. Within that field, much of my work focuses on questions of competition and, more specifically in recent years, on mergers and merger policy. I have published more than eighty articles in leading journals as well as three books. My book, *The Antitrust Revolution,* co-edited with L.J. White, published by Oxford University Press is a widely-used compilation of case studies of major antitrust proceedings and is now in its sixth edition. My book *Mergers, Merger Control, and Remedies: A Retrospective on U.S. Policy*, is a research monograph studying the effects of mergers and the effectiveness of merger control and remedies. It has just recently been published by MIT Press.

4. My full curriculum vitae is attached as Exhibit 1.

## B. THE ISSUES

5. In June of this year, Charter Communications, Inc. (“Charter”), Time Warner Cable, Inc. (“TWC”), and Advance/Newhouse Partnership (Bright House Networks) (“BHN”) petitioned for approval of a consolidation of their cable, broadband, and related businesses. If approved, the transaction would effectively merge the three companies. I have been asked by Entravision Communications Corporation (“Entravision”) to analyze the effects of this proposed merger on independently provided programming intended for Latino-oriented television viewers, especially in light of the number of other recent and proposed mergers in this sector that are transforming the video programming and distribution businesses.

6. The consolidation of multichannel video distribution providers (“MVPDs”) has already been a matter of concern to independent programmers and, as my analysis will show, this proposed merger heightens that concern considerably. I proceed first by showing that this merger will further reduce the number of buyers and increase concentration among buyers of video programming, conferring yet more market power on the remaining larger buyers. I will further show that these effects are especially pronounced with respect to programming oriented toward Latino audiences, since the post-merger “New Charter” — a combination of Charter, TWC, and BHN — will dominate a number of markets that are heavily populated with Latino households.

7. The second step in my analysis is to apply economic theory and evidence to the transaction between a larger MVPD and program providers, with particular attention to program providers oriented toward Latino viewers. Bargaining theory and empirical evidence serve to underscore the concern that an MVPD that becomes a larger buyer of a genre of programming will be able to tilt the balance of bargaining power in its favor and will use that bargaining power to secure programming on terms more favorable to it and unfavorable to programming providers. Those unfavorable terms will be felt especially acutely by programmers oriented toward Latino viewing audiences.

8. Based on my analysis of the available evidence up to this point in time, I therefore conclude that the merger of Charter, TWC, and BHN, if approved, would adversely affect

the quality, viability, and competitiveness of Latino-oriented programming and the viewing audiences that they seek to serve. In the rest of this analysis, I will explain the basis for this conclusion.

## II. LATINO-ORIENTED VIDEO PROGRAMMING IS DISTINCT

9. This Commission has long recognized the heterogeneity that characterizes viewers of video programming and, indeed, has sought to ensure a diversity of programming that would match the diversity of viewers. Diversity of programs has resulted in video programs that are neither perfect substitutes for each other nor entirely distinct. Rather, as this Commission has observed, they are a "classic differentiated product"[1] with programs that substitute for each other to varying degrees. Thus, some viewers may switch from movie channels to talk shows, or from shopping channels to reality shows, but most select a genre for its distinct appeal.

10. While this Commission has chosen, as a general matter, not to define numerous submarkets of program types, it has nonetheless recognized that, at least for some purposes, certain programming should be viewed as a separate market segment.[2] It has made precisely this determination with respect to regional sports programming and local broadcast news, each of which is said to be characterized by the "unique nature of its core component" and to lack any "readily acceptable close substitutes."[3] Thus, national news is not a substitute for local news, nor are out-of-market sporting events substitutes for home town teams featured on regional sports networks. I now turn to an analogous set of factors that demonstrates that Latino-oriented programming should be considered a distinct segment as well.

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[1] *General Motors Corporation and Hughes Electronics Corporation*, 19 FCC Rcd 473, 504 (2004).

[2] The qualifier "at least for some purposes" reflects the fact that not all issues and proceedings may require such disaggregation of program types. As the Commission has said, "[n]othing in the record suggests a need for us to define rigorously all the possible relevant markets for video programming networks." *Id*. But where correct analysis of the issues require drawing such distinctions, as with regional sports programming, the Commission has made clear its willingness to do so.

[3] *Id.* at 535.

## A. VIEWERS OF LATINO-ORIENTED PROGRAMMING CONSTITUTE A DISTINCT MARKET SEGMENT

11. Much as local news and regional sports, programming oriented toward Latino audiences has unique features and lacks close substitutes. Perhaps the most obvious distinctive feature of Latino-oriented programming is, of course, language. A considerable majority of Latinos remain either Spanish-dominant or at most bilingual.[4] Television viewing by Hispanics follows much the same pattern: Of Hispanic television households, 64 percent report they are only or mostly Spanish speaking, or at most have a mix of Spanish-only and some English speaking members.[5]

12. The reasons for distinguishing Latino-oriented programming as a distinct market segment go beyond language: various features of such programming, including program types (e.g., telenovelas) and cultural cues that resonate uniquely with persons of Hispanic background. Indeed, the major general market programming networks have had little success in gaining Latino viewership. A recent feature story reported on these difficulties, noting that despite the presence of a Latino star in a top-ranked English-language program, Latino viewers made up only six percent of that program's audience. The top-ranked Latino market program that ran at the same time had seven times as many viewers. This report concluded that Hispanic viewers "seem to want very little to do with American English-language television."[6]

13. Not surprisingly, then, all of the top ten broadcast shows viewed by Latinos are programmed specifically to the Latino market and all are in Spanish.[7] Univision's

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[4] Nielsen reports that "sixty-one percent of Hispanics aged 18+ . . . prefer to speak Spanish in their homes versus only 17 percent who say they speak only English." *Three Things You Thought You Knew About U.S. Hispanic's Engagement with Media . . . And Why You May Have Been Wrong*, Nielsen, 2011. Similar to the assimilation of other immigrant populations, Latino populations are more likely to speak English the longer than have resided in the United States, but that process is slow—measured over generations, not a year or two. Large numbers of Spanish-dominant Latinos will remain for some time, and those numbers are constantly being replenished by new immigrants. *When Labels Don't Fit: Hispanics and Their Views of Identity*, Pew Research Center, April 4, 2012, p. 26.

[5] Hispanics in the Media Landscape, Nielsen, 2015, p. 3.

[6] "Networks Struggle to Appeal to Hispanics," *New York Times*, August 5, 2012, for example,

[7] Nielsen, 2011, *op. cit.*

Spanish language newscast, Noticiero Univision, often gets higher ratings than English language news programs in heavily Hispanic markets.[8] Its local affiliate in Los Angeles not only has had the highest rated evening local news show for 21 consecutive years, but often gains the highest overall ratings.[9]

14. In addition to its distinctiveness, the Latino audience is both large and growing. Between the Censuses of 2000 and 2010, the number of Latinos in the U.S. grew by 43 percent. About fifty-three million Americans, approximately one in six, are now of Hispanic origin.[10] The importance of this market has prompted increasing interest from video programmers and advertisers alike. Indeed, Univision—focusing on its Latino audience—has even on occasion bested the traditional English language networks in overall national ratings.[11]

## B. ADVERTISERS CONFIRM A DISTINCT LATINO-ORIENTED MARKET SEGMENT

15. Advertisers purchase time slots on video programming selectively, targeting viewers whose characteristics make them likely potential purchasers of their products. For this reason advertiser choices of programming on which to purchase time reflect viewer distinctions that are relevant here. More specifically, the greater the extent to which advertisers target the large and growing Latino community by developing distinctive advertising, by selling distinctive products, and by purchasing advertising time on Latino market programming, the stronger is the evidence for a distinct market segment.

