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

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| In the Matter of | ) | |
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| Applications of | ) | MB Docket No. 14-57 |
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| Comcast Corp. and<br>Time Warner Cable Inc. | )<br>) | |
| | ) | |
| For Consent to Assign or Transfer Control<br>of Licenses and Authorizations | )<br>) | |

To: The Commission

## COMMENTS OF THE NBC TELEVISION AFFILIATES

The NBC Television Affiliates ("NBC Affiliates")[1] hereby submit these Comments in response to the Commission's Public Notice in the above-captioned proceeding seeking comment on the various assignment and transfer of control applications filed by Comcast Corp. ("Comcast"), Time Warner Cable Inc. ("TWC"), Charter Communications, Inc. ("Charter"), and SpinCo. These comments address the proposed sale of TWC cable systems to subsidiaries or affiliates of Comcast, referred to herein as the "proposed transaction."

In connection with the merger of Comcast and NBC Universal, Inc. (the "Comcast-NBCU merger"), Comcast made important voluntary commitments to protect the future of free, over-the-air broadcast television and the strength of the NBC Television Network.[2] To remedy potential public interest harms, the Commission then made those commitments enforceable through conditions, as well as imposed additional conditions designed to preserve the strength of

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[1] The NBC Television Affiliates is an association of broadcast television stations that are affiliated with the NBC Television Network. Members of the NBC Television Affiliates operate approximately 225 stations.

[2] *See Applications of Comcast Corp., Gen. Elec. Co. & NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, ¶ 6 (2011) ("*Comcast-NBCU Order*").

the NBC network-affiliate partnership and the public that it serves.[3] Specifically, the Commission adopted conditions focused on (i) the potential harm to over-the-air broadcasting, (ii) localism and the network-affiliate relationship, and (iii) retransmission consent.[4] These conditions are important safeguards for the strength of the NBC network-affiliate partnership and the community service it makes available to the public in markets across the country.[5]

While the proposed transaction raises a number of issues, we have been in constructive discussions with Comcast to address these potential issues, and we submit these comments for the Commission to consider in its evaluation of the pending application. Those issues include the possibility that the proposed transaction could prompt Comcast to favor its cable distribution business at the expense of its free, over-the-air broadcasting business and the network-affiliate partnership. When the Commission approved Comcast's acquisition of NBCU, it recognized that the acquisition of one of the four major broadcast networks by the country's largest MVPD created incentives and opportunities for Comcast to promote its cable distribution and other non-broadcast businesses at the expense of the NBC Network.[6] The instant proposed transaction has the potential to enhance those incentives, which is why additional assurances are important.

For the reasons described below, it is clear that approval of the transaction should be conditioned on an extension of the expiring conditions that were imposed by the Commission in connection with the Comcast-NBCU merger to safeguard the NBC network-affiliation

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[3] *Id.*

[4] *See id.* ¶¶ 155–178.

[5] *See Applications of Comcast Corp. and Charter Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Applications and Public Interest Statement, at 109 (filed June 5, 2014).

[6] *See Comcast-NBCU Order*, ¶¶ 161, 168.

partnership (for seven or ten years, as applicable).[7] Extension of these conditions is important to protect the continued strength of the NBC network-affiliate partnership and the strong public interest benefits that it delivers for viewers.

## I. The Proposed Transaction Could Increase Comcast's Incentives to Favor Its Cable Distribution Business at the Expense of NBC and the Network-Affiliate Partnership.

In connection with the Comcast-NBCU merger, the Commission recognized that the acquisition of one of the four major broadcast networks by the country's largest MVPD created incentives and opportunities for Comcast to promote its cable distribution and other non-broadcast businesses at the expense of the NBC Network.[8] The substantial increase in the number of Comcast's cable systems and subscribers that would result from consummation of the proposed transaction has the potential to increase the risk identified by the Commission. Following the transaction, Comcast's cable business will be more than one-third larger than the current cable company and therefore a potentially more significant driver of Comcast's business decisions than it is today.

