



May 8, 2014

The Honorable Robert Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2426 Rayburn Building
Washington, D.C. 20515

The Honorable Spencer Bachus
Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
2246 Rayburn Building
Washington, DC 20515

Dear Chairman Goodlatte and Honorable Committee Members;

The Writers Guild of America, West (WGAW) respectfully submits this letter in connection with the May 8 Hearing on the proposed Comcast – Time Warner Cable (TWC) merger. WGAW represents more than 8,000 professional writers working in film, television and new media. Almost all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East. Increasingly, the original video programming available online through services such as Netflix, Amazon, Hulu and Crackle is also written by Guild members.

We thank you for convening this hearing to examine the implications of the proposed merger. WGAW members are concerned about this merger because the content they create, for television networks and online providers, must go through Comcast and Time Warner Cable to reach a significant portion of consumers. The WGAW opposes the merger because the combined size of Comcast-TWC in both the cable and broadband Internet markets, even after subscriber divestitures, will allow the company to limit competition and choice, harming both content creators and consumers. As such, approval of this merger would run contrary to the goals of antitrust law and the FCC's public interest standard.

The FCC has already found, in the Comcast-NBCU merger, that the company has “the incentive and ability to hinder the development of rival online video offerings and inhibit potential competition from emerging online video distributors that could challenge Comcast’s cable

television business.”¹ Allowing Comcast to extend its control over an additional 8 million subscribers increases its ability to harm competition, and Comcast’s record of violating merger conditions reveals the inadequacy of conditions as a protective measure or compromise. The only appropriate response to this merger is denial rather than a panoply of conditions that we can only hope will ameliorate the harms.

The proposed merger is unprecedented in size and scope. Comcast, the largest MVPD and Internet service provider (ISP), also owns two broadcast networks, local broadcast stations, many of the most watched cable networks and television and film production entities. Time Warner Cable is the fourth largest MVPD and ISP. While Comcast and Time Warner Cable do not currently compete head to head for consumers, they are two of the largest distributors of content as multichannel video programming distributors (MVPDs) and Internet service providers (ISPs). Of key concern to writers is how the combined entity may use its enhanced buyer power and bottleneck power to harm both traditional television programmers and new online video providers.

With almost 30% of MVPD subscribers after proposed divestitures, the merged entity’s power as a buyer of content will be significantly enhanced. Comcast-TWC will be able to use this increased bargaining power to force television networks to agree to below market rates, harming investment in programming. Comcast-TWC has already said it expects to save \$1.5 billion in operating efficiencies in the first three years, including savings on programming costs “as more favorable rates and terms in some of Comcast’s programming agreements supersede some of TWC’s existing contracts.”²

We are concerned about the enhanced buyer power enabled by the merger because affiliate fees paid by Comcast, Time Warner Cable and other MVPDs to television networks have helped to fuel the growth of original dramatic programming across basic cable. At least two dozen cable networks are now developing and airing original comedies and dramas, providing additional content choices to consumers. The merger threatens competition in upstream content markets because, with the ability to blackout programming to one-third of households, programmers will have no choice but to submit to Comcast-TWC demands. As such, Comcast-TWC’s monopsony power will diminish opportunities for content creators and ultimately result in fewer content choices for consumers.

While enhanced buyer power is sometimes viewed favorably because it can result in lower prices to consumers, Comcast Executive Vice President David Cohen has already stated that the company is “not promising that customer bills are going to go down or even increase less rapidly.”³ The enhanced buyer power can also harm competing MVPDs because programmers may attempt to raise prices to rivals to make up for revenue lost from Comcast-TWC.

¹ Federal Communications Commission, Memorandum Opinion and Order, *In the Matter of Applications of Comcast Corporation, General Electric and NBCUniversal, Inc., For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, released January 20, 2011.

² *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Declaration of Michael J. Angelakis ¶ 7.

³ Jon Brodtkin, “Comcast: No promise that prices ‘will go down or even increase less rapidly,’” *Ars Technica*, February 13, 2014.

