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Comcast-Time Warner Cable Merger

Background

On February 12, 2014, Comcast Corp. announced a bid to acquire all of Time Warner Cable Inc. The Boards of Directors of both companies agreed to a stock-for-stock transaction whereby Comcast will acquire 100% of Time Warner Cable shares for approximately $45.2 billion in equity value. If approved, this acquisition would be the largest cable TV merger of all time.

Comcast is the largest cable operator in the United States, with approximately 21.6 million subscribers receiving cable television, high speed data, and/or voice service. Time Warner Cable is the second largest cable operator with approximately 11 million subscribers in major markets such as New York City, Southern California, Texas, the Carolinas, Ohio, and Wisconsin. **Table 1** shows subscriber data for the top four cable system operators in the United States. **Table 2** shows subscribers for all MVPDs (multichannel video programming distributors) including cable, direct broadcast satellite (DBS), and telephone companies.

As part of the acquisition, Comcast announced its willingness to divest 3 million of Time Warner Cable's 11 million subscribers. This would result in Comcast adding 8 million subscribers, bringing its total subscribership to about 30 million or just under 30% of the 100.1 million U.S. subscribers to multichannel services. Thus, Comcast would voluntarily remain under the 30% horizontal ownership cap that had previously been imposed by the Federal Communications Commission (FCC), although this cap was subsequently vacated in 2009 by the D.C. Circuit Court of Appeals (*Comcast v. FCC*). Comcast, on April 28, 2014, announced an agreement with Charter Communications, to complete a complex three step transaction which would, among other provisions, result in the net reduction of approximately 3.9 million subscribers of the merged Comcast-Time Warner. This proposed agreement, which is contingent on Comcast-Time Warner merger approval, will be accomplished through three separate transactions, involving an asset sale, an asset transfer, and an asset spin-off, following the merger.

A combined Comcast-Time Warner Cable company would own cable and broadcast networks and stations as well as cable operating systems. In January 2011, Comcast received governmental approval for the acquisition of NBCUniversal, a major producer and aggregator of video content including the NBC broadcast network, a number of national cable networks, local major-market NBC-owned television stations, and various other media and entertainment properties. Additionally, Comcast owns a number of regional cable sports networks. Time Warner Cable also owns some local and cable channels, most notably Time Warner Cable SportsNet, which has the broadcast rights to the Los Angeles Dodgers and Lakers.

Meanwhile, as part of the 2011 acquisition of NBCUniversal, Comcast agreed to a number of conditions and committed to specific undertakings in the public interest, many of which are intended to maintain a continuing competitive environment in the marketplace. Comcast has stated that several of these conditions and undertakings will be extended to the acquired Time Warner Cable systems in the event that the merger is approved. For example, Comcast has stated that the FCC's Open Internet protections will be extended to its acquired broadband networks, irrespective of whether the FCC re-establishes such protections for other industry participants. Comcast has also promised to extend broadband adoption and digital literacy programs to low-income subscribers in the acquired systems.

Table 1. Top Four Cable System Operators

(in millions of subscribers)

	Basic	Digital	High Speed Data	Voice
Comcast	21.6	21.5	20.3	10.5
Time Warner Cable	11.6	9.1	11.5	5.1
Cox	4.4	3.2	4.7	2.6
Charter	4.3	3.8	4.5	2.3

Source: SNL Kagan. September 2013 third quarter data.

Federal Review Process

The Comcast-Time Warner Cable proposed merger will be subject to a multi-faceted federal review process. The Department of Justice (DOJ) will review the merger based on compliance with the antitrust laws. The FCC will subject the license transfers that will occur in the proposed merger to review using a more broadly defined "public interest" standard.

As a result of this review the merger may be approved as proposed, approved subject to conditions, challenged in court by the DOJ, or the license transfers may be denied by the FCC. If conditions are attached to the approval, Comcast has the option to not agree to the conditions and withdraw its application. The merger is also subject to shareholder approval and state and local scrutiny.

Many proposed mergers contain a penalty clause where the acquiring party (in this case Comcast) pays some form of compensation to the party being acquired (in this case Time Warner Cable), if the transaction is not completed. However in this case no such penalty clause exists. Therefore there would be no penalty if Comcast decides that the conditions placed upon it to gain approval are too stringent and withdraws the proposal.

Issues Under Consideration

A merger of this magnitude will give rise to the examination of a number of issues pertaining to a wide range of converging markets. Cable systems are no longer just suppliers of video, but now provide access to broadband and its vast array of interactive voice and data services and applications. As a result, this merger has the potential to impact the consumers and suppliers of the video, voice, and broadband applications and services markets.

Included among the issues that may be under consideration are: the appropriate definition and size of the relevant market; implications for open access, peering, and other competitive issues in the broadband market; and the impact on retransmission consent negotiations and other aspects of the video programming market.

Table 2. MVPD Video Subscribers

(in millions)

	End of Year 2010	End of June 2011	End of Year 2011	End of June 2012
Total MVPD	**100.8**	**N/A**	**101.0**	**N/A**
Cable	**59.8**	**58.9**	**58.0**	**57.3**
Comcast	22.8	22.5	22.3	22.1
TWC	12.4	12.2	12.1	12.5
Cox	4.9	4.8	4.8	4.7
Charter	4.5	4.4	4.3	4.3
Cablevision	3.3	3.3	3.3	3.3
All Other	11.9	11.6	11.3	10.5
DBS	**33.4**	**33.5**	**33.9**	**34.0**
DIRECTV	19.2	19.4	19.9	19.9
DISH	14.1	14.1	14.0	14.1
Telephone	**6.9**	**N/A**	**8.5**	**N/A**
AT&T	3.0	3.4	3.8	4.1
Verizon	3.5	3.8	4.2	4.5
All Other	0.4	N/A	0.5	N/A

Source: FCC, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fifteenth Report, released July 22, 2013, pp. 61-62.

Next Steps

Reaction to the proposed merger has been mixed. Some see this as an inevitable consolidation of an industry facing high costs and an increasing pressure to respond to competition brought about by technological change, and that the merger will result in significant consumer benefits. Others, however, have expressed reservations about the merger, stating considerable concern over the potential negative consequences that the consolidation of the two largest cable system operators and their wide range of assets and services may have on consumers and suppliers in the converging information market.

Comcast and Time Warner filed on April 8, 2014, their applications and public interest statement for consent to transfer control of licenses and authorizations at the FCC thereby commencing the review process. All parties will have a chance to voice their opinions as the FCC solicits public comments (MB Docket No. 14-57). Similarly, the companies also submitted their premerger notification to the DOJ in compliance with the Hart-Scott-Rodino Antitrust Improvements Act. DOJ review is not open to public comment.

It is likely that review will also be conducted by the appropriate state and local authorities. Congress will also play an oversight role as it examines the potential consequences, both positive and negative, of the proposed merger.

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