### A. <u>The Proposed Transaction May Increase Comcast's Incentives to Migrate Sports Programming from NBC to Comcast's Cable Networks.</u>

In considering the Comcast-NBCU merger, the Commission found that the acquisition provided Comcast with "increased incentive and ability to migrate marquee sports programming from NBC and the NBC [owned-and-operated stations] to Comcast's cable networks."[9] The

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[7] Those conditions originally set to sunset in seven years should be extended for an additional seven years, and those originally set to sunset in ten years should be extended for an additional ten years. To the extent that certain conditions do not expire, they do not require extension.

[8] *See Comcast-NBCU Order* ¶¶ 161, 168.

[9] *Id.* ¶ 161.

Commission stated that such action "would harm consumers who rely exclusively on [over-the-air] broadcasting."[10]

In the years since the Comcast-NBCU merger, concerns about the migration of sports programming to cable networks have continued. For example, a number of marquee sports events, such as the Major League Baseball playoffs and the NCAA Men's Basketball Final Four, have been wholly or partially moved onto cable networks.[11] The increase in the number of cable systems and regional sports networks under Comcast's control as a result of the proposed transaction, as well as the number of video subscribers served by those systems, has the potential to further increase Comcast's incentives to favor its cable business and migrate marquee sports programming from NBC to its cable networks.

### B. The Proposed Transaction Has the Potential to Impact Localism.

In reviewing the Comcast-NBCU merger, the Commission agreed with concerns raised by the NBC Affiliates that the merger would give Comcast "the incentive and ability to interfere with . . . retransmission consent negotiations by either (1) importing the signal of another NBC affiliate into the negotiating station's market, or (2) supplying the Comcast cable system with which an NBC affiliate has a retransmission consent dispute with a direct linear feed of NBC programming . . . during or in anticipation of such a dispute."[12] The Commission determined that "once Comcast obtains a controlling interest in NBCU, it will have an even greater incentive

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[10] *Id.*

[11] *See* Mike Oz, *Baseball's Postseason Will Air Mostly on Cable Starting in 2014*, YAHOO SPORTS (March 5, 2013, 6:46 PM), http://sports.yahoo.com/blogs/big-league-stew/baseball-postseason-air-mostly-cable-starting-2014-234618123--mlb.html; Brian Steinberg, *Turner, CBS to Share Final Four as NCAA Hoops Find Cable Roost*, VARIETY (May 7, 2013, 8:51 AM), http://variety.com/2013/tv/news/tv-sports-turner-cbs-accelerate-final-fours-migration-to-cable-1200470211/#.

[12] *Comcast-NBCU Order* ¶ 164.

and ability to bypass the NBC affiliates to advantage its cable systems in retransmission consent disputes."[13] To address these issues, the Commission adopted a number of conditions designed to protect against potential impacts to localism and interference with the retransmission consent process.[14] However, because Comcast will now control many more cable systems, including many in the nation's top markets, the company could have greater incentives and ability to interfere with the retransmission consent process in favor of its cable systems.

C. The Commission Should Examine The Impacts Of The Transaction On Competition, Particularly With Respect To Advertising.

The combined company also could affect local television markets in other ways. It will enjoy a significantly larger market share in certain Nielsen Designated Market Areas ("DMAs") beyond what either Comcast or TWC has in these markets today.[15] This will strengthen Comcast's position with respect to programming negotiation, as well as local and regional advertising and advanced advertising services. Comcast's extensive advertising interests could put it in a position to affect competition in emerging markets for advanced advertising technologies and platforms.[16] Comcast has touted as a key attribute of the proposed transactions the development and ability to scale advanced advertising technologies and platforms, such as addressable advertising that "allows marketers to replace geographic zone targeting with

[13] *Id.* ¶ 174.

[14] *See id.* ¶ 168.

[15] *See Applications of Comcast Corp. and Charter Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Applications and Public Interest Statement, at 5 (filed June 5, 2014).

