

**“Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers”
Questions for the Record Submitted by
Senator Orrin G. Hatch**

Questions to Mr. David Cohen:

- 1. During the hearing, you noted that the issue of “a la carte” programming is complicated and that the result of an a la carte regime could be less choice and higher costs for consumers. In contrast, others argue that a la carte programming would give consumers access to more choices at lower prices. Please explain why you believe a la carte options would not increase consumer welfare.**

Response: There was a robust and healthy debate a few years ago about whether consumers would be better off in an a la carte world. What we learned is that while a la carte may sound like a good idea on its face, almost every independent study shows that the result of an a la carte regime would be less choice for consumers and higher cost.

The ability of programming networks to obtain a dual revenue stream – carriage fees from cable operators like Comcast, and advertising based on their potential household reach – is key to the proliferation of high-quality cable programming. In an a la carte world, where potential eyeballs may be dramatically reduced, both streams would be disrupted, and the retail price of each individual network would likely be dramatically higher than its cost as part of a programming package.

As the Congressional Research Service has found, any benefit of a la carte might go only to households that watch a small number of networks and prefer general interest programming. See Congressional Research Service, *The FCC’s ‘a la carte’ Reports* (Mar. 30, 2006). That is not a majority of consumers. CRS also found that the migration of even a small percentage of households to a la carte pricing could completely undermine the economic feasibility of large tiers and the broad array of channel choices they provide.

In a separate study, the Government Accountability Office found that an a la carte requirement could result in increased cable rates (and higher per-channel rates) for most consumers and that, with increased license fees resulting from reduced ad revenue opportunities, there is no reason to assume that cable bills would decline for most Americans. See U.S. Government Accountability Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, at 34 (Oct. 2003).

Programming packages, or tiers, provide great value while supporting more original and independent content and programming choices. Comcast offers a wide variety of service packages so that our customers can choose the one that’s right for them. A multitude of factors go into our decisions regarding the packaging and pricing of the services we offer, including responsiveness to our competitors.

Advocates who say that consumers are being forced to pay for channels they do not watch are wrong. A consumer who purchases a tier of cable services does not

“subsidize” programming she does not watch any more than a purchaser of a newspaper “subsidizes” a particular columnist with whom she disagrees, or any more than a diner who prefers the chicken at a restaurant buffet is subsidizing the diner who prefers fish.

- a. **In addition to the direct effects on consumers, what would be the impact of mandatory a la carte offerings on independent programmers? In particular, what would a la carte do to the launch and growth of new program services, including those targeted at niche interests?**

Response: Without access to a large subscriber base, and the corresponding subscription and advertising revenues, many smaller programming networks would not be viable. For example, the former COO of Ovation wrote last year in the *San Jose Mercury News* that “tiered programming combines smaller, independent networks [like Ovation] with larger well-established ones (like ESPN) and thereby allows all programmers – big and small – to build a larger audience from the bigger universe of viewers of the entire tier.” He concluded: “This huge exposure that a network gets from being grouped on a tier helps offset the growing costs of producing programming. . . . Take away the tier, and these costs are inexorably shifted to the consumer.” Chad E. Gutstein, *Pay-Per-Channel Pricing Costs Cable, Satellite TV Users More*, July 8, 2013, http://www.mercurynews.com/ci_23621224/pay-per-channel-pricing-costs-cable-satellite-tv.

A la carte would have a particularly adverse effect on diverse and niche programming. The Executive Director of the NAACP said last year that efforts to mandate a la carte are “aimed squarely at squelching new and emerging voices on television that represent the proud and diverse fabric that is contemporary America.” David Honig of the Minority Media and Telecommunications Council has said that a la carte “would be the death knell for program diversity.” He speaks of multichannel cable as the equivalent of a video library; just as natural curiosity motivates visitors to browse library shelves and check out books they have never heard about, cable channel surfing allows viewers to sample and enjoy programming they would likely never see if the government had forced them to order cable a la carte.

Our current market structure benefits diversity of all kinds, including political perspective, whereas an a la carte approach would harm it.

