Before the
Federal Communications Commission
Washington, D.C. 20554

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

PETITION TO CONDITION ASSIGNMENT OR TRANSFER OF CONTROL OF LICENSES AND AUTHORIZATIONS

Horry Telephone Cooperative, Inc. ("HTC"), by its attorneys and pursuant to the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby petitions the Commission to condition the grant of the above-captioned applications ("Applications") to ensure the provision of video services and continued video competition in rural portions of the United States.[1] Specifically, HTC urges the Commission to condition any grant of the proposed merger of Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") (collectively, the "Applicants"), and divestiture of certain Comcast-TWC subscribers to Charter Communications, Inc. ("Charter"), on the requirements that the merged Comcast-TWC and Charter each commit to offer video programming that they own and control; that is owned and controlled by any of their affiliates, parents, or subsidiaries; and that is subject to their influence based on a certain percentage of ownership in the programming entity, as specified further herein, to small and rural multichannel video programming distributors ("MVPDs") with 200,000 subscribers or less, at most favored nation ("MFN") pricing for a

[1] *See Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and Spinco to Assign and Transfer Control of FCC Licenses and Other Authorizations*, MB Docket No. 14-57, Public Notice, DA 14-986 (rel. July 10, 2014).

minimum period of 10 years.[2] Should the Commission not adopt this essential condition, it should deny the Applications to prevent the proposed merger.

As explained in greater detail herein, absent the adoption of this condition, the proposed merger of Comcast and TWC, and the related divestiture of Comcast and TWC subscribers to Charter, will harm the ability of local and rural MVPDs to compete for video services, and will also threaten the viability of these local and rural MVPDs, including HTC, as competitive providers of voice and broadband services. While in most designated market areas, Comcast and TWC do not directly compete against each other,[3] a merger between Comcast and TWC as completed with divestures to Charter, without safeguards on pricing of programming, will likely have a devastating effect on independent providers of video programming services in both urban and rural portions of the United States. Accordingly, without conditioning approval of the Comcast-TWC merger, as requested in this Petition, the proposed merger is contrary to the public interest and should denied by the Commission.

I. BACKGROUND AND STATEMENT OF INTEREST

HTC is a small, rural telephone cooperative that provides wireline voice, digital cable television, high-speed broadband Internet, and wireless services to consumers in its service areas in Horry and Georgetown Counties, South Carolina (the "Market"). As a cooperative, HTC's mission is to provide reliable state-of-the-art voice and Internet communications and video services to the community it serves at the best possible value.

[2] The Commission should impose the condition on Charter to the extent that it or any affiliated company, as specified herein, owns or controls programming, or has influence over a programming entity.
[3] *See* Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc., MB 14-57 (filed April 8, 2014).

In 1981, HTC was granted a waiver by the Commission to begin providing video services in the Market.[4] HTC began providing video services in the Market in 1984, and is continuing today to expand its cable facilities in order to be able to provide video services to *all* consumers throughout the Market. As a locally owned service provider, HTC is invested in the community it serves and is dedicated to serving its *entire* Market,[5] including the most rural, high-cost areas of the Market. TWC began overbuilding HTC in the urban portions of the Market in 1994 and is currently the only other provider of cable television services in the Market,[6] but today TWC still only serves the more densely populated areas of the Market. Presently, HTC provides video service to approximately 60,000 subscribers, and also offers voice and broadband Internet services as part of a "triple play" package. It is only through HTC's expansion into the rural areas of its service area that customers in the most rural portions of the Market can subscribe to bundled video, voice, and broadband Internet services.

II. DISCUSSION

Pursuant to Section 310(d) of the Communications Act, as amended (the "Act"), the Commission must determine whether the Applicants have demonstrated that approval of the proposed transaction would, on balance, serve "the public interest, convenience, and necessity."[7] Section 303(r) of the Act authorizes the Commission "to prescribe restrictions or conditions, not

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[4] *Application of Horry Telephone Cooperative, Inc. for certification under Section 214 of the Communications Act of 1934 to construct and operate coaxial cable distribution facilities, for the provision of cable television service, within its telephone service area in and around Conway, Loris, Aynor and Floyds, South Carolina; Petition of Horry Telephone Cooperative, Inc. for waiver of Sections 63.54 and 63.55 of the Commission's Rules and Regulations*, Order and Certificate, File Nos. W-P-C-3855 and W-602-159 (rel. June 29, 1981) (granted waiver of rules prohibiting a telephone common carrier from furnishing cable television service to the viewing public in its telephone service area on the basis that cable television service by an entity other than the telephone company or its affiliates is unlikely).

