

**SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR COMCAST-TWC MERGER  
HEARING, APRIL 9, 2014**

**QUESTIONS FOR MR. COHEN**

**1. Some have expressed concerns based on the fact that Comcast and Time Warner create some of their own content. Will the merger enhance the company's ability to restrict competing content providers from distributing their programs to a significant number of consumers through its distribution channels? In addition, what assurances can you provide the Committee that the newly combined company will not withhold its own programming content from competing TV and Internet providers?**

**Response:** The combined company will have neither the incentive nor the ability to restrict competing content providers from distributing their content to consumers, or to withhold NBCUniversal programming from competing TV and Internet providers.

The combined company will account for less than 30 million managed MVPD subscribers, or less than 30 percent of MVPD homes. As discussed in our Joint Written Statement and elsewhere, this will not adversely affect the ability of content providers to distribute their content broadly to a national audience, whether or not they enter into an agreement with our company.

Most consumers can choose among three facilities-based MVPD providers; many can choose among four or more. This dynamic competition now also includes online video distributors ("OVDs"). According to SNL Kagan, 45.2 million U.S. households subscribe to online video services today, more than *double* the 19.8 million that did so in 2010. Consumers demand content from major companies, like Fox and Disney, as well as smaller companies and independent networks, like Altitude, NESN, and The Outdoor Channel. And consumers have an increasing number of providers they can choose from to access their desired content. If Comcast refuses to carry the content that consumers want, they can and will switch to our competitors.

Nor will the transaction change our incentives to license NBCUniversal content to competitors. As detailed in our Joint Written Statement, Comcast is acquiring minimal new programming interests in this transaction. Given that there is a *de minimis* change in the new company's programming holdings, it will not have any power or incentive to withhold NBCUniversal programming from MVPDs in any markets. Moreover, these relatively modest new holdings will be subject to safeguards such as the FCC's program access rules.

The licensing of NBCUniversal content to OVDs will also not be impeded by this transaction. Since the NBCUniversal transaction was approved, NBCUniversal has successfully licensed or renewed programming content to numerous OVDs, including Amazon, Netflix, and YouTube. And the *Comcast-NBCUniversal Order's* licensing and arbitration rights for OVDs will continue to apply after the transaction.

**2. Some have argued that free markets and a lack of government regulation have enabled technological innovation and allowed internet services to flourish. Do you believe that imposing new regulations could stifle innovation and inhibit the growth and**

**deployment of broadband services? In your view, should there be more or less government involvement in this industry?**

**Response:** Greater reliance on the competitive marketplace, and less government intervention, will promote innovation and investment. To the extent that the government believes it needs to act to ensure an open Internet, the fact that the combined company will remain subject to the FCC's original Open Internet rules through 2018 accomplishes that goal, and the FCC has now announced its intention to adopt new Open Internet rules that apply to all Internet service providers ("ISPs") in this calendar year. Other parties have called for extending regulation into other aspects of the Internet, including so-called interconnection, peering, and transit arrangements. For over two decades, ISPs and others in the Internet ecosystem have worked cooperatively to make these arrangements work. We believe introducing regulation would be counterproductive, invite regulatory gamesmanship, and needlessly break a system that is functioning well.

**3. How will the proposed merger impact cable advertising? Currently, I understand that cable networks allow cable companies to keep 2 minutes per hour of advertising, which permits small businesses to advertise in a cost-effective way on national programming. Comcast and Time Warner Cable already control a substantial part of this cable advertising market, and a combined Comcast-TWC would consolidate that control over this \$5.4 billion market. How can you assure the Committee that this dominant control of the market won't result in limiting the access that small businesses have, and that it won't result in higher advertising costs, which are then passed on to consumers?**

**Response:** Comcast and TWC do not have – and, post-transaction, the combined company will not have – dominant control (or, for that matter, any control) of the cable advertising market. Advertisers who seek to reach a national television audience today primarily purchase advertising time from cable and broadcast networks, not MVPDs. These purchases can be made directly or through national broadcast representative firms.

National advertisers sometimes supplement their advertising purchases with local spot market advertising purchases from local broadcast stations or MVPDs. NCC Media is one of many firms that sell spot advertising time across multiple pay TV providers. Newspapers, radio broadcast stations, local businesses, and other small advertisers also participate in the local spot market. MVPDs may sell their available local spot advertising time directly to buyers of advertising or through firms like NCC Media.