2. **During the hearing, you drew a distinction between “compliance” issues and “interpretive” issues involving the FCC’s oversight of the NBCUniversal conditions and your written testimony about that subject. Please clarify what you meant by this distinction.**

Response: To date, the FCC has only initiated one “compliance” investigation concerning the NBCUniversal conditions. As noted in our Joint Written Statement, in 2012, the FCC investigated Comcast’s compliance with the standalone broadband condition. That investigation has concluded and we have addressed the concern.

Separately, a dispute arose between Comcast and Bloomberg TV over interpreting what the language of the “neighborhooding” condition meant. Both parties asked the FCC to clarify the requirement. Once the FCC did so, Comcast complied with it. Comcast remains Bloomberg TV’s largest distributor, and the parties have a strong business relationship. It is fair to say that in both of the above instances, the FCC looked at questions concerning the NBCUniversal conditions, as I acknowledged during the hearing.¹

3. **It is my understanding that so-called interconnection or peering arrangements—such as the recently-announced deal between Comcast and Netflix—are commercial agreements to distribute the costs of upgrading network infrastructure to meet growing demand for online video. I understand that Internet providers and those that provide online video content have different views about who should pay to upgrade network capacity. Despite these differences, agreements such as the one between Comcast and Netflix suggest that there is a market-based solution. From Comcast’s perspective, is this market-driven approach working?**

Response: Yes it is. The terms for exchange of Internet traffic from companies transporting content, like Netflix, and Internet service providers (“ISPs”), like Comcast, have been successfully worked out in the market through commercial negotiations for nearly two decades. In this particular case, Netflix wanted to cut out the middleman – it wanted to bypass the transit providers and CDNs it had long used to obtain access to Comcast’s network, and set the goal of negotiating a more favorable rate for interconnection directly with Comcast. Comcast worked collaboratively with Netflix over many months on these arrangements, and an agreement was reached. The Internet traffic exchange market continues to work well, far better than regulation could, and government involvement is unwarranted and would be counterproductive.

- a. **During the hearing, Mr. Kimmelman testified that the merger would give Comcast more leverage not only in carriage negotiations with content providers, but also in negotiations to provide Internet companies like Netflix direct access to Comcast’s networks. How can we ensure that these agreements between Comcast online content providers regarding how Internet traffic is delivered are not anticompetitive?**

Response: Mr. Kimmelman’s argument is wrong. There are a wide variety of routes into our networks. We have over 40 settlement-free peering agreements, and thousands of commercial (*i.e.*, paid) connecting arrangements, which include several dozen substantial peering and transit agreements (*e.g.*, with CDNs, ISPs,

¹ The FCC has also participated in one arbitration under the *Comcast-NBCUniversal Order* involving a benchmark demand for content by a start-up company named Project Concord. Project Concord’s benchmark request covered certain content that, under common and reasonable industry practices, is restricted from ad-supported exhibition for certain time periods under other NBCUniversal license agreements. The Conditions include an express provision to ensure that no benchmark demand results in the violation of the rights of other NBCUniversal licensees, and the arbitration centered on parsing through these contract issues. The Media Bureau reviewed the arbitration order, including relevant provisions of affected contracts, and *agreed* with NBCUniversal on *every* contract issue.

or larger edge providers). Because of the competition in the business of Internet traffic exchange, and the ability to send traffic to our network in multiple ways, the market will ensure that a combined Comcast/TWC will have no ability to raise prices or degrade service for edge providers. When Comcast accepts traffic from a transit provider or CDN, Comcast is not at liberty to discriminate against the traffic of any particular edge provider using that mode of transport; moreover, because most major edge providers use multiple sources of transit or other pathways into an ISP's network, an effort to block would quickly devolve into a game of "whack-a-mole." And the agreements Comcast offers for direct connection must be reasonable and even attractive or no edge provider would enter into such an agreement. Competition in transit services has caused the price to plummet by 99 percent in the last 15 years. If we tried to charge Netflix – or anyone else – a price for traffic exchange that was higher than the market price for transit, they would have the ready alternatives of buying very affordable transit service through a third-party provider instead.