[5] Indeed, HTC's investment in the community it serves is reflected by the network that has been constructed to cover a 1,300 square mile area.

[6] DirecTV and Dish Network also provide satellite video services in the Market, but only TWC competes with HTC for "triple play" video, voice, and Internet services.

[7] 47 U.S.C. § 310(d).

inconsistent with the law, which may be necessary to carry out the provisions of the Act."[8] In exercising this authority, the Commission generally prescribes conditions in order to "remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction."[9]

The threats to competition, innovation, and consumer welfare, which were acknowledged by the Commission when approving the merger between Comcast and NBC Universal, Inc. ("NBCU"), particularly the potential public interest harms to competition and to smaller cable providers, will increase exponentially if the largest MVPD in the United States merges with the second largest MVPD. Even with the proposed divestiture of three million of the combined 21.5 million Comcast subscribers and the 11.4 million TWC subscribers to Charter, the merger of Comcast and TWC, if approved, will result in the merged Comcast-TWC holding nearly 30 percent of the subscribers in the pay-television market, and controlling or having significant influence, either directly or indirectly, over a large portion video programming content – content that is essential to the viability of rural MVPDs, such as HTC.[10]

Specifically, a merged Comcast-TWC will control a significant amount of video programming content and will have the ability to use that control to continue to charge a premium for sports, entertainment, and other programming to other MVPDs – with smaller MVPDs continuing to pay more than larger, national carriers. A merged Comcast-TWC may

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[8] 47 U.S.C. § 303(r). *See, e.g.*, *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, ¶ 25 (2011) ("*Comcast/NBCU Order*"); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control,* Memorandum Opinion and Order, 23 FCC Rcd 3265, ¶ 26 (2008).

[9] *See Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and Authorizations*, Memorandum Opinion and Order, 26 FCC Rcd 10898, ¶ 26 (2011) ("*AT&T-Qualcomm Order*").

[10] Importantly, the proposed divestiture of Comcast-TWC subscribers to Charter, of which Liberty Media Corporation, an entity with substantial investments in media, communications, and entertainment businesses, has a 26 percent ownership interest. *See Liberty Media Corporation Investment Summary*, http://www.libertymedia.com/asset-list.aspx.

also have the incentive to use that control over content as a competitive edge for increasing its own subscribership at the expense of its competition. Currently, Comcast owns the NBC television network, 10 NBC owned-and-operated stations ("O&Os"), 13 regional sports networks ("RSNs"), and many popular national cable networks including USA Network, CNBC, Golf Channel, Syfy, Bravo, E!, and MSNBC.[11] TWC controls or manages 16 RSNs, 26 local news channels, and 10 lifestyle channels.[12]

A merged Comcast-TWC will likely mean that HTC will have to pay even *higher* rates than it already does to access such video programming content, rates that could drives costs to a point that would make the provision of video services in rural areas by HTC prohibitive. In a market driven by cost and choice, the potential competitive harm created by the size and scope of this proposed merger becomes painfully clear, as HTC's largest competitor gets larger and controls more of the programming content needed by HTC to survive as an MVPD. In order to mitigate the potential harm to competition in the video programming and broadband Internet access markets, HTC urges the Commission to adopt the access to programming content condition proposed herein.

A. The Public Interest Warrants Conditioning Approval of the Comcast-TWC Merger on Reasonably Priced Access to Video Content.

The threat this proposed merger poses to small and rural MVPDs necessitates that the Commission more directly address the ability and opportunity of the merged Comcast-TWC to use pricing for access to its programming content as a means to engage in exclusionary strategies that would harm the ability of small and rural MVPDs to compete for video subscribers or to offer video services at all. As such, HTC urges the Commission to require the merged Comcast-

[11] Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc. at 12-13.
[12] *See* Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc. at Exhibit 8.