16. Indeed, such is the case. Not only does Latino market programming appeal to advertisers with products oriented toward a Latino market, but the types of product and the method of advertising are also distinctive. Nielsen reports that "primetime English-language focused broadcast [advertising] effectively leaves out Spanish-dominant Hispanics . . . .

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[8] "Jorge Ramos's Long Game," *New York Times Magazine*, September 25, 2015

[9] Univision Press Release, "KMEX Univision 34 Los Angeles Finishes May Sweep as the Most Watched Television Station in Prime Time," June 21, 2015.

[10] The Hispanic Population: 2010, 2010 Census Briefs, May 2011.

[11] Hispanic Population in the U.S., 2012 Census Bureau.

Spanish-language advertising is generally more effective than English-language advertising for Hispanics."[12] Among the reasons for this dynamic, according to that report, is the fact that "Spanish ads create a deeper personal connection to Hispanic customers."[13] A more recent Nielsen report finds that "Bilingual consumers showed a higher emotional engagement when Spanish ads were shown in the context of Spanish television programming."[14]

17. Additional evidence of the distinctiveness of Latino-oriented advertising and, by implication, Latino-oriented programming, comes from an analysis by the Department of Justice in an antitrust case involving advertising on Latino-oriented radio. Applying its standard methodology for defining an antitrust market based on substitutability, the DOJ concluded as follows:[15]

> Many local and national advertisers....consider Spanish-language radio to be particularly effective or necessary to reach their desired customers, particularly Spanish-speaking consumers who listen predominantly or exclusively to Spanish-language radio. These advertisers consider Spanish-language radio, either alone or as a complement to other media, to be the most effective way to reach their target audience, and do not consider other media, including non-Spanish-language radio, to be a reasonable substitute. These advertisers would not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio. . . .

18. In short, having conducted an inquiry analogous to that necessary here, the Justice Department found a basis for distinguishing a Spanish-language radio advertising market. I know of no subsequent analysis with a different conclusion.

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[12] Nielsen, 2011, p. 3.

[13] *Id*.

[14] Nielsen, 2015, op. cit., p. 10.

[15] *United States of American v. Univision Communications, Inc., and Hispanic Broadcasting Corporation*, C.A. No. 1:03-CV-00758 (D.D.C.) (Filed March 26, 2003), at p. 4-5.

### C. CONCLUSION: PROGRAMS ORIENTED TO LATINO VIEWERS ARE DISTINCT

19. The evidence supports the conclusion that Latino-oriented video programming constitutes a distinct market segment. Viewers of Latino-oriented programming are dedicated to that format for reasons of language, culture, and product, while viewers of general English-language programming are equally committed to their format. Moreover, given this separation of viewers, advertisers directly seeking Latino consumers are not likely to switch to advertising on general market programs. Viewership of general English-language programming captures a different demographic that is worth significantly less to Latino-oriented advertisers. Actual video programming oriented toward Latino audiences confirms this distinctiveness. Consistent with this perspective, this Commission has an open proceeding to "examin[e] Hispanic television viewing" and makes particular reference to "the Hispanic television market."[16] I therefore conclude that the available evidence clearly supports the proposition that Latino market video programming constitutes a distinct market segment.

## III. LATINO-ORIENTED PROGRAMMERS FACE EVER FEWER BUYERS

20. The Latino-oriented programming industry is quite fragmented. Unlike the majority of programming sources,[17] there is a small number of networks with substantial Latino viewership with familiar brand names such as Univision, Telemundo, and MundoMax (formerly MundoFox). Another group of program suppliers consists of fledgling networks of the above major players, such as NBC Universo (formerly Mun2, and produced by Telemundo) and UniMas ( a Univision Network affiliate), and secondary networks like LATV. In addition, there are several smaller domestic providers such as Azteca America, Discovery Familia, NUVO tv, and MTV Tres. Finally, there are

16 "FCC Announces New Study Examining Hispanic Television Viewing as Part of Commitment to Encourage Broadcast Diversity," Press Release, October 24, 2013.

17 *Video Marketplace*, General Accounting Office, June 2013.

innumerable foreign program suppliers with less familiar names: Once TV, Ecuavisa, Canal Sur, and Teleformula, among many others.[18]

21. These program suppliers differ in many ways, but they have one crucial characteristic in common: Each must secure carriage for their product from one or more video distributors, as video distribution to the right markets generates an audience that is large enough and well suited to advertisers.[19] In short, without sufficient carriage in the relevant markets, audience size collapses. Without audience size, advertising collapses. Without sufficient revenues from advertisers (and perhaps MVPDs), the economics of program provision collapses. Thus, to understand the implications of the consolidation of Charter, TWC, and BHN for Latino-oriented program providers, one must examine its effect on the buyer side of the transaction between program suppliers and MVPDs.

## A. CONCENTRATION IS RISING AMONG MVPD BUYERS OF VIDEO PROGRAMMING

22. At a first approximation, the importance of individual MVPDs as buyers of programming can be measured by their share of viewers. Access to an MVPD's viewer pool ensures a program supplier an audience and the advertising and revenues that follow. The national shares of MVPDs, up until this year, are reflected in Table 1.[20] The four major players were Comcast at about 22 percent, DirecTV at 20 percent, followed by Dish and Time Warner Cable at 14 and 11 percent, respectively. AT&T, Verizon, Charter, Cox, and Cablevision comprised the next tier, each with shares roughly in the range of 4 to 6 percent. Among wired cable companies, with their unique technological advantages, numbers were fewer and concentration higher. Indeed, that medium has been, and still is, overwhelmingly dominated by five companies — Comcast, Time Warner Cable, Charter, Cox, and Cablevision.

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18 For completeness, it should be noted that there are sports and movie channels directed at Latino viewers as well.

19 In principle, a sufficiently important Latino-oriented network could also command license fees from the distributor, but I understand this is the case only for the largest networks. I discuss the economics of the program provider industry further below.

20 This market share analysis purposefully does not reflect the combination of AT&T and DirecTV.

23. From the vantage point, of many program suppliers, access to audiences had already been impaired by Comcast's 2009 acquisition of NBCUniversal and was further threatened by the proposed merger of Comcast and TWC. As this Commission recognized, ownership of NBCUniversal gave Comcast the incentive and ability to discriminate against unaffiliated program suppliers in favor of its in-house offerings.[21] Latino-oriented program suppliers were especially vulnerable because NBCUniversal owned Telemundo, and the evidence indicates that the Comcast's promised remedial efforts have not been successful.[22] The proposed merger of Comcast and TWC would therefore have dramatically expanded Comcast's footprint and thus its incentive to engage in further foreclosure of its viewer markets, but, of course, it was withdrawn.

24. Now, in short order, three other video distributor mergers have occurred or been proposed. AT&T has completed its acquisition of DirecTV. Charter proposes to acquire both TWC and then BHN. [23] And the owner of Suddenlink, Altice, is acquiring Cablevision. The dramatic effects of these three consolidations, if all go through, are illustrated in Table 2. AT&T has already become the largest MVPD, at about 26 percent of national viewership, while Charter will grow from a 4 percent firm to fully 17.3 percent subsequent to the integration of TWC and BHN and become the third largest MVPD. Cablevision's incremental gain would be considerably smaller, but together with the other two consolidations, a total of four independent buyers of programming representing more than 35 percent of nationwide subscribers, will have disappeared.[24]

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[21] *Comcast Corp., General Electric Company, and NBC Universal, Inc.*, 26 FCC Rcd 4238, 4402 (2011).

[22] See, for example, the evidence cited in *Reply Comments of Entravision Communications Corporation*, MB Docket No. 14-57, p. 8.

[23] It is clear that Charter is the moving party and surviving entity from this consolidation. Press reports at the time carried headlines such as "Charter announces plan to buy Time Warner Cable and Bright House" and recounted the fact that Charter had previously pursued TWC, only now to succeed (CNN.money.com, May 26, 2015, viewed October 6, 2015). Moreover, the current CEO of Charter will become the head of New Charter. "Charter Communications to merge with Time Warner Cable and Acquire Bright House Networks," Press Release, May 26, 2015.