[16] Comcast has highlighted this opportunity in its applications to the Commission. *See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, Applications and Public Interest Statement, at Exhibit 2 ¶ 154 (filed Apr. 8, 2014) (noting that addressable advertising that "allows marketers to replace geographic zone targeting with advertising targeted to individual households based on demographics and other household-specific characteristics"); *see also id.* at Exhibit 2 ¶¶ 155–178.

advertising targeted to individual households based on demographics and other household-specific characteristics."[17] While the NBC Affiliates share Comcast's vision for advanced advertising technologies and platforms that better serve advertisers, Comcast could have the incentive and ability to use its market power as a distributor to impair the ability of broadcasters and others from participating in this market.

## II. The Commission Should Extend the Expiring Conditions.

The Commission should extend the conditions it adopted in the Comcast-NBCU proceeding to respond to the concerns raised herein that the proposed transaction could enhance Comcast's incentives and opportunity to favor its cable distribution and other non-broadcast businesses over the NBC Television Network.[18] As described above, in connection with the Comcast-NBCU proceeding, the Commission adopted conditions in three categories focused on (i) the potential harm to over-the-air broadcasting, (ii) localism and the network-affiliate relationship, and (iii) retransmission consent.[19] While two of the conditions do not expire, the other conditions are scheduled to expire or sunset.[20] These conditions received support from the

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[17] *Comcast-TWC Application* at Exhibit 5 ¶ 154 (Declaration of Gregory L. Rosston & Michael D. Topper); *see also id.* at 104 (Public Interest Statement) (stating that "Comcast has addressable ad technology that it is planning to roll out more widely by the end of 2014"); *id.* at Exhibit 4 ¶ 42 (Declaration of Michael J. Angelakis).

[18] *See id.* ¶¶ 161, 168.

[19] *See id.* ¶¶ 155–178.

[20] *See Comcast-NBCU Order* at Appendix A, Section XX ("Except as expressly stated, these Conditions shall remain in effect for seven years following the date of this Order."); *id.* at Appendix A, Section IX ("Section 3 of the NBC Affiliates Agreement . . . shall . . . expire on the date on which NBCU and Comcast are no longer commonly owned and/or controlled."); *id.* at Appendix F, Section 7.A ("The Network will continue to provide these protections and execute any necessary agreements after expiration of current agreements and side letters to maintain these network non-duplication protections for NBC Local Affiliates for so long as the FCC maintains network non-duplication rules, and thus shall not be subject to expiration on the Sunset Date.").

public interest community.[21] The conditions by their own terms will continue to apply to cable systems that Comcast acquires,[22] including the TWC systems it will gain as a result of the proposed transaction, and Comcast has affirmed this fact in public statements.[23]

As the Commission considers how to address the various concerns raised by the transaction, it should help safeguard the NBC network-affiliate partnership and the public that it serves by extending the expiring conditions for seven or ten years, as applicable. An extension of the expiring conditions will help mitigate the important issues identified herein during the critical period in which the business practices of the combined Comcast-TWC entity will be established.

[21] *See, e.g.*, Free Press, Media Access Project, Consumer Federation of America, and Consumers Union, Reply to Opposition, MB Docket No. 10-56, at 60 (stating that "in the event the Commission is disposed to grant the merger, it should expressly condition any such action upon full compliance with the terms of the four agreements"). Some even argued that certain of the conditions were too important to permit to allow to expire. *See, e.g.*, Greenlining Institute, Reply to Opposition to Petitions and Responses to Comments, MB Docket No. 10-56, at i, 7 & n.28 (Aug. 19, 2010).

[22] *See id.* at 4355 (defining "C-NBCU," to which the broadcast conditions apply, as "the joint venture created as a result of the transaction approved with conditions by this Order *together with its subsidiaries, Affiliates, successors, and assigns*" (emphasis added)).

[23] *See Public Interest Benefits Summary*, COMCAST, http://corporate.comcast.com/images/Public-Interest-Benefits-Summary.pdf (last visited August 9, 2014) ("Additional consumer benefits arise from the automatic application of certain NBCUniversal Conditions to the cable systems and related assets acquired from Time Warner Cable.").

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For the foregoing reasons, the expiring conditions imposed by the Commission in connection with the Comcast-NBCU merger should be extended for seven or ten years, as applicable.

Respectfully submitted,

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