As Professor Yoo testified during the April 9 hearing, cable companies represent only 7 percent of the local advertising market based on SNL Kagan data. "If you're a local advertiser, 93 percent of your money is going elsewhere. . . . And a 7 percent concentration level under any antitrust standard is irrelevant." Similarly, even combined, Comcast and TWC will only have approximately 8-11 percent of television viewing saleable impressions. Although our geographic footprint may be larger, therefore, our share of the local TV advertising market will still be very small and well below any level that raises antitrust concerns.

Lastly, Comcast and TWC operate in distinct geographic footprints and do not compete for small business advertisers. Combining the Comcast and TWC systems, therefore, will not reduce the

many advertising choices small businesses have to reach households in any relevant local market. Advertisers will continue to enjoy a great many alternative outlets in the Designated Market Areas (“DMAs”) where the combined company operates, including broadcast television, other MVPDs, radio, Internet media, newspapers, direct mail, and outdoor display advertising, to place local advertisements for small businesses.

**4. If the proposed merger is approved and Comcast-TWC has a dominant position in the local spot advertising market, wouldn’t that make it more difficult and expensive for local businesses to advertise in the spot market? Would there be an incentive to sell more spots at higher prices to national and regional advertisers, giving local small businesses fewer options and forcing them to pay higher prices? What are the implications for others in the cable television community – for example, independent cable systems, satellite carriers and other cable advertising companies – if they cannot get access to the spot advertising market other than through Comcast?**

**Response:** As noted above, Comcast and TWC serve distinct geographic markets and do not compete for local spot advertising. (New York is the only DMA where Comcast and TWC both sell cable spot advertising. But advertising on a Comcast system is not a substitute for advertising on a TWC system, since the systems serve different customers.) Given the lack of overlap between the two companies, and the limited programming assets owned by TWC, buyers of advertising on all business levels – small, regional, and national – will have the same choices among all of the competing advertising outlets as they have today. Similarly, independent cable systems, satellite carriers, and other pay TV providers will continue to be able to sell their available local advertising time directly to buyers of advertising or through firms like NCC Media that sell advertising time across multiple pay TV providers.

**5. So called “cord cutting” is becoming more and more popular, especially as companies like Netflix and Hulu gain traction. Comcast controls the internet connections that many people use to access these sites. But because Comcast also provides cable television access, it could have an interest in preventing people from cutting the cord. What assurances can you give the Committee that it won’t use its control of the internet infrastructure to stop consumers’ ability to “cord cut?”**

**Response:** Comcast has no interest in degrading a consumer’s online experience to disadvantage online video distributors or other edge providers. That would only harm the attractiveness of our fastest-growing business segment – high-speed broadband. Further, as part of the NBCUniversal transaction, Comcast agreed to be bound by the Open Internet’s “no blocking” and non-discrimination rules, which prohibit impeding or discriminating against the flow of online video programming offered by Netflix, Hulu, or others to Comcast broadband customers.

**6. The Comcast consent decree with DOJ and the FCC Conditions to the NBC Universal transaction forbid Comcast from limiting or using incentives to limit a cable programmer from selling its content to an online video distributor. Since September 2011, has your company entered into or modified any program carriage agreements that contain contractual provisions which create a financial disincentive for programmers to sell their programming on an online video distributor?**

**Response:** All of the carriage agreements Comcast has entered into since January 2011 are fully consistent with the applicable provisions of the DOJ Consent Decree and NBCUniversal Order.<sup>1</sup>

---

<sup>1</sup> Under both the DOJ Consent Decree and FCC Conditions, Comcast (in this case, specifically, Comcast Cable) is permitted to obtain exclusive rights to show a program if the period of exclusivity is 14 days or less; and online exhibition for free of content for which Comcast pays a license fee can be prohibited for the 30-day period after the content has first aired. DOJ Consent Decree, § V.C; *Comcast-NBCUniversal Order*, App. A, § IV.B.3.a, b. Exclusivity rights are a way for programmers and distributors to recoup the costs of original content, which generates more content, which is good for consumers. The FCC has recognized these pro-consumer benefits, *see Revisions of the Commission's Program Access Rules*, Report and Order, 27 FCC Rcd 12605, ¶¶ 41-46 (2012), and exclusivity is widely used by OVDs and MVPDs to distinguish their services.