August 25, 2014

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Commission Seeks Comment on Application of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations

Dear Sir or Ma’am:

These comments are submitted for the record to the Federal Communications Commission by The Heartland Institute in response to the Commission’s request for comments on the efforts of Comcast Corporation and Time Warner Cable to transfer control of various FCC licenses and other authorizations pursuant to Sections 214 and 310(d) of the Communications Act of 1934 from Time Warner Cable (TWC) and its affiliates and related entities to subsidiaries or affiliates of Comcast.¹ This transfer would allow Comcast and TWC to complete their pending sale.

The Heartland Institute is a national nonprofit research organization based in Chicago. Its mission is to discover, develop, and promote free-market solutions to social and economic problems. Founded in 1984, it is tax exempt under Section 501(c)3 of the Internal Revenue Code. It is not affiliated with any political party, business, or foundation.

Heartland has gained the endorsement of many of the top scholars, thinkers, and politicians in the world – including Nobel Laureate Milton Friedman, former Czech Republic President Vaclav Klaus, and think tank leaders including Sen. Jim DeMint (The Heritage Foundation), Morton Blackwell (The Leadership Institute), and Grover Norquist (Americans for Tax Reform).

The Heartland Institute’s Center on the Digital Economy regularly publishes research and commentary on telecommunications based on its view of sound economics and free-market competition.² Heartland’s researchers and writers say rules for the Internet and electronic commerce should result from private collective action, not government regulation. Heartland’s experts also contend effective free-market advocacy and education are required to overcome the special-interest groups who have the ear of policymakers too eager to regulate.

Specifically with respect to the application of Comcast and TWC, Heartland notes the two entities do not operate in the same markets, and thus their application does not raise antitrust concerns. The end result of this transaction would be improved telecommunication services for consumers with little effect on competition. Since the proposed transaction presents no harm to either the market or public as a whole, it should be allowed to continue with no extraneous conditions being placed on the companies as a condition of approval.

In particular, we call FCC’s attention to the following:

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1. Comcast and TWC service territories do not overlap, and this transaction would not remove a competitor from the playing field.

Comcast and TWC do not operate in the same markets, making it unlikely consumers would experience a loss of competitive choice or product availability in television, broadband Internet, or telephone services. In an April 2014 open letter to Sens. Chuck Grassley (R-Iowa) and Mike Lee (R-Utah), the leaders of several free-market and pro-taxpayer organizations noted: “The transaction will simply swap one cable company for another in some markets – something which is competitively neutral on its face.”

Ronald D. Rotunda, the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University, argued in a media statement that the merger is more likely to help consumers than harm them.

The merger does not limit competition because Comcast and Time Warner do not compete against each other. The two companies do not now operate in any of the same ZIP codes. The larger company will have greater resources, which will allow them to compete against other media companies – such as Netflix – in creating new content for their subscribers. Increased competition is always good for the consumer. No consumer has ever been wounded in a price war.

Comcast has made efforts to respond to many of the merger’s critics by agreeing to shed millions of subscribers if the transaction is allowed. Comcast has agreed to sell those subscribers to a major competitor and critic of the merger, Charter Communications. Comcast agreed to sell 1.4 million subscribers to Charter Communications while spinning off an additional 3.5 million subscribers into a separate company co-owned by both Comcast and Charter. That transaction, valued near $20 billion, would be completed only if FCC approves the merger. It would affect subscribers in Dallas, Detroit, Los Angeles, and Minneapolis.

Even if the Comcast-Time Warner Cable transaction were to be approved, Comcast would have less than 30 percent of the total market for paid television services. Thirty percent has long been FCC’s threshold limit for pay TV ownership; that benchmark was overturned in 2009, when a legal decision determined FCC “failed to demonstrate that allowing a cable operator to serve more than 30 percent of all cable subscribers would threaten to reduce either competition or diversity in programming.”

2. The market for broadband Internet service is competitive and will remain competitive after this transaction.

Critics of the Comcast–TWC merger claim the transaction would make the market for broadband Internet service, which they believe is noncompetitive, even less competitive. Those critics are wrong: The market for broadband Internet service is thriving, and allowing the Comcast–TWC transaction to proceed will not destabilize that market.
In the coalition letter cited earlier, the free-market and taxpayer advocacy groups note the opponents of the merger have defined the market too narrowly and ignored the many options Americans have for accessing broadband services. The United States is one of only two nations worldwide that has developed three major nationwide broadband technologies competing for subscribers: cable, telco, and wireless 4G LTE.