[24] This calculation is based on the fact that AT&T and Charter are the acquiring and surviving companies in their respective transactions, and the owner of Suddenlink is adding Cablevision. Charter is replacing TWC in the rankings with a larger presence. I note that both OTA broadcast and alternative distribution methods, such as OVD, can affect interpretation of these calculations. Here I follow the Commission in

25. If all of these mergers and acquisitions were approved, the effect would be a substantial new step in the consolidation of video program distribution. Industry observers fully understand this, labeling recent mergers as part of "a significant round of consolidation of the American cable and broadband business."[25] I will next show that these concerns are particularly acute for Latino-oriented program suppliers.

### B. CONCENTRATION OF BUYERS OF LATINO-ORIENTED PROGRAMMING IS EVEN HIGHER

26. If the Latino population of the U.S. were spread uniformly throughout the country, then the above approximation—shares of national viewership—would be sufficient for determining the extent of buyer concentration for Latino-oriented programming. That pattern, however, is not the case. Rather, the Latino population is heavily concentrated in a small number of DMAs and it is the buying side of those specific markets that matters for the purpose of calculating the relevant concentration of buyers of Latino-oriented programming.

27. The logic behind this focus on heavily Latino DMAs is straightforward. Suppose that all viewers of a specific genre happened to live in a single DMA, so that programming to those viewers only made economic and business sense there. In that case, an MVPD that was the sole video distributor in that DMA — regardless of its overall national share or share in other DMAs — would be the only relevant buyer of programming to those viewers. Alternatively, if that DMA were served by many MVPDs, then concentration of buyers to viewers of that genre might well be less than in the nation as a whole.

28. Table 3 lists the largest 20 DMAs according to total Latino television households. The importance of these DMAs to Latino television viewing is demonstrated by the fact that, while these twenty DMAs account for 37.6 percent of total television households nationwide, they account for fully two-thirds of total Latino television households —

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excluding OTA broadcast and online video distribution from the calculations due to their technological and practical limitations. *EchoStar-DirecTV*, 17 FCC Rcd 20559, ¶¶ 109-115 (Oct. 18, 2002); *Comcast-NBCU*, 26 FCC Rcd at p. 4256.

[25] CNN Money, Sept. 18, 2015.

67.1 percent.[26] Put differently, with two-thirds of all Latino viewers, these twenty markets comprise the inescapable core viewing market to which Latino-oriented video programming is created and sold. While there are other Latino viewing households outside these DMAs, by definition they represent smaller concentrations and are geographically more thinly spread. For those reasons they are technologically more costly to reach and less valuable to advertisers. I conclude that the Latino-oriented video programming market is largely driven by Latino viewers in these core DMAs.

29. I now analyze how the consolidation of Charter, TWC, and BHN would affect the buying side of these core Latino viewing markets. Charter would add to its subscriber base 3.7 million Time Warner Cable subscribers in these core Latino markets and an additional l.6 million viewers from Bright House Networks. Charter's resulting share of 15.5 percent would vault it to third place overall, after the now-merged AT&T-DirecTV and Comcast. Moreover, New Charter would be the dominant MVPD in six of these twenty DMAs. It would become the largest MVPD in Los Angeles. In addition, it would combine TWC's dominance of the San Antonio, McAllen, and El Paso DMAs, with Bright House Networks' overwhelming dominance of the Orlando and Tampa DMAs. In these six important markets, New Charter would have a weighted average share of 43.3 percent. In New York, the second largest Hispanic market, New Charter would assume TWC's dominance of three of the five boroughs of New York City and share its franchise with Cablevision in one more. While remaining third overall to Cablevision and Verizon in the entire New York City DMA,[27] New Charter will dominate three city boroughs accounting for a Hispanic population of 1.1 million.[28]

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26 Based on the source cited in columns [a] – [d] of Table 3, the 20 largest Latino DMAs represented 37.6 percent of total television households and 67.1 percent of Hispanic television households.

27 Cablevision-Suddenlink and Verizon have shares of 36.3 and 20.2 percent respectively in New York.

28 "Time Warner Cable provides service in Staten Island, Manhattan, Queens and part of Brooklyn." "Frequently Asked Questions: Cable Television," *NYC Information Technology & Telecommunications*, available at <http://www.nyc.gov/html/doitt/html/faq/cable_tv.shtml> (accessed 10/5/2015). According to the New York City Department of Planning, in 2013, there were approximately 420,000 Hispanics in Manhattan, 640,000 in Queens, and 85,000 in Staten Island. "2013 American Community Survey 1-Year Estimates: New York City and Boroughs," *Department of City Planning City of New York*, available at <http://www.nyc.gov/html/dcp/html/census/popacs.shtml> (accessed 10/5/2015).

30. The implication of this data analysis is as follows. The merger of Charter, TWC, and BHN will eliminate two potential buyers of programming in major Latino dominant DMAs. It will create a company that delivers video programs to a substantial fraction of the Hispanic population in the top twenty DMAs, and will become the dominant MVPD in six of these DMAs — Los Angeles, San Antonio, McAllen, El Paso, Orlando, and Tampa and a leading MVPD in the New York DMA, including its urban core. Control of access to those viewers conveys the ability to affect the market for Latino-oriented programming generally through its program acquisition practices in those markets. I next explain how these changes in buyer size and concentration will affect program providers to these heavily Latino viewing markets.

## IV. THIS MERGER WOULD FURTHER TILT THE MARKET AGAINST LATINO-ORIENTED PROGRAM PROVIDERS

31. As I have already described, the market for Latino-oriented video programming consists, on the supply side, of many mostly small providers, and on the buying side, a handful of large and diversified media companies. The particular concern here, of course, is that New Charter will shrink the already small number of buyers and increase the size of one of the remaining large buyers. In this Section I will address the likely effects of this further consolidation on the price of Latino-oriented programming and the viability of Latino-oriented programmers.

### A. LATINO-ORIENTED PROGRAM PROVIDERS MUST BARGAIN WITH EVER LARGER MVPD BUYERS

32. Program providers need access to their intended audience through MVPDs, while MVPDs in turn need such programming in order to satisfy viewer demand and thereby generate revenues. As with most other programming, MVPD carriage of Latino-oriented programming in heavily Latino DMAs creates two possible revenue streams. The first and more obvious is the direct payments of “license fees” for program acquisition. License fees can be substantial in the case of high-demand programming, but for a great many smaller-viewership or niche programs, license fees amount to little or nothing at

all. Those programs strive simply for carriage on an MVPD, securing most or all of their revenues from a second source.

33. That second revenue source involves the sale of the advertising time slots within the contracted-for program. A program that draws more viewers will obviously have correspondingly more valuable advertising time slots, but as noted, many programs struggle simply to gain carriage and obtain no license fees at all. For them, survival depends on their ability to obtain and sell sufficient advertising time slots to generate the necessary revenues.[29] As the total number of available slots for any time band and program are largely fixed, the allocation advertising slots between program suppliers and MVPDs can be a subject for negotiation, much like license fee. A stronger MVPD may therefore be able to negotiate control over more advertising slots from a smaller and weaker program provider, while in other cases a more important program provider may secure more slots to sell by itself (as well as possibly obtaining license fees).

34. In what follows I will discuss the determination of the "price" of Latino-oriented programs in the transaction between providers and MVPDs. In this context I use the term "price" for convenience to denote all dimensions of the transaction that are valued by both parties and matters for negotiation between the two. Thus, "price" would include the license fee, of course, but also revenue from the sale of allocated advertising slots. In addition, it might involve channel placement on the MVPD, the number of programs acquired by the MVPD from a supplier, and carriage itself. Thus, even a nominal zero license fee is not the lower bound of what a strong MVPD can extract from a program provider.

