Consumer Federation of America

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"ONLINE VIDEO COMPETITION IS THE LAST AND ONLY HOPE TO BREAK THE STRANGLEHOLD OF CABLE"

CFA Petitions the FCC to block the Comcast-Time Warner merger

Washington, DC – The Consumer Federation of America (CFA) and its member groups today filed a petition calling on the Federal Communications Commission (FCC) to block Comcast's acquisition of Time Warner Cable and the swap of additional systems with Charter Communications. The petition shows that the Comcast-Time Warner merger poses a much greater threat to competition, consumers and the public interest than the Comcast-NBCU merger, which has not benefited the public.

"The inevitable result of this merger will be higher prices, worse service, and less innovation," Mark Cooper, CFA's director of research said. "Just four years ago the FCC and the Department of Justice (DOJ) found that Comcast has market power, as the nation's largest buyer of professional video content and the largest provider of both multichannel video programming and broadband Internet access service.

"The acquisition of Time Warner would increase Comcast's market power by at least 50% and create a Goliath that would tower over the industry. Comcast would be:

- 1.5 times as large as the next largest multichannel video program distributor (MVPD),
- 2 times as large as the next largest Internet access service provider,
- 3 times as large as the next largest service provider with the capacity to deliver an integrated bundle of video and broadband,
- the dominant cable and broadband operator in 24 of the nation's largest 25 video markets, including the addition of the most important media markets, New York and Los Angeles."

"Sometimes size does matter, and in these markets it is particularly important," Cooper added. "Because Comcast has such a commanding position in distribution and owns a huge slate of national and regional programming, with well over a billion subscribers, it has the incentive and ability to leverage its market power to distort and weaken competition in local, regional and national video and Internet markets."

The Petition to Deny points out that the performance of the cable sector has gotten worse since the Comcast-NBCU merger.

- Price increases have accelerated, and Comcast's price increases have been above average.
- Usage caps have spread, and Comcast is the leader.
- Broadcast retransmission fees have skyrocketed, contradicting the claim that the integration of broadcast content and distribution would moderate increases.
- Video and Internet services continue to rank last in consumer satisfaction and Comcast is among the worst of the worst.

According to the DOJ/FTC Merger *Guidelines*, the merger would have a devastating impact on the structure of all of the markets in which Comcast plays a leading role.

- The merger creates highly concentrated markets in multichannel video, high capacity broadband and regional news and sports programming.
- It fractures the *Guidelines*, exceeding the thresholds by five to ten times.
- It is "presumed to be likely to enhance market power."
- The merger and system swaps with Charter divide the nation into "fortress regions," with Comcast dominating the coasts, while Charter would dominate the upper Midwest.

There is nothing in the recent past or near future that has or will change the fact that cable is the dominant technology.

- Comcast has been expanding its share of the broadband market and enjoys high margins because competition is weak.
- Comcast's fixed-line, true broadband technology has much higher capacity than DSL and wireless and is set to increase its advantage.
- Entry has been minimal and there are no prospects for significant, wide scale entry of new technologies or new players.

Comcast has a long history of abusing its market power that has been reaffirmed by its behavior since its acquisition of NBC.

- It has shown it is willing to press its advantage to the limits of the law and beyond in disputes with video programmers in both the traditional and online markets.
    - Netflix: discrimination, degradation of service quality, raising rival's cost
    - Conductive: denial of access to content
    - Bloomberg News: delay in providing a fair channel location
    - Tennis and Wealth Channels: denial of carriage
- In contrast, Comcast has done as little as possible to deliver on its public interest promises.
    - Participation in Comcast's broadband lifeline program has been meager, one-quarter of what well-run assistance programs in the communications sector achieve.
    - The standalone broadband offer was badly mismanaged.

Comcast remains a laggard in capital expenditures.

- It invests the lowest percentage of its free cash flow in capital expenditures (CapEx) than any of the large video and Internet access providers.

- In fact, it takes more capital out through depreciation and amortization than it puts back in with CapEx, with the total disinvestment over the past decade reaching $15 billion.

"Given the long-standing "gentlemen's agreement" among cable operators to not compete head-to-head in physical space and their decision to extend that agreement to cyberspace with their "authentication" scheme, online video competition is the last and only hope to break the stranglehold of cable.

- No regulatory tools exist to control the market power over customers, set top boxes and "middle mile" transport that Comcast will have if it is allowed to acquire Time Warner.
- Competition, consumers and the public interest can only be served by blocking this merger."

The petition can be found at www.consumerfed.org/pdfs/CFA-Comcast-TW-Comment.pdf.

The Consumer Federation of America is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.