Comcast-TWC's control over the broadband Internet market is also a key concern for writers. Both consumers and content creators are just now beginning to benefit from innovative online video services. 2013 marked the debut of original television-length programming from outside the television ecosystem as Netflix and Amazon began offering original drama and comedy series directly to consumers. Press reports indicate Xbox, Yahoo! and Playstation will be the next online providers to offer such programming.⁴ These providers are new buyers of content and are moving into direct competition with traditional television networks.

These services have emerged outside of the cable bundle only because of the development of the Internet as a video distribution platform. But a merged Comcast-TWC will control as much as 40% of the broadband Internet market, giving it significant market power over content providers trying to reach consumers. Comcast has already shown a willingness to use its bottleneck power to extract tolls from edge providers like Netflix. Netflix Vice President Christopher Libertelli recently wrote in a letter to Senator Franken,

“Comcast is already dominant enough to be able to capture unprecedented fees from transit providers and services such as Netflix. The combined company would possess even more anti-competitive leverage to charge arbitrary interconnection tolls for access to their customers.”⁵

Comcast has the incentive to limit the growth of online video providers because they compete with its cable television offerings and its own NBC Universal content. As demonstrated by its treatment of Netflix, the company's size has given it the ability to harm competition by raising the cost of access. It is evident that the Net Neutrality condition of the Comcast-NBCU merger cannot sufficiently protect online video providers from Comcast's anti-competitive behavior. Allowing Comcast to increase its control over the broadband Internet market will only exacerbate this problem.

Contrary to Comcast-TWC claims, competition is not robust. While the companies' merger application names a host of companies including Amazon, Apple and Netflix as competitors, none provide consumers with a true alternative to the services offered by Comcast or TWC. Most consumers only have a choice between a cable operator and two satellite providers for MVPD service. While AT&T and Verizon have entered the MVPD market, they only offer services to about 40% of the country and Verizon has stopped expanding its service to new markets.^{6,7} In addition, online video services are not substitutes for an MVPD service. Services such as Netflix or Amazon Prime Video are akin to an individual television network like HBO. They offer only a limited menu of programming that does not include must-have content such as news or live

⁴ Nellie Andreeva, “XBox Develops Pro Skater Comedy Series,” *Deadline Hollywood*, December 6, 2013; Marc Graser, “Microsoft to Launch First Original Shows on Xbox in Early 2014,” *Variety*, December 13, 2013; Nellie Andreeva, “Xbox Developing 1990s Music Series Based on Rapper Nas' Life,” *Deadline Hollywood*, February 11, 2014; Bryan Bishop, “Sony's first original TV series for Playstation will be ‘Powers,’” *The Verge*, March 19, 2014; Mike Shields, “First Netflix and Amazon. Now Yahoo to Get Into TV Programming Game,” *The Wall Street Journal*, April 5, 2014.

⁵ Christopher Libertelli, Vice President, Global Public Policy, Netflix, Inc., “Letter to Senator Al Franken,” April 23, 2014.

⁶ SNL Kagan, “Media Trends,” 2013 Edition, p. 212.

⁷ Steve Donohue, “Verizon pressured to expand FiOS in New Jersey,” *Fierce Cable*, October 4, 2013.

sporting events. Perhaps most critically, online video providers also rely on ISPs like Comcast and Time Warner Cable to reach consumers.

Broadband Internet is even less competitive, with almost one in three Americans having only a single option for Internet service fast enough to stream videos.⁸ While Comcast may point to Google's entry into the broadband market as evidence of competition, it is worth noting that even if Google were to expand into all of the 34 cities it recently expressed interest in, its fiber network would only pass a total of about 3.9 million households out of 119 million occupied U.S. households in 2013.⁹ DSL Internet service also cannot be considered a reasonable substitute because the technology is unable to provide the speeds necessary for video streaming. Similarly, wireless Internet is also not a suitable alternative because data plans for wireless service make video streaming cost prohibitive. For instance, an AT&T subscriber would need 10 GB of data a month to watch just an hour of HD video a day.¹⁰ This costs \$60 a month under the Mobile Share Plan.¹¹ The average American watches almost 5 hours of television a day, or 150 hours a month and would need 45GB of data to substitute all of his or her television consumption with video on a wireless network, at a cost of \$335 per month. Verizon estimates an hour of HD streaming per day to require a 30GB plan, costing \$185 per month.^{12,13}