TWC, as well as Charter, an entity also benefiting from the transaction,[13] to make all of their programming available to all MVPDs with less than 200,000 subscribers at MFN pricing for a period of 10 years. Specifically, for 10 years following the consummation of the proposed merger, all programming (a) owned or controlled by the merged Comcast-TWC or Charter, (b) all programming owned or controlled by any affiliate, parent, or subsidiary of the merged Comcast-TWC or Charter, and (c) all programming subject to significant influence by the merged Comcast-TWC, Charter, or any of their affiliates, parents, or subsidiaries, with significant influence determined by a collective 30 percent or greater share held by any combination of the merged Comcast-TWC and any of its affiliates, parents, or subsidiaries, or by any combination of Charter and any of its affiliates, parents, or subsidiaries, should be made available to any competitive MVPD of with 200,000 subscribers or less, at the lowest rate charged to any other MVPD, including the rates charged to the merged Comcast-TWC , Charter, and their affiliates, parents, or subsidiaries. The FCC should also monitor the cooperation of the merged Comcast-TWC and of Charter with MVPDs for access to video content on a semi-monthly basis and use any necessary means to ensure compliance by Comcast-TWC and Charter with this condition.

The public interest is served when there are viable competitors for video services. To ensure this public interest goal is met, it is critical that HTC and other small, rural MVPDs be able to access video programming at the same rates as those charged to larger MVPDs because it will place HTC and small MVPDs on more equal footing with a merged Comcast-TWC. If HTC is unable to compete with larger MVPDs, HTC will be forced out of the video services market, leaving the merged Comcast-TWC as the sole provider of “triple-play” bundled video, voice, and broadband Internet services in portions of the Market. Similarly, without a viable competitor,

[13] *See supra* note 2.

such as HTC, that also offers bundled video, voice, and broadband Internet services in the Market, the unrestrained, merged Comcast-TWC will be able to exponentially raise rates charged to consumers, unchecked. As the large communications companies get even larger and control programming distribution and content, it is the American consumers that suffer. As such, the public interest dictates that the Commission take action to ensure that small and rural MVPDs have access to video content at rates that are competitive and comparable to what Comcast-TWC and Charter charge themselves and their affiliates, as well as rates charged to other large MVPDs.

B. Previously Imposed Conditions Are Insufficient to Protect Rural MVPDs.

In the *Comcast/NBCU Order*, the Commission adopted arbitration conditions intended to mitigate Comcast's ability to engage in "exclusionary strategies [that] could raise distribution competitors' costs or diminish the quality of the content available to them,"[14] and the Commission required Comcast to adopt an "improved commercial arbitration process for resolving disputes about prices, terms, and conditions for licensing Comcast-NBCU's video programming."[15] Although HTC believes the adoption of arbitration conditions similar to those adopted in the Comcast-NBCU merger would also be appropriate for the Comcast-TWC merger, those conditions alone will not be enough to ensure that small MVPDs, particularly those serving rural areas like the rural areas in HTC's Market, have competitive access to content. Arbitration conditions will not address the already existing root problem that small MVPDs encounter with disparate pricing for video programming.

The existing problem with programming costs, which will be significantly exacerbated by the merger of Comcast and TWC and the creation of an entity that wields far-reaching control and influence over video programming content, is that small MVPDs do not have the scale and

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[14] *Comcast-NBCU Order* at ¶ 29.
[15] *Comcast-NBCU Order* at ¶ 4.

scope to negotiate competitive rates for essential video content. Small MVPDs simply do not have buying power, and the result is that they are charged significantly higher prices for content than what larger MVPDs pay. While HTC utilizes a "content cooperative" to help secure rights to video content, even the content cooperative's bargaining power is not sufficient to negotiate competitive rates for access to video programming due to the small scale of the buying group. As a result, HTC already pays far higher rates for content than rates paid by large, national MVPDs.

Higher video content costs result in higher charges to subscribers, making it difficult at best, for small MVPDs to compete against larger MVPDs. Notably, the cost of video content accounts for approximately 70 percent of the basic video service rate charged to HTC subscribers. The remainder of HTC's video service rate covers network and other typical business operations expenses, with no profit margin.[16] The difficulty in remaining competitive on rates charged for HTC's video services is apparent. Because HTC serves large portions of rural areas, the costs of providing video services on a per subscriber are significantly higher than large MVPDs that focus on providing video services to more densely populated areas. Further increases in video content costs will likely make it impossible for a small, rural MVPD, like HTC, to continue offering video services or new programming controlled by the largest content providers because these increased costs can only be offset by a reduction in unregulated revenue sources, or must be passed on directly to subscribers. As such, the conditions previously placed on Comcast, conditions that Comcast has said it will continue to honor as part of this transaction, are not enough to adequately protect HTC from competitive harm should this merger be approved.