Taking the wider broadband market into consideration diminishes Comcast’s post-transaction market share to only 20 percent, which is significant but not a monopoly. And even this lead in market share is likely to shrink. In recent years, cable providers have seen their customers move to new services like satellite or to new TV services from companies like AT&T and Verizon.⁷

According to MediaDailyNews, cable TV providers lost almost 2 million subscribers in 2013, 388,000 in the fourth quarter alone. Satellite providers added 170,000, an increase of 0.5%. TV provider services from telecommunications companies AT&T and Verizon also saw sharp increases, together adding 286,000 new customers.

The new competition to traditional cable television providers is expected to grow, with (for example) Google expanding its fiber services across the country. Will Rinehart of American Action Forum argues the television and video markets have rarely been more competitive, with 98 percent of Americans being able to choose from among three or more multichannel video programming distributors.⁸

The rate at which the video and broadband markets develop makes implementing regulation and other telecom policies difficult. Narrowing the discussion of mergers and antitrust policies to paid television services alone misses the realities of the current market.

Major cable companies face stiff competition from new competitors like Netflix, Hulu, Amazon, and YouTube, who are not burdened by the high infrastructure costs that cable companies must bear. FCC itself has recognized the growth in online video revenue, pointing in a Fact Sheet to the “tremendous growth” of the new industry.⁹

### 3. Internet service for consumers in TWC territories is likely to improve following the merger.

While critics of the Comcast–TWC merger have claimed that allowing the transaction to continue would lead to decreases in product quality and less investment in new networks and technology, current TWC subscribers can in fact expect to see improvements in the speed and quality of their broadband and television services.

In a new report from the Free State Foundation, Seth L. Cooper outlines several examples how consumers would benefit from the merger. He notes:¹⁰

> On its face, Comcast/TWC poses a number of likely consumer welfare-enhancing benefits. If approved, the merger has the potential to:
• Accelerate transition from analog to digital for cable video transmission to more broadband Internet consumers;
• Enable faster deployment of DOCSIS 3.1 to more retail video subscription consumers;
• Improve the competitiveness of the market for broadband services to business enterprise customers, including nationwide and inter-regional business customers; and
• Increase efficiency as well as expand the supply and geographic scope for wireless backhaul infrastructure services needed to transmit wireless data.

Comcast currently offers broadband Internet speeds of 105 to 505 Mbps, considerably faster than the 50 Mbps offered by TWC in most locations. Comcast has already stated its intention to upgrade TWC’s slower broadband networks. Telecom website Light Reading points out Comcast has completed its transition to all-digital networks, while TWC has completed less than 20 percent of its planned transition.11 Comcast is an industry leader, offering more video, streaming, and high-definition options than TWC through its X1 operating system and Xfinity platforms.12

In a Forbes online article, Doug Brake, telecom policy analyst with the Information Technology and Innovation Foundation, says the claim that Comcast is likely to slow its investments in new technologies is unfounded, noting Comcast spent $5.4 billion in capital expenditures on its cable business last year alone.13 Moreover, technology is generally being improved to provide faster internet for everybody. Current generation cable modem technology – DOCSIS 3.0 – is capable of well over 100 Mbps. DOCSIS 3.1, the next generation, which can be deployed with minimal changes to infrastructure, is designed for 10 Gbps downstream and 1 Gbps upstream. Brake also notes consumers of the new combined company would be likely to benefit from increased efficiency arising from improved economies of scale. Brake cites a recent study from the Canadian government14 that found “economies of scale were responsible for 30 to 40 percent of productivity growth in the telecommunications sector from 1984 to 2008. The increasing returns to scale in the communications industry is a key reason why this deal is good for the economy and consumers.”

Conclusion

The Federal Communications Commission’s goal in this review is to determine whether the merger of Comcast and Time Warner Cable will negatively affect competition.

We respectfully submit this transaction will not hurt competition and in fact is likely to improve services for many consumers nationwide. The Heartland Institute urges FCC to consider these important points when making its decision:

• The service territories of Comcast and TWC do not overlap, and this transaction would not remove a competitor from the playing field.
• The market for broadband Internet service is competitive and will remain competitive after this transaction.

• Internet service for consumers in TWC territories is likely to improve following the merger.

The Heartland Institute appreciates this opportunity to comment.

Sincerely,

Matthew Glans
Senior Policy Analyst
The Heartland Institute


10 Cooper, S. “The Comcast/Time Warner Cable Deal: Keep the Focus on the Consumer Welfare Benefits.” Free

12 Cohen, D. “Comcast and Time Warner Cable File Applications and Public Interest Statement with FCC.”
Comcast Voices, April 8, 2014.

February 27, 2014.

http://www.statcan.gc.ca/pub/11f0027m/11f0027m2014089-eng.pdf