Allowing Comcast and Time Warner Cable to merge may also foreclose future competition between the two cable providers. Satellite provider, Dish, recently reached an agreement to offer Disney channels in a virtual cable package, delivered over the Internet.¹⁴ While cable providers have historically stayed within their geographic footprint, it is conceivable that as the market changes, MVPDs could be incentivized to offer services out of their footprint. However, allowing Comcast and Time Warner Cable to merge now will eliminate this possibility.

Comcast and Time Warner Cable have offered a host of conditions to make this merger more palatable. But, Comcast has a questionable track record of following merger conditions. The company has already been fined \$800,000 by the FCC for failure to adequately market its standalone Internet service, a condition of the Comcast-NBCU merger. We have also witnessed Comcast fight enforcement of merger conditions. A Comcast-NBCU merger condition requires that if Comcast groups any news and/or business channels in a "news neighborhood," it must group all independent news and business news channels in that neighborhood.¹⁵ Comcast failed

⁸ FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2012*, December 2013, p 9.

⁹ Kamran Asaf, "Google targeting over 3 million households with its planned fiber expansion," *SNL Kagan*, March 4, 2014.

¹⁰ AT&T, Data Calculator, <http://www.att.com/att/datacalculator/index.html#fbid=mDr3ZnVdLNo>, Accessed May 5, 2014.

¹¹ AT&T, AT&T Mobile Share for Data-Devices Only, https://www.att.com/shop/wireless/data-plans.html#fbid=J_j0aMoai_u?tab2, Accessed May 5, 2014.

¹² Verizon Wireless, Data Calculator, <http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp?popup=true>, Accessed May 5, 2014.

¹³ Verizon Wireless, The MORE Everything Plan, http://www.verizonwireless.com/wcms/consumer/shop/shop-data-plans/more-everything-plan.html?s_tnt=55694:2:0, Access May 5, 2014.

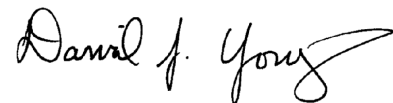
¹⁴ Todd Spangler, "Disney Deal Gives Dish the Rights for a Virtual-MSO Foray," *Variety*, March 12, 2014.

¹⁵ Federal Communications Commission, Memorandum Opinion and Order, *In the Matter of Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, at Appendix A, Conditions, § III.2. Released January 20, 2011.

to place Bloomberg TV, an unaffiliated business news channel, in a news neighborhood, thereby discriminating against the unaffiliated network in favor of its affiliate news networks such as CNBC.¹⁶ It took more than two years for the FCC to issue a decision ordering Comcast to relocate Bloomberg TV to a news neighborhood.¹⁷ And the FCC has not yet responded to the complaint, raised by WGAW and Public Knowledge, that Comcast has violated its much-touted condition of commitment to Net Neutrality by exempting its online video service, Xfinity Streampix, from its own data caps when watched on an Xbox.¹⁸

Comcast's behavior clearly demonstrates that the company will treat its own content preferentially, disadvantage competitors and fight enforcement. Our antitrust laws exist to promote free and fair competition in the marketplace. It is undeniable that this merger will harm competition in upstream content markets and disadvantage competing MVPDs even though Comcast and TWC do not compete directly for the same customers. We urge you to convey these concerns to the FCC and the Department of Justice.

Sincerely,

A handwritten signature in black ink that reads "David J. Young". The signature is written in a cursive, flowing style.

David J. Young
Executive Director

¹⁶ FCC Public Notice DA 11-1077, released June 20, 2011.

¹⁷ Memorandum Opinion and Order, *In the Matter of Bloomberg L.P. v. Comcast Cable Communications, L.L.C.*, MB Docket No. 11-104, ¶ 40. Released September 26, 2013.

¹⁸ Letter, filed by Writers Guild of America, West Inc., 8/13/12, Re: *Applications of Comcast Corporation, General Electric Company and NBCUniversal Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56.