Economic Analysis of Comcast's and Time Warner's Proposed Acquisition of Adelphia

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Merger will increase Comcast's incentives and ability to discriminate against MASN

- Vertically integrated cable operator like Comcast engages in content discrimination against an unaffiliated RSN so long as the gains from content discrimination (in terms of greater future affiliated content sales) exceeded the downstream losses (in terms of fewer cable subscriptions)
- Comcast is willing to incur downstream losses (if any)
  - to weaken MASN
  - to send a signal to any sports franchise considering entry into upstream programming market in the future
- The proposed merger would allow Comcast to more credibly commit to its foreclosure strategy, which is designed to drive MASN from the market.
  - increased downstream footprint means that future benefits from foreclosure are larger (can sell affiliated RSN to larger base of customers)

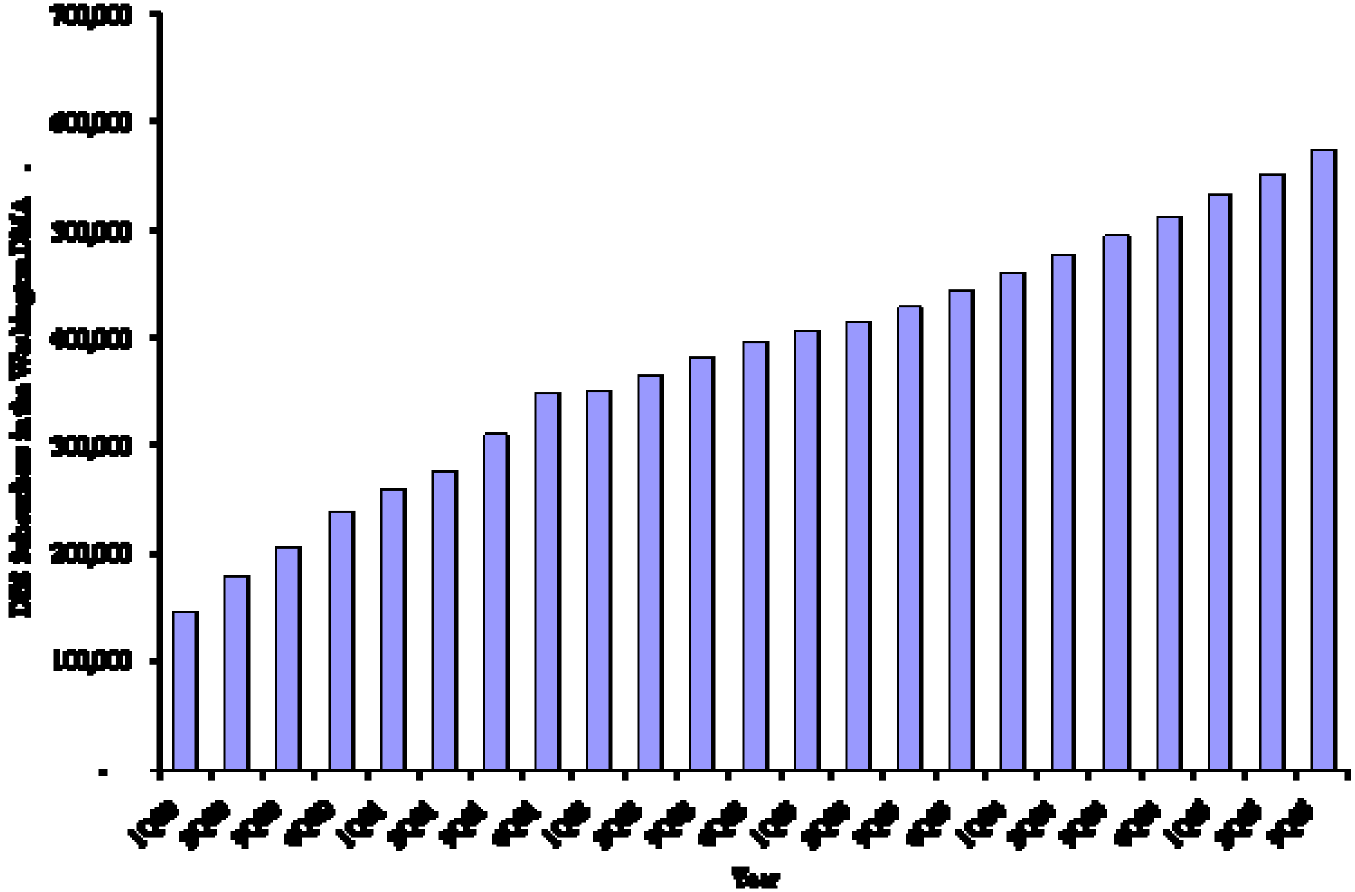
Merger Creates a Significant Likelihood of Foreclosure

- By denying MASN access to <u>more</u> cable homes in the Washington DMA, Comcast ensures that MASN cannot achieve minimum viable scale.
- If MASN cannot generate sufficient revenues to pay down its significant fixed costs, MASN will be forced to exit the market and likely sell its television rights at a distressed price to Comcast.
- At that point, Comcast will have successfully extended its downstream market power into the upstream programming market.