- 4. The rapidly-evolving set-top box is already starting to bridge the divide between online streaming and the traditional cable viewing experience. Time Warner Cable was reportedly collaborating with Apple on a next-generation set-top box, and now reports indicate that Apple is considering a partnership with Comcast to create a new set-top box. Some commentators suggest that such a partnership could provide exciting new technology to consumers. But cable companies have historically been reluctant to let third-parties control the viewing experience for their customers. How will this merger affect Comcast's willingness to partner with others—in some cases, competitors—to improve the viewing experience for consumers?**

Response: Customers want the ability to watch video programming where and when they want to, and on the equipment of their choice. Comcast is strongly committed to meeting that demand. We are an industry leader in providing our customers with a variety of ways to access our cable and TV Everywhere services on retail devices. We constantly evaluate additional options to enhance the customer experience.

HBO Go: Comcast authenticates HBO Go for a wide array of devices: desktop/laptop computers, iPad, iPhone, Android smartphones, Kindle Fire, Android 7- and 10-inch tablets, Samsung Smart TVs, Xbox 360, and Apple TV. Comcast is exploring other authentication for additional platforms, including Roku.

Xfinity TV Go App: The Xfinity TV Go app, which allows customers to stream shows and movies, is currently available on iPhone, the later generations of iPod touch, iPad, Kindle Fire, and some Android phones and tablets.

PCs/Macs: Comcast customers have the ability to access TV Everywhere content via the Xfinity.com website on their PCs, Macs, and other device platforms supporting an Internet browser.

Comcast also supports the ability of customers to access our cable services on various customer-owned devices:

IP Cable Streaming: Comcast customers can access its IP VOD services (without needing an additional cable set-top box) on both Xbox 360s and Samsung TVs; and Comcast is now enabling customers to experience its full IP cable service via an Xfinity app on PCs/Macs, iOS devices running 7.0 or higher, and Android devices running 4.4 or higher.

CableCARD: We have long supported TiVo and other retail CableCARD-enabled retail devices in our cable systems, and will continue to do so post-transaction. We have gone above and beyond the FCC's CableCARD requirements in this area by giving TiVo customers the ability to access our VOD services on TiVo devices using our "Cardio" solution throughout most of our footprint.

- 5. During the hearing, Mr. Bosworth contended that Comcast carries only 20 independent networks. You testified that the number of independent networks is actually over 160. Can you please clarify how you counted the number of independent networks that Comcast carries for purposes of your testimony?**

Response: Mr. Bosworth was wrong. In the *Comcast-NBCUniversal Order*, the FCC defined "independent networks" as those networks that are not owned by Comcast and are not an affiliate of either Comcast or a top 15 programming network, as measured by annual revenues. Using the FCC's definition, Comcast carries over 160 independent networks, which are listed in Attachment A.

- 6. Since Comcast's 2011 merger with NBCUniversal, have any independent channels been dropped from any Comcast program lineups? If so, what was the reasoning? Does Comcast drop independent stations when their Nielsen ratings exceed a certain level?**

Response: Between January 2011 and the end of 2013, Comcast added 20 independent networks and expanded carriage of over 120 independent networks.² Comcast dropped 15 independent networks during that time for various reasons, including a decision by the owners to cease operations, the loss of key programming rights by the network, and lack of subscriber interest (leading to replacement by better-performing networks). These networks were not dropped due to Nielsen ratings. Many independent networks choose not to subscribe to Nielsen and therefore are not rated by it.

- 7. Independent programmers are concerned that further consolidation in multichannel video programming distribution will make it more difficult for independent networks to secure carriage. What criteria are used by Comcast to evaluate**

² For example, the Africa Channel has been expanded to more than two million homes; Mnet, the only 24/7 English-language nationwide television network in the U.S. targeting Asian Americans, has been expanded to millions of additional subscribers in major DMAs; and we also launched MYX TV, a channel made for and by Asian Americans, in Seattle and western Washington state.

independent programming networks for carriage? What criteria are used to determine if carriage of the independent programming network should be in standard definition or high definition? Is Comcast launching the high definition feeds of independent channels, or limiting them to standard definition?

Response: Comcast has an stellar record of commitment to providing carriage of independent programmers. In evaluating carriage or expand carriage of a network, Comcast typically considers several factors, including whether a network is offering programming that our customers value and demand, as well as the network's proposed license fees, requested level of distribution, management experience, and financial stability. We must also consider how carriage of a network would affect our overall programming costs, our customers' monthly rates, bandwidth capacity, and other factors.