35. For many markets with large numbers of agents and continuous transactions in homogenous commodities, competition issues can be analyzed in a conventional supply-demand framework. But where the commodities are differentiated and perhaps unique, where each seller engages with each buyer in a bilateral negotiation, and where the transaction is mutually advantageous and hence essentially certain to be consummated,

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29 *Report on the Packaging and Sale of Video Programming Services to the Public*, FCC Media Bureau, November 18, 2004.

the key question of price is best analyzed with a somewhat different framework. That framework is bargaining theory.[30]

36. In its simplest form, bargaining theory directs attention to the gains resulting from the transaction, that is, the total value to the buyer and the seller from consummating the transaction. The theory predicts that each party will negotiate in a range defined by its maximum valuation of the item (willingness to pay or to accept payment) and its disagreement (or threat) point that measures the value it would receive if negotiations were to fail and the transaction not to occur. It is straightforward to show that the negotiated price will lie in the set of prices falling in the overlap of the two parties'= respective ranges. A "Nash bargaining solution" is one in which neither of the parties has an incentive to further deviate from the negotiated split. For example, after a bargaining session of alternative offers, a 50-50 split might result.[31]

37. The relevance of this framework for analyzing the effect of a merger on price determination is that, by increasing the size of one side to a transaction (in this case, the buyer), a merger can shift the transaction price in favor of that party. More specifically, for a program provider facing a now-larger MVPD purchaser of video programming, this shift would imply a lowering of the price received by the provider. There are two possible reasons for this effect. The first is an increase in bargaining power, so that instead of a 50-50 split, for example, the now larger buyer can negotiate a more favorable

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30 A useful discussion of the application of bargaining theory to mergers was provided by the then Deputy Assistant Attorney General for Economics of the Antitrust Division. *See* Aviv Nevo, Mergers that Increase Bargaining Leverage, January 22, 2014 (hereafter "Nevo"). Bargaining theory played a significant role in the Antitrust Division's analysis of the proposed merger of Comcast and TWC . *See* Nancy Rose, Remarks Prepared for the Stanford Institute for Economic Policy Research and Cornerstone Research Conference on Antitrust in Highly Innovative Industries (Jan. 22, 2014).

31 See, for example, the discussion on bargaining equilibria in Rubinstein, Ariel, "Perfect equilibrium in a bargaining model" *Econometrica: Journal of the Econometric Society* (1982): 97-109 (hereafter "Rubinstein"). Many other outcomes are possible in such negotiations, depending, *inter alia*, on the setup of the negotiation process (*e.g.*, the number of bargaining periods, outside options available to parties) and the relative discount rates of the parties.

split. Various behavioral, sociological, and economic considerations argue for the proposition that size conveys bargaining power.[32]

38. In addition, a second mechanism favoring the larger merged buyer is added leverage in negotiations, where leverage means the ability to extract a preferred outcome from the transaction due to a change in its value to one party. Here the added leverage flows from the change in the buyer's valuation. Specifically, the now-larger buyer's surplus can be expected to decrease relative to the two surpluses before the merger (that is, one for each of the merging buyers), due to the likely diminishing value of additional viewers.[33] That is, the now larger buyer "needs" the provider's product less, and can do without it more easily. To that extent, the buyer's disagreement point rises and, with it, the threat to abandon negotiations. For any given split of the gains, increased leverage translates into a lower price to program providers.[34]

39. I therefore conclude that the increase in the size of the buyer of Latino-oriented programming resulting from a merger of these three entities —TWC, Charter, and BHN— will predictably lower the price received by Latino-oriented programmers relative to the price received from the entities in separate negotiations with Latino-oriented programmers.[35]

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32 Nevo points out, for example, that the larger firm may be more patient, implying a higher disagreement point for a single current transaction. *See* Nevo at pp 3-4 (citing Rubinstein on the effect of discount rates on negotiated outcomes).

33 The theoretical direction of this effect is ambiguous, but in practice there are compelling reasons to conclude that the effect is in this direction. For one, if there were no such advantages to larger size in negotiating, the parties either would not be merging or could simply leave negotiations with program providers to their previously separate parts. In addition, economic studies and other evidence strongly support this proposition. For a useful review, see Joseph Farrell, Declaration on Behalf of Cogent Communications, MB Docket No. 14-57, August 25, 2014.

34 It is also possible that the program seller's threat point decreases as a result of the merger of buyers. The seller may perceive that there now are fewer possible DMAs to which it can market its programs, making it more urgent to secure the one where it faces the MVPD. This heightened determination to consummate the transaction would further tilt the outcome of negotiations toward the larger buyer.

35 An analysis of this transaction based on a monopsony framework has an analogous prediction for the key result of heightened buyer power, namely, lower price to Latino-oriented program providers seeking carriage in DMAs with large numbers of Latino viewers and a dominant MVPD. Monopsony theory would also predict a reduction in quantity of programs, in transactions where that might be a consideration.

## B. THE PRICE PAID FOR PROGRAMMING ALREADY DISPLAYS THIS TILT

40. Consistent with this theoretical prediction, there is a widely understood and well documented inverse relationship between the size of an MVPD and its programming costs per subscriber. Among numerous sources, I rely upon the following:

- This Commission's Fifteenth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming[36] cites outside sources to the effect that large MVPDs "far exceed all others in terms of their bargaining power with programmers." It also notes evidence of "higher prices paid for video programming by small cable operators that lack scale economies."[37]

- This Commission's Sixteenth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming [38] cites sources reporting that "large group owners can use economies of scale to negotiate favorable contractual terms with program suppliers."[39]

- Securities markets analysts' assessments of the relative costs of programming by MVPDs of different sizes. Among many examples, a recent JPMorgan investor note called attention to potentially large cost saving in this very merger "from moving Charter programming contracts to TWC rates."[40]

- Claims by parties to recent past mergers and proposed mergers in this industry concerning the motivation for and anticipated effects on programming costs. The CFO of Comcast, for example, stated in his affidavit to this Commission that he expected millions of dollars in operating cost savings "from savings on programming costs....as more favorable rates and terms in some of Comcast's programming agreements supersede some of TWC's existing contracts."[41]

- In its 8-K filing in June 2014, AT&T stated that it expected ultimately to achieve \$1.6 billion in annual cost savings from its merger with DirecTV, and that

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36 28 FCC Rcd 10496 (2013).

37 *Id.* ¶70.

38 30 FCC Rcd 3253 (2015).

39 *Id.* ¶183.

40 Phillip Cusack, JPMorganChase, May 2015.

41 Declaration of Michael Angelakis, FCC 14-57, April 7, 2014, ¶ 7. While such declarations and promises have been commonplace in past attempts at consolidation, parties to this merger (all of whom have been parties to past proposals where such claims were prominent) have eschewed any direct assertions here.

> "Programming costs are the most significant part of the expected cost synergies."[42]

41. Perhaps most dispositively, public data and economic studies confirm this relationship. SNL Kagan and other data for 2012, 2013, and 2014, shown in Table 4, detail the clear advantage in programming costs per subscriber held by both Comcast and TWC over the smaller providers such as Charter and BHN. Such data are widely known, accepted, and acted upon in the industry.