[16] Despite the lack of profit margin, there is an overall significant value in offering video services to subscribers as it allows small and rural communications providers to offer the highly sought-after triple play services of voice, Internet, and video.

C. In the Face of Predatory Pricing, Controls Over Programing Costs Will Ensure That Rural Consumers Will Continue to Have Access to Competitive Broadband and Video Services.

While video content costs have severely impacted, if not completely negated, the profit margin of small MVPDs, and further increases in video content costs may lead to the elimination of small MVPDs as a competitive choice, or even as the sole provider, of video services, the lack of competitive access to video content has an equally devastating impact on the ability of small MVPDs to provide broader communications services. Indeed, the very viability of these communications providers is at risk without any protection for access to video content as a condition on the Comcast-TWC merger. Without reasonably priced access to video content, small MVPDs cannot compete with a merged Comcast-TWC for video subscribers on price or content choice. This inability to effectively compete will cause small MVPDs to lose subscribers and video service market share, and ultimately to lose the ability to offer video services at all. Without a triple play of voice, broadband Internet, and video services, small MVPDs have absolutely no ability compete with national providers of communications and video services. As the cost of video programming increases and as Comcast continues to grow through acquisition, rural markets are at risk of losing their only provider of voice, broadband Internet, and video services.

Small MVPDs have difficulty competing not only for video subscribers, but also voice and broadband Internet subscribers, when large, national MVPDs offer below market pricing for their video services when these services are purchased on a longer-term contract basis or in a bundle with voice, broadband Internet, and other products and services.[17] As a merged entity,

[17] Small MVPDs that serve local communities cannot compete on price as long as large MVPDs like TWC are permitted to utilize geographical cross subsidization, offering substantially discounted rates in competitive areas, while maintaining much higher rates for comparable services in noncompetitive areas. In geographic areas similar to the Market, TWC published retail rates for comparable services differ by

Comcast-TWC will have an even greater ability to use such pricing strategies to the detriment of small, rural MVPDs. When large MVPDs are able to leverage disparate video content costs and utilize pricing strategies afforded by services offered on a national scale, the result is that small, rural MVPDs will be pushed out of the MVPD market, but also out of the broader communications market. The real harm caused by the power that can be wielded by a merged Comcast-TWC in controlling video content costs is that ultimately consumers in small markets will be left with no competitive choice for the video, voice, and Internet services, and consumers in rural markets will be left with no provider of these services. Accordingly, imposition of the programming pricing condition, as described herein, is essential to ensure that this transaction is in the public interest.

III. CONCLUSION

In light of the aforementioned public interest concerns raised by the proposed transaction, HTC requests that the Commission condition approval of the Applications on agreement by Comcast-TWC and Charter to access to video programming at MFN pricing as specified herein for a minimum of 10 years. It is rural and independent MVPDs that compete directly with large video providers that will feel the greatest impact of this merger – if approved – by relying on large competitors to provide content essential for viability and relevance in rural markets. Absent this condition, the proposed merger will harm rural MVPDs in a way that larger, nationwide video service providers will not feel, threatening the provision of video services to other unserved and rural areas in the years to come, and accordingly the applications seeking FCC consent to the merger should be denied.

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approximately 25 percent. "No contract" offers provided by TWC routinely exceed a 30 percent discount from published retail rates and are offered with no annual increases guaranteed for multiple years. Bulk agreements with no annual increases are offered at discounts that exceed 60 percent off published retail rates.

Respectfully Submitted,

HORRY TELEPHONE COOPERATVE, INC.

By: ______________________

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Date: August 25, 2014

DECLARATION OF MICHAEL HAGG

I, Michael Hagg, do hereby declare that to the best of my knowledge, information, and belief, and under penalty of perjury that the foregoing is true and correct:

1. I am the Chief Executive Officer of Horry Telephone Cooperative, Inc.
2. I have read the foregoing Petition to Condition Transfer of Control of Licenses and Authorizations dated August 25, 2014. I have personal knowledge of the facts set forth therein, and I believe them to be true and accurate.

Michael Hagg

Michael Hagg
Chief Executive Officer
Executed on: August 25, 2014

Certificate of Service

I, Susan Goldhar Ornstein, hereby certify that on this 25th day of August, 2014, I have caused a copy of the foregoing Petition to Condition Assignment or Transfer of Control of Licenses and Authorizations to be served, in the delivery method specified, upon the following:

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