Comcast does not have a specific policy with respect to launching independent networks in high or standard definition. Our decision depends on many variables, including the quality of programming, viewer interest, financing of the network, other carriage the network has obtained, bandwidth constraints, cost, and management expertise. For example, while many independent networks are available in high definition (*e.g.*, Univision, Bloomberg, MASN, NESN, Altitude), others have chosen to pursue standard definition as a pathway for launch, particularly on systems that have limited bandwidth availability.

ATTACHMENT A
List of Independent Networks Carried By Comcast

¡Sopresa!	Bandamax	RTP Int'l
AYM Sports	De Película	News 12 NJ
BridgesTV	De Película clasico	Three Angels Broadcasting
Cable Noticias	iON	Texas Cable News
Canal 24	Family Net	MAVTV
DMX Music	Outside Television (Satellite)	Portuguese Channel
El Garage TV	MYX	BYU International
ELLA (fka Casa Club TV)	Pentagon Channel	BlueHighways TV
GoTV	Total Living Network	Antena 3
Korean American TV	World Fishing Network	Playboy en Espanol
LaTele Novela	NESN	TYC Sports International
Mexico 22	MASN	Six News Now
Mexico TV	JUCE (fka JCTV)	Supercanal
Teleritmo	Boston Catholic	Youtoo TV (fka American Life)
World Today TV	PA Cable Network	Arizona Capitol TV
El Rey	iON qubo	Telemicro Int'l
Revolt	iON Life	Local Weather Station
HSN	NASA	HDNet Movies
QVC	CA Channel	GMA Pinoy
Jewelry TV	Northwest Cable News	EWTN Espanol
TV Guide Network	Impact Network (Local Detroit)	TV Globo
Univision	TBN Enlace	Filipino Channel
EWTN	Smile of A Child	Zee TV
BBC America	HRTV	RAI Italia
Bloomberg Television	TV Washington	TV 5
UP (fka GMC)	Church Channel	SET Asia
GSN	Altitude	News 12 WC
UniMas (fka Telefutura)	Catholic TV	Star Plus
WGN	Newschannel 8	TV Japan
Galavisión	Cine Latino	Jade Channel
Word Network	ViendoMovies	Cox Sports
INSP	VeneMovies	Channel One Russia
Azteca America	Cine Mexicano	RTN
NBA TV	WAPA-America	CCTV 4
Outdoor Channel	RFD TV	CTI Zhong Tian
TBN	Gran Cine	TV Asia
Fuse	Telehit	GMA Life
Al Jazeera (fka Current TV)	Once Mexico	Star Gold
Daystar	CentroAmerica TV	ABPNews (fka Star News)
BBC World News	TV Colombia	Willow Plus (fka Neo Cricket)

Reelz Channel
Ovation TV
ASPiRE
Baby First TV Americas
MGM HD
TV Games
NuvoTV (fka SiTV)
Sportsman Channel
Pivot (fka Halogen
JLTV
Africa Channel
HITN-TV
AXS TV (fka HDNet)
Mnet (fka ImaginAsian TV)
Tennis Channel
Crossings TV
BYU Television
beIN – SP
beIN – EN
Ritmoson Latino

LAS
MEXICANAL
Pasiones
V-Me Kids
TV Chile
TV Dominicana
Sur (fka Canal Sur)
Caracol TV
Sur Peru
TV Venezuela
PCNC
TeleFormula
Video Rola
TVE Internacional
Ecuavisa
Latinoamérica Televisión
Telefe International
MVS (Canal 52)
Multimedios
BMA (WRNB - Minneapolis)

ETTV
TV Polonia
Deutsche Welle
SPT
Mediaset
RTVI
Bandeirantes Int'l
Israeli Network
TV Record Int'l
Washington Korean TV
ART
Vijay TV
Premier Futbol Clube (fka TV Globo)
Antena Satellite TV
Russian Kino
Impact TV
Phoenix N.A. Chinese Channel
Phoenix Infonews
Milenio