42. I take from this evidence the conclusion that there is a systematic inverse relationship between the size of an MVPD and programming costs per subscriber. The implication of this conclusion is that the increased size of the new merged entity will likely result in further downward pressure on the price that Latino-oriented programmers can expect to receive from new Charter relative to the price they now realize in their separate negotiations with Charter, TWC, and BHN.[43]

43. The effects of this downward price pressure will be predictably harmful to smaller programmers such as those that are oriented toward Latino viewers. A lower price to programmers would diminish the returns to those businesses, jeopardizing program quality, program improvements, and perhaps even the viability of some programmers. The smaller amount of Latino-oriented programming would correspondingly limit the options and raise the price faced by advertisers seeking to reach that audience.[44]

44. These predicted effects are more than theoretical. Some of them have already been observed as past consolidation of the buying side has put downward pricing pressure on small suppliers. In another matter, the Writers Guild of America, noted the decline of independently produced programming and increasing demands on the talent community. The result is that writers must do more work for less compensation. For example, writers are now required to invest their time and bear the risks of developing new creative works,

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42 AT&T, Current Report (Form 8-K), June 3, 2014, ¶1.

43 Recall that "price" means not simply the nominal price for programming, which is zero for many programs, but also the split of other valuable considerations such as advertising slots.

44 As this bargaining is over surplus from the transaction, there is no basis to believe any "gain" by the MVPD would be passed through to consumers.

a function once compensated in a more competitive era.[45] These are precisely the types of squeezes on input suppliers through lesser compensation (or equivalently, more tasks at the same compensation) that can be expected from the further bargaining power that this merger would convey to the new Charter in its negotiations with Latino-oriented program providers.

45. The effects on program providers will translate directly into harms to viewers, and for all the reasons documented here, especially for Latino viewers. Heavily concentrated in a modest number of DMAs, several of which will be dominated by the new Charter, Latino viewers can expect to find programming that has been subjected to downward pricing pressures and consequent compromises in its quality, novelty, and other improvements that would otherwise have occurred.

## V. SUMMARY AND CONCLUSIONS

46. Based on all the facts and evidence available to me, my analysis leads me to conclude that the proposed merger of TWC, Charter, and BHN will result in a significant further obstacle to the quality, viability, and competitiveness of the Latino-oriented programming sector. Much of this sector already exists on the financial margin, seeking carriage, advertising opportunities, and audience in order to generate adequate revenues. Having to face another larger buyer of its programs, especially in many heavily Latino DMAs, will predictably tilt the terms of the transaction to the further disadvantage of Latino-oriented program providers and the viewers that look to them for video programming that serves their interests.

[45] Testimony of Christopher Keyser, President, Writers Guild of America, West, before the Subcommittee on Antitrust, Competition Policy, and Consumer Rights, June 24, 2014.

# EXHIBIT 1

Curriculum Vitae
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Neal F. Finnegan Distinguished Professor of Economics, Northeastern University
Board of Directors, Industrial Organization Society
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Advisory Board, Journal of Industrial and Business Economics
Board of Directors and Senior Fellow, American Antitrust Institute

**Previous Academic Positions:**

Professor of Economics, George Washington University, 1981-2001
  Columbian Professor, 2001
  Research Professor, 2001-2003
Faculty Associate in Public Policy, George Washington University, 1983-2001
Visiting Professor of Economics, Harvard University, 1994-95
Visiting Associate Professor of Economics, Northwestern University, 1980-81
Assistant Professor of Economics, University of North Carolina at Chapel Hill, 1972-75
Instructor, Lecturer in Economics, University of Pennsylvania, 1970-72

**Previous Non-Academic Positions**:

Member, Advisory Council to the Competition Commission of Mauritius, 2012
Guest Scholar, Amsterdam Center for Law and Economics, University of Amsterdam, Fall 2008
ENCORE Fellow, University of Amsterdam, 2003-09
Fellow, Center for Business and Government, Kennedy School, Harvard, Summer 2000
Founder and Co-Director, GWU Research Program on Industry Economics and Policy, 1996-2001
Guest Scholar, Brookings Institution, 1995
Special Assistant to the Chief, Common Carrier Bureau, Federal Communications Commission, 1987-88
Economist, Economic Policy Office, Department of Justice Antitrust Division, 1985
Economist, Bureau of Economics, Federal Trade Commission, 1975-81
Economic Policy Fellow, Brookings Institution**,** 1975-76

**Previous Professional Positions:**

General Editor, Review of Industrial Organization, 2001-04
Vice President, Southern Economic Association, 2000-02
Senior Research Scholar, American Antitrust Institute, 2000
Associate Editor, Journal of Industrial Economics, 1990-95, 1998-2001
Editorial Board, Review of Industrial Organization, 1983-2001
President, Industrial Organization Society, 1998-99
Board of Editors, Journal of Media Economics: 1987-96
Advisory Board, Antitrust Law and Economics Review: 1985-90

**Education:**

Ph.D. in Economics, University of Pennsylvania, 1972
A.B. in Economics, cum laude, Brown University, 1967
Rensselaer Polytechnic Institute, 1963 (transferred)

**Books:**

Mergers, Merger Control, and Remedies in the United States: A Retrospective Analysis, MIT Press, 2015

The Antitrust Revolution, co-edited with Lawrence J. White:
6th ed., Oxford University Press, 2014
5th ed., Oxford University Press, 2009
Translated into Chinese by Ping Lin and X. H. Zang, Economic Science Press of China, Beijing (2008)
4th ed., Oxford University Press, 2004
Translated into Chinese by Ping Lin and X. H. Zang, Economic Science Press of China, Beijing (2008)
3rd ed., Oxford University Press, 1999
2nd ed., HarperCollins, 1994
1st ed., Scott, Foresman, 1989.

Power Structure: Ownership, Integration, and Competition in the U.S. Electricity Industry, Kluwer, 1996.

**Articles:**

"Predicting Merger Outcomes: The Accuracy of Stock Market Event Studies, Market Structure Characteristics, and Agency Decisions," with C. Gu, Journal of Law & Economics, forthcoming.

"Structure, Conduct, Policy, and Performance: The 'Simple Model' of F. M. Scherer," Journal of Industrial and Business Economics, March 2014.

"Rockonomics: The Ticketmaster-Live Nation Merger and the Rock Concert Business," in The Antitrust Revolution, J. Kwoka and L. White, eds., 2014

"Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes," Antitrust Law Journal, v. 78, n. 3, 2013.

"Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement," with Diana Moss, Antitrust Bulletin, December 2012

"Mergers That Eliminate Potential Competition," Research Handbook on the Economics of Antitrust Laws, Einer Elhauge, ed., Edward Elgar, 2012.

"Reflections on the Tenth Anniversary of the Antitrust and Regulatory Update," Review of Industrial Organization, December 2011

"The Cost Structure of Regional Transmission Organizations," with Daniel Greenfield, Energy Journal, v. 32, n., 2011.

"Price Spikes in Energy Markets: 'Business by Usual Methods' or Strategic Withholding?" with Vladlena Sabodash, Review of Industrial Organization, May 2011.

"The Price Effect of Eliminating Potential Competition: Evidence from an Airline Merger," with Evgenia Shumilkina, Journal of Industrial Economics, December 2010.

"Incentive Regulation, Service Quality and Standards in U.S. Electricity Distribution," with Anna Ter-Martiroysan, Journal of Regulatory Economics, December 2010.

"Do Mergers Improve Efficiency? Evidence from Restructuring the U,S. Electric Power Sector," with Michael Pollitt, International Journal of Industrial Organization, November 2010.

"Divestiture Policy and Operating Efficiency in U.S. Electric Power Distribution," with Michael Pollitt and Sanem Sergici, Journal of Regulatory Economics, June 2010.

"Competition Policy and the Transition to a Low-Carbon, Efficient Electricity Industry," with Diana Moss, Electricity Journal, August-September 2010.

"The U.S. Auto Industry Under Duress: Fit, or Finished?" Competition Policy International, Autumn 2009.

"Restructuring the U.S. Electric Power Sector: A Review of Recent Studies," Review of Industrial Organization, May 2008.

"Eliminating Potential Competition," Issues in Competition Law and Policy, Dale Collins, ed., American Bar Association, 2008.