Examples of Prior Conduit Discrimination

- In Philadelphia, Comcast denies access to SportsNet Philadelphia to DBS providers through the so-called "terrestrial delivery" loophole
- In Sacramento, Comcast requires DIRECTV to carry Comcast SportsNet West ("CSN-West"), which shows Sacramento Kings basketball games, in the San Francisco DMA, despite the fact that these games must be blacked out across this DMA
- Once Comcast's RSN acquired the rights to Chicago Bulls, Blackhawks, Cubs, and White Sox, Comcast demanded that DIRECTV pay a rate for CSN-Chicago that was roughly 100 percent more than what DIRECTV had been paying FSN Chicago for the same content
- Comcast blacked out NHL games on Comcast's Outdoor Life Network (OLN) when Echostar refused to capitulate to Comcast's 40 percent subscriber-penetration demands

Comcast's in-region market share did not decline significantly as a result of Comcast's refusal to carry MASN



Other Reasons Why Costs of Content Discrimination Would Be Small

- High switching costs (even higher with bundle of services)
- Customer will not incur these significant switching costs so long as there is a non-trivial probability that Comcast and MASN will eventually reach an agreement
- New offers such as HDTV will increase switching costs further
- Decision to remain a Comcast subscriber even when Comcast refuses to carry MASN does not preclude the subscriber from viewing *all* Nationals' games

Merger will increase Comcast's incentives and ability to discriminate against competing MVPDs

- Benefits to this form of foreclosure *increase* as Comcast's downstream footprint increases
- Exact tipping point (in terms of share of subscribers) can be solved with margin data
- Given results from slide 8, we suspect that tipping point is around 49% of MVPD subscribers in the DMA
- Comcast's post-merger subscriber share will be 53%

Local Markets in Which Comcast Owns a Regional Sports Network (RSN)

Market (DMA)	Affiliated RSN	Comcast Homes Passed as % of Total Households in DMA (Before)	Comcast Homes Passed as % of Total Households in DMA (After)	Comcast Subs as % of Total Households in DMA (Before)	Comcast Subs as % of Total Households in DMA (After)	Deny Access to Unaffiliated RSN?	Discriminate Against Unaffiliated MVPD
Orlando	Comcast/ Charter Sports Southeast	7	9	5 [4]	8 [6]	--	No
Tampa	Comcast/ Charter Sports Southeast	9	11	10 [9]	10 [10]	--	No
Atlanta	Comcast/ Charter Sports Southeast; BravesVision	45	49	29 [38]	32 [43]	--	No
Washington	SportsNet MidAtlantic	45	54	28 [42]	38 [53]	Yes	No
Sacramento	SportsNet West	60	60	35 [49]	35 [49]	--	**Yes**
Miami	Comcast/ Charter Sports Southeast	65	71	37 [58]	42 [66]	--	NA
Philadelphia	SportsNet Philadelphia	71	72	58 [80]	60 [80]	--	**Yes**
Baltimore	SportsNet MidAtlantic	73	76	53 [76]	56 [80]	Yes	NA
Detroit	Comcast Local	78	78	48 [64]	48 [64]	No	NA
Chicago	SportsNet Chicago	90	90	49 [69]	49 [69]	--	**Yes**

Note: Share of MVPD subs in brackets

Proposed Merger Conditions

- Anti-discrimination provision vis-à-vis unaffiliated RSNs
  - Eliminate equity, exclusivity requirements
  - Unaffiliated RSN may choose to submit the dispute to commercial arbitration (with RSN carriage required during the arbitration process)
- Anti-discrimination provision vis-à-vis unaffiliated MVPDs
  - Unaffiliated MVPD may choose to submit the dispute to commercial arbitration (with RSN carriage required during the arbitration process)

Proposed Merger Conditions

- Commercial arbitration provisions to ensure that Comcast lives up to its obligations
  - FCC has clear authority to require commercial arbitration. See DirecTV/NewsCorp ¶ 173
  - It would be appropriate to require that the unaffiliated programmer bear the burden of proving that carriage of its programming would be profitable for Comcast's downstream MVPD division at the unaffiliated programmer's asking price
  - Such evidence of profitability could include: (1) contracts voluntarily entered into by other MVPDs at the same terms for the same content, or (2) market surveys of the willingness to pay for the denied content by local MVPD subscribers. In the face of convincing evidence on the profitability of carriage, the burden would shift to the cable operator, which would then be permitted to justify its refusal to deal with an unaffiliated programmer on the grounds that it is pro-competitive or efficient