"The Proposed Merger of United Airlines and US Airways," in A Revolucao do Antitruste no Brasil, Cesar Mattos, ed., Sao Paolo, Editora Singular, 2nd ed., 2008.

"Making Markets Work," with Kamen Madjarov, Electricity Journal, November 2007.

"F.M. Scherer," in Pioneers of Industrial Organization, W.G. Shepherd and H. W. de Jong, eds., Edward Elgar, 2007.

"The Role of Competition in Natural Monopoly: Costs, Public Ownership, and Regulation," Review of Industrial Organization, August-September 2006.

"Electric Power Distribution: Economies of Scale, Mergers, and Restructuring," Applied Economics, Nov. 2005.

"The FTC and the Professions: A Quarter Century of Accomplishment and Some New Challenges," Antitrust Law Journal, 2005.

"Networks and Natural Monopoly," in Network Access, Regulation, and Antitrust, Diana Moss, ed., Routledge, 2005.

"Freight Railroads," with L. J. White, in Network Access, Regulation, and Antitrust, Diana Moss, ed., Routledge, 2005.

"The Comparative Advantage of Public Ownership: Evidence from U.S. Electric Utilities," Canadian Journal of Economics, May 2005.

"Dynamic Adjustment in the U.S. Higher Education Industry," with Christopher Snyder, Review of Industrial Organization, May 2004.

"A Study in Merger Enforcement Transparency: The FTC's Cruise Merger Decision and the Presumption Governing High Concentration Mergers," with Warren Grimes, web published at www.antitrustsource.com, May 2003.

"The U.S. Automobile Industry: Overtaking an Oligopoly," in Industry Studies, Larry Duetsch, ed., Prentice-Hall, 3rd ed., 2002; 2nd ed., 1998; 1st ed.,1993

"Twenty-five Years of Deregulation: Lessons for Electric Power," Loyola University Chicago Law Journal, Summer 2002.

"Governance Alternatives and Pricing in the U.S. Electric Power Industry," Journal of Law, Economics, & Organization, April 2002.

"Vertical Economies in Electric Power: Evidence on Integration and Its Alternatives," International Journal of Industrial Organization, May 2002

"Non-Incumbent Competition: Mergers Involving Constraining and Prospective Competitors," Case Western Reserve Law Review, Fall 2001.

"Automobiles: The Old Economy Meets the New," Review of Industrial Organization, August 2001.

"The New Industrial Organization and Small Business," with L. J. White, Small Business Economics, February 2001.

"Commitment to Competition: An Assessment of Antitrust Enforcement Budgets," IOS Presidential Address, Review of Industrial Organization, June 1999.

"Manifest Destiny? The Union Pacific-Southern Pacific Railroad Merger," in The Antitrust Revolution, with L. J. White, 4th ed., 2004; 3rd ed., 1999.

"Herfindahl Concentration with an Import Fringe and with Supply Constraints," Review of Industrial Organization, August 1998.

"Transforming Power: Lessons from British Electricity Restructuring," Regulation, Summer 1997

"The Price Effects of Bidding Conspiracies: Evidence from Real Estate Auction 'Knockouts'," Antitrust Bulletin, Summer 1997.

"Altering the Product Life Cycle of Consumer Durables: The Case of Minivans," Managerial and Decision Economics, January/February 1996.

"The Sales and Competitive Effects of Styling and Advertising Practices in the U.S. Automobile Industry," Review of Economics and Statistics, November 1993.

"Implementing Price Caps in Telecommunications," Journal of Policy Analysis and Management, Fall 1993.

"Regulation and Deregulation American Style," Sosyal Bilimler Dergisi, Fall 1993

"The Effects of Divestiture, Privatization, and Competition on Productivity in U.S. and U.K. Telecommunications," Review of Industrial Organization, no. 1, 1993

"The Effects of Divestiture, Privatization, and Competition on Productivity in U.S. and U.K. Telecommunications: A Briefer Reply," in Review of Industrial Organization, 1993.

"Market Segmentation by Price/Quality Schedules: Some Evidence from Automobiles," Journal of Business, October 1992.

"The Output and Profit Effects of Horizontal Joint Ventures," Journal of Industrial Economics, September 1992.

"The American Antitrust Revolution," Consumer Policy Review, July 1992.

"Price Squeezes in Electric Power: The New Battle of Concord," Electricity Journal, June 1992.

"Productivity and Price Caps in Telecommunications," in Price Caps and Incentive Regulation in Telecommunications, M. Einhorn, ed., Kluwer, 1991.

"Price Cap Reform in Telecommunications: A Penny Saved..." Regulation, Winter 1991.

"The Effect of Market Growth and Contraction on Industry Price-Cost Margins," Eastern Economic Journal, July-September 1990.

"The Private Profitability of Horizontal Mergers with Non-Cournot and Maverick Behavior," International Journal of Industrial Organization, Fall 1989.

"International Joint Venture: General Motors and Toyota," in The Antitrust Revolution, J. Kwoka and L.J. White, eds. Scott, Foresman, 1989; 2nd ed., HarperCollins, 1994.

"Design Criteria for Incentive Regulation," in Report of D.C. Public Service Commission on Symposium, "Competition and the Regulation of Telecommunications Services in the District of Columbia," December 1988.

"Accounting for Losses: The Great Detroit Newspaper War," Journal of Media Economics, Fall 1988.

"Cooperation vs. Rivalry: Price-Cost Margins by Line of Business," with David Ravenscraft, Economica, August 1986.

"Efficiencies, Failing Firms, and Alternatives to Merger: A Policy Synthesis," with Frederick R. Warren-Boulton, Antitrust Bulletin, Summer 1986.

"Messy Merger Guidelines: A Comment," Antitrust Law and Economics Review, 1986 (No 2).

"The Herfindahl Index in Theory and Practice," Antitrust Bulletin, Winter 1985.

"Markets: A Magical Mystery Tour of Current Policy," Society, November/December 1984; reprinted in Thomas Swartz and Frank Bonello, Taking Sides (Duskin, 1986).

"Market Power and Market Change in the U.S. Automobile Industry," Journal of Industrial Economics, June 1984.

"Market Share Distribution and Industry Performance: A Reply," Review of Economics and Statistics, May 1984.

"Output and Allocative Efficiency Under Second-Degree Price Discrimination," Economic Inquiry, April 1984.

"Advertising and the Price and Quality of Optometric Services," American Economic Review, March 1984.

"The Limits of Market-Oriented Regulatory Techniques: The Case of Automotive Fuel Economy," Quarterly Journal of Economics, November 1983.

"Self-Regulation in Optometry: The Impact on Price and Quality," with R. Bond, J. Phelan, and I. Whitten, Law and Human Behavior, Vol. 7, Nos. 2/3, 1983.

"Monopoly, Plant, and Union Effects on Manufacturing Wages," Industrial and Labor Relations Review, January 1983.

_____, reprinted (in Spanish) in El Mercado de Trabajo y la Estructura Salarial, Centro de Publicaciones, Ministerio de Trabajo y Seguridad Social, Madrid, 1988.

"Regularity and Diversity of Firm Size Distributions in U.S. Industries," Journal of Economics and Business, October 1982.

"Does the Choice of Concentration Measure Really Matter?" Journal of Industrial Economics, June 1981.

Effect of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry, with R. Bond, J. Phelan, and I. Whitten, FTC Staff Report, September 1980.

"Establishment Size, Wages, and Job Satisfaction: The Trade-offs," in The Economics of Firm Size, Market Structure and Social Performance, Conference Proceedings, Federal Trade Commission, July 1980.

"EIS Market Share Data: Nature, Reliability, and Uses," Antitrust Law Journal, Vol. 47, No. 3, 1979.

"The Effect of Market Share Distribution on Industry Performance," Review of Economics and Statistics, February 1979.

______, excerpt in Donald Watson and Malcolm Getz, Price Theory in Action, (Houghton Mifflin, 1981).

Market Shares, Concentration, and Competition in Manufacturing Industries. FTC Staff Report, August 1978.

"Regional Distribution of the 'Subsidy' Under Federal Milk Market Regulation," in Farm Size and Regional Distribution of the Benefit Under Federal Milk Market Regulation. FTC Staff Report by David R. Fronk, May 1978.

"Pricing Under Federal Milk Market Regulation," Economic Inquiry, July 1977.

"Large Firm Dominance and Price-Cost Margins in Manufacturing Industries," Southern Economic Journal, July 1977.

"The Organization of Work: A Conceptual Framework," Social Science Quarterly, December 1976.

"Federal Milk Market Regulation: The Multiple Pricing System," Proceedings, Conference on Milk Prices and the Market System, Community Nutrition Institute, Washington, D.C., January 1976.

"Optimal Policy When Effects on Distribution are Unknown," with James C. Ohls, Public Finance Quarterly, April 1975.

**Book Reviews:**

Economics of Beer, edited by Johan Swinnen, Journal of Wine Economics, 2013.

Mergers and Productivity, edited by Steven Kaplan, in the Journal of Economic Literature, June 2002.

Costs and Productivity in Automobile Production: The Challenge of Japanese Efficiency by Melvyn Fuss and Leonard Waverman, in Review of Industrial Organization, June 1994.

The Economics and Regulation of United States Newspapers by Stephen Lacy and Todd Simon, in Journal of Media Economics, no. 1, 1994.

Profits and the Stability of Monopoly by M. A. Utton, in The Antitrust Bulletin, Summer 1987.

The Japanese Automobile Industry by Michael Cusumano, in Journal of Economic History, June 1987.

Industrial Organization by Kenneth Clarkson and Roger Miller, in Antitrust Law and Economics Review, 1985 (No. 3).

Power and Market: Government and Economy by Murray Rothbard, in Southern Economic Journal, October 1978.

**Monographs:**

"The Direct Costs and Benefits of US Electric Utility Divestitures," with T. Triebs and M. Pollitt, EPRG Working Paper 1024, Cambridge University, Sept. 2010.

"The Price Effect of Eliminating Potential Competition: Evidence from an Airline Merger," with Evgenia Shumilkina, SSRN: http://papers.ssrn.com/so13/papers.cfm?abstract_id=1275841

"Investment Adequacy Under Incentive Regulation," Northeastern University Department of Economics Working Paper 09-001

"Industry Restructuring, Mergers, and Efficiency: Evidence from Electric Power," with M. Pollitt, Northeastern University Department of Economics Working Paper 07-001

"Restructuring the U.S. Electric Power Sector: A Review of Recent Studies," Northeastern University Department of Economics Working Paper 06-005

"The Role of Competition in Natural Monopoly Industries: Costs, Public Ownership, and Regulation," Northeastern University Department of Economics Working Paper 06-001, January 2006

"Eliminating Potential Competition: Mergers Involving Constraining and Prospective Competitors," Northeastern University Department of Economics Working Paper 05-007, June 2005

"The Federal Trade Commission and the Professions: A Quarter Century of Accomplishments and Some New Challenges," American Antitrust Institute Working Paper 04-04, October 2004

"Electric Power Distribution: Economies of Scale, Mergers, and Restructuring," Northeastern University Department of Economics Working Paper 04-005, Sept. 2004

"The Attack on Antitrust Policy and Consumer Welfare: A Response to Crandall and Winston," Northeastern University Department of Economics Working Paper 03-008, June 2003

"Dynamic Adjustment in the Higher Education Industry, 1955-1997," with Christopher Snyder, Northeastern University Department of Economics Working Paper 03-007, May 2003

"Unilateral Withholding: Market Power and California's Electricity Crisis," GWU Center for Economic Research Discussion Paper 01-01, May 2001

"Price Caps for Postal Service: Some Lessons and Some Limits," GWU Center for Economic Research Discussion Paper 00-03, April 2000

"The Industrial Organization and Small Business," with L. White, GWU Center for Economic Research Discussion Paper 00-02, March 2000

"Reform of the Electric Power Sector in Britain," GWU Center for Economic Research Discussion Paper 96-02, December 1996.

"The Origins and Purpose of Public Enterprise," GWU Center for Economic Research Discussion Paper 96-01, December 1996

"Privatization, Deregulation, and Competition: A Survey of Effects on Economic Performance," World Bank PSD Occasional Paper No. 27, September 1996.

"Vertical Integration and Its Alternatives for Achieving Cost Efficiencies in Electric Power," GWU Department of Economics Discussion Paper D-9601, March 1996.

"The Price Effects of Buying Rings: Evidence from 'Knockouts' in Real Estate Auctions," GWU Department of Economics Discussion Paper D-9503, March 1995.

"Public vs. Private Ownership and Economic Performance: Evidence from the U.S. Electric Power Industry," Harvard Institute of Economic Research Discussion Paper 1712, February 1995.

"Ownership, Competition, and Price Performance of Electric Utilities," GWU Department of Economics Discussion Paper D-9408, October 1994.

"Lengthening and Strengthening the Product Life Cycle: The Case of Minivans," GWU Department of Economics Discussion Paper D-9212, November 1992.

"The Sales and Competitive Effects of Styling and Advertising Practices in the U.S. Automobile Industry," GWU Department of Economics Discussion Paper D-9109, March 1991.

"Policy and Productivity in the U.S. and U.K. Telecommunications Industries," GWU Department of Economics Discussion Paper D-9004, April 1990.

"Regulation American-Style: Heavy-Handed, Light-Handed, and (Sometimes) Off-Handed," March 1990.

"Unleashing Market Forces: Lessons from Deregulation of U.S. Industry," February 1990.

"Accounting for Losses: The Great Detroit Newspaper War," GWU Department of Economics Discussion Paper D-8809, February 1988.

"Antitrust Policy and Foreign Competition," GWU Department of Economics Discussion

Paper D-8711, November 1984.

"Efficiencies, Failing Firms, and Alternatives to Merger: A Policy Synthesis," with F. Warren-Boulton, Department of Justice, Antitrust Division Discussion Paper EAG 86-14.

"Market Segmentation by Product Quality: Some Evidence from Automobiles," GWU Department of Economics Discussion Paper D-8603, May 1986.

"Industrial Contraction and Sunk Costs as Constraints on Concentration," GWU Department of Economics Discussion Paper D-8502, June 1985.

"Market Power from Horizontal Mergers and Joint Ventures," GWU Department of Economics Discussion Paper D-8413, January 1985.

"Cooperation vs. Rivalry: Price-Cost Margins by Line of Business," with D. Ravenscraft, Federal Trade Commission Bureau of Economics Working Paper No. 127, June 1985.

"More on Market Share Distribution and Industry Performance," GWU Department of Economics Discussion Paper D-8210, September 1982.

"Advertising and the Price and Quality of Optometric Services," GWU Department of Economics Discussion Paper D-8209, September 1982.

"Behavior of an Auto Firm Under the Fuel Economy Constraint," FTC Bureau of Economics Working Paper No. 28, June 1980.

"Output Under Second-Degree Price Discrimination," FTC Bureau of Economics Working Paper No. 21, October 1979.

"Does the Choice of Concentration Ratio Really Matter?" FTC Bureau of Economics Working Paper No. 17, October 1979.

"The Diversity of Firm Size Distributions in Manufacturing Industries," FTC Bureau of Economics Working Paper No. 12, February 1978.

"The Effects of Market Shares and Share Distribution on Industry Performance," FTC Bureau of Economics Working Paper No. 2, March 1977.

**Other:**

Jerry S. Cohen Award for Antitrust Scholarship, 2014

ABA Antitrust Section Economics Grant Program recipient, 2012-13

Distinguished Service Award, Industrial Organization Society, 2012

Principle organizer and Chair of Local Organizing Committee, International Industrial Organization Conferences, Northeastern University, 2003, 2006, 2009, 2011, 2013, 2015

Award for Meritorious Service, Federal Trade Commission, 1980

"Antitrust Analysis and the 'Cooperative Core': It's the First Two Market Shares That Count," interview by Charles Mueller, Antitrust Law and Economic Review, 1983 (No. 4) and 1984 (No. 1).

Membership in:

- American Bar Association Antitrust Section
- American Economic Association
- European Association for Research in Industrial Economics
- Industrial Organization Society
- International Competition Network
- Southern Economic Association

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# TABLE 1

**Table 1: Pre-Merger MVPD Share of Subscribers Nationally**

| | Households/MVPD Subscribers [a] | Percentage of Total Television Households/MVPD Subscribers [b] |
|---|---|---|
| **Television Households:** | | |
| Total | 113,808,820 | |
| Hispanic | 14,686,110 | 12.9% |
| **Pre-Merger MVPD Subscribers:** | | |
| Total | 100,900,000 | |
| Comcast | 22,456,997 | 22.3% |
| DIRECTV | 20,230,034 | 20.0% |
| Dish | 14,047,831 | 13.9% |
| TWC | 11,211,998 | 11.1% |
| AT&T | 5,851,002 | 5.8% |
| Verizon | 5,419,003 | 5.4% |
| Charter | 4,320,005 | 4.3% |
| Cox | 4,246,187 | 4.2% |
| Cablevision | 2,771,000 | 2.7% |
| Bright House | 1,878,818 | 1.9% |
| Suddenlink | 1,168,801 | 1.2% |

Sources and Notes:

[b]: Shares shown for MVPDs are as a percentage of total MVPD Subscribers

Television Household numbers are based on data as of October 2014 from The Nielsen Company, all rights reserved.

Total Subscribers for all MVPDs nationwide is based on data as of end of year 2013 from the FCC Sixteenth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, March 31, 2015.

Subscriber numbers for individual MVPDs are based on SNL Kagan data as of Q22014. © 2014 SNL Kagan, a division of SNL Financial LC, estimates, all rights reserved.

# TABLE 2

**Table 2: Post-Merger MVPD Share of Subscribers Nationally**

| | Households/MVPD Subscribers [a] | Percentage of Total Television Households/MVPD Subscribers [b] |
|---|---|---|
| **Television Households:** | | |
| Total | 113,808,820 | |
| Hispanic | 14,686,110 | 12.9% |
| **Post-Merger MVPD Subscribers:** | | |
| Total | 100,900,000 | |
| AT&T-DIRECTV | 26,081,036 | 25.8% |
| Comcast | 22,456,997 | 22.3% |
| Charter-Bright House-TWC | 17,410,821 | 17.3% |
| Dish | 14,047,831 | 13.9% |
| Verizon | 5,419,003 | 5.4% |
| Cox | 4,246,187 | 4.2% |
| Cablevision-Suddenlink | 3,939,801 | 3.9% |

Sources and Notes:

[b]: Shares shown for MVPDs are as a percentage of total MVPD Subscribers

Television Household numbers are based on data as of October 2014 from The Nielsen Company, all rights reserved.

Total Subscribers for all MVPDs nationwide is based on data as of end of year 2013 from the FCC Sixteenth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, March 31, 2015.

Subscriber numbers for individual MVPDs are based on SNL Kagan data as of Q22014. © 2014 SNL Kagan, a division of SNL Financial LC, estimates, all rights reserved.

# TABLE 3

**Table 3: Post-Merger MVPD Share of Top 20 DMAs by Latino Households**

| Hispanic DMA Rank [a] | DMA [b] | Total MVPD Subscribers [c] | Hispanic Television Households [d] | Charter Percentage of Total MVPD Subscribers [e] | TWC Percentage of Total MVPD Subscribers [f] | Bright House Percentage of Total MVPD Subscribers [g] | Post-Merger Charter-TWC-Bright House Percentage of Total MVPD Subscribers [h]=[e]+[f]+[g] |
|---|---|---|---|---|---|---|---|
| 1 | Los Angeles | 4,833,240 | 1,927,420 | 5.7% | 30.9% | 0.1% | 36.7%* |
| 2 | New York | 7,076,301 | 1,433,400 | 0.3% | 16.5% | 0.0% | 16.8% |
| 3 | Miami | 1,358,551 | 732,020 | 0.0% | 0.0% | 0.0% | 0.0% |
| 4 | Houston | 1,900,607 | 647,700 | 0.4% | 0.1% | 0.0% | 0.5% |
| 5 | Chicago | 2,987,871 | 528,290 | 0.2% | 0.0% | 0.0% | 0.2% |
| 6 | Dallas | 2,215,182 | 525,250 | 4.8% | 16.5% | 0.0% | 21.3% |
| 7 | San Antonio | 690,153 | 444,430 | 0.0% | 45.6% | 0.0% | 45.6%* |
| 8 | San Francisco | 2,361,759 | 425,850 | 0.4% | 0.5% | 0.0% | 0.8% |
| 9 | Phoenix | 1,176,442 | 373,470 | 0.0% | 0.0% | 0.0% | 0.0% |
| 10 | McAllen | 222,359 | 315,520 | 0.0% | 48.8% | 0.0% | 48.8%* |
| 11 | Sacramento | 1,215,976 | 278,230 | 1.8% | 0.0% | 0.0% | 1.8% |
| 12 | Albuquerque | 513,334 | 261,200 | 1.2% | 0.0% | 0.0% | 1.2% |
| 13 | San Diego | 946,306 | 260,800 | 0.0% | 12.7% | 0.0% | 12.7% |
| 14 | Fresno | 472,244 | 260,220 | 1.7% | 0.0% | 0.2% | 1.9% |
| 15 | Orlando | 1,292,154 | 249,990 | 0.0% | 0.0% | 54.7% | 54.7%* |
| 16 | Philadelphia | 2,634,081 | 244,260 | 0.0% | 0.0% | 0.0% | 0.0% |
| 17 | Denver | 1,368,043 | 243,430 | 3.1% | 0.2% | 0.0% | 3.3% |
| 18 | El Paso | 217,864 | 242,160 | 0.0% | 37.0% | 0.0% | 37.0%* |
| 19 | Washington, DC | 2,209,276 | 233,980 | 0.0% | 0.0% | 0.0% | 0.0% |
| 20 | Tampa | 1,638,435 | 225,410 | 0.0% | 0.0% | 54.7% | 54.7%* |
| | **Top 20: Share of Total MVPD Subscribers** | **100.0%** | | **1.3%** | **9.8%** | **4.3%** | **15.5%** |
| | **Top 20: Total HH/Subscribers** | **37,330,178** | **9,853,030** | **502,217** | **3,667,206** | **1,609,335** | **5,778,758** |

Sources and Notes:

* Indicates that Charter-TWC-Bright House has the largest share of Television Households among MVPDs in a given DMA.

[a]-[b]; [d]: Hispanic DMA Market Rank and Television Household numbers are based on data as of October 2014 from The Nielsen Company, all rights reserved.

[c]; [e]-[h]: MVPD Subscriber numbers are based on SNL Kagan data as of Q22014. © 2014 SNL Kagan, a division of SNL Financial LC, estimates, all rights reserved. Total MVPD Subscribers includes subscribers for AT&T, Bright House, Cable One, Cablevision, Charter, Comcast, Cox, DirecTV, Dish, Mediacom, Suddenlink, Time Warner Cable, Verizon, and WOW!.

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