August 18, 2015

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication, MB Docket No. 10-71

Dear Ms. Dortch:

Last week, Chairman Wheeler announced through the FCC's blog that he would be circulating an order that proposes elimination of the broadcast exclusivity rules, specifically the syndicated exclusivity rule and network non-duplication rule. In his blog, the Chairman asserted that these "50-year-old rules … have been rendered unnecessary by today's marketplace." He also described the rules as "outdated."[1]

While the Chairman was not specific about how these rules have been rendered unnecessary, one would presume that he believes MVPD competition has somehow impacted the need for exclusivity rules. The trouble with the Chairman's apparent logic, however, is that the most relevant changes in the marketplace – MVPD and cable consolidation specifically – make the rules more essential than ever. As a recent examination of consolidation in the pay TV marketplace by Multichannel News[2] (article attached) demonstrates, the pay TV industry's steady consolidation has transformed numerous smaller regional operators into nationwide behemoths that have much greater control over subscription-based television (to say nothing of their near total control of the broadband-to-the-home market).

According to Multichannel News, the top five pay TV operators had a total base of 11.4 million subscribers in 1985 and 33.1 million subscribers in 1995. That compares to a **whopping 85.5 million subscribers controlled by the top five pay TV operators today**. Given their massive subscribership and much broader geographic reach, these pay TV giants have

---

[1] *See* "Upgrading Media Rules to Better Serve Consumers in Today's Video Marketplace," Tom Wheeler, FCC Chairman, Official FCC Blog (Aug. 12, 2015).

[2] *See* Attachment, Mike Farrell, "Eat or Be Eaten: Consolidation Creates A Top-Heavy List of the 25 Largest MVPDs," Multichannel News at 8-10 (Aug. 17, 2015).

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5300

much greater power vis-à-vis local broadcasters, especially when it comes to the importation of distant broadcast signals.

As NAB has detailed elsewhere, the cable industry already receives the benefit of a large government subsidy in the form of a blanket distant signal license. It makes little sense that the Commission should now, at a moment of the greatest consolidation of the cable industry (and all MVPDs generally), drop an enormous weight on the scale for them by removing the exclusivity rules that have ensured some measure of balance as broadcasters have been overshadowed by a heavily concentrated, well-capitalized cable industry. The notion that the FCC would continue to go out of its way to help this mature and wealthy industry at the expense of local broadcasters flies in the face of the Commission's core duty to act in the public interest.

We encourage the Commission to review this helpful analysis by Multichannel News as it re-examines the importance of the broadcast exclusivity rules. Considerable and continued consolidation in the pay TV industry fundamentally undermines any suggestion that the marketplace has changed in ways that render the current rules "outdated."

Respectfully submitted,

Rick Kaplan
Executive Vice President and General Counsel
Legal and Regulatory Affairs

Enclosure

Eat or Be Eaten

CONSOLIDATION CREATES A TOP-HEAVY LIST OF 25 LARGEST MVPDs BY MIKE FARRELL

The cable universe is shrinking.

Consolidation, competition and new viewing habits are irrevocably changing the pay TV landscape, with more contraction expected as larger deals close and smaller cable systems are snapped up by their larger peers.

But unlike years past, when deals were driven by a desire to cluster operations more efficiently, the coming consolidation wave seems sparked purely by a need to get bigger — bulking up to roll out new services more effectively and cheaply across a broader base, and to help keep rising programming costs in check.

Cable operators aren't the only ones looking for scale. AT&T completed its $48.5 billion acquisition of DirecTV in July, raising its video-subscriber tally to 26.3 million customers and vaulting the telco to the top of the list of multichannel video-programming distributors (MVPDs). Comcast, which abandoned its $67 billion pursuit of Time Warner Cable in April when it determined regulators would not sign off on the deal, is still a solid No. 2 with 22.3 million subscribers.

TAKEAWAY

Consolidation has created a wide disparity between the top and bottom of the list of Top 20 pay TV providers.

Charter Communications, which started the whole consolidation wave in 2014 when it began a dogged pursuit of Time Warner Cable, finally won that prize with its May agreement to purchase the 10.8 million-subscriber TWC for $78.7 billion. That deal is expected to close by the end of the year, and with Charter's $10 billion purchase of Bright House Networks — also expected to close in December — the Stamford, Conn.-based operator will have 17.2 million customers with which to spread the operating acumen of CEO Tom Rutledge.

CATCHING THE WAVE

Charter is expected to at least look at other potential acquisitions, but others are not sitting idly by. European telecom giant Altice agreed to purchase a 70% interest in Suddenlink Communications for $9.1 billion, and has said it will use the midsized St. Louis-based cable company as a vehicle to expand its U.S. presence.

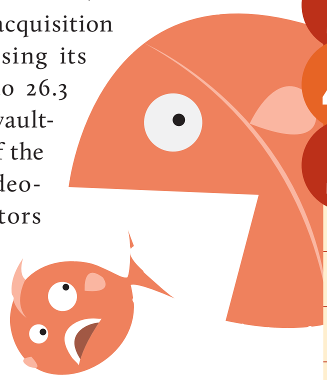
Already, Altice chairman Patrick Drahi has named Cox Communications and Cablevision Systems as potential targets. And though Cox has insisted it isn't for sale — and there is some doubt as to whether Altice could pay Cablevision's price — there is no doubt that further consolidation is coming.

In a recent report, MoffettNathanson principal and senior analyst Craig Moffett said possible acquisition targets could include some of the larger operators at the lower end of the top 10 — Mediacom Communications, Cable One or WideOpenWest.

"It would be foolish to dismiss the idea that any or all of them might be acquired," Moffett wrote.

And the cable industry has a long history of acquisition. For example, only three of the Top 25 MSOs of 1985 still exist today (Cox, Cablevision and Comcast); the rest have been assumed by other entities. Five of the Top 25 of 1995 are in business today — Time Warner Cable, Comcast, Cox, Cablevision and Charter — with TWC expected to be swallowed by Charter by year-end.

Cable operators stopped growing their basic-video subscriber rolls more than



Top 25 MVPDs (2015)

With the recently completed, $48.5 billion AT&T-DirecTV merger, the multichannel video-programming distributor (MVPD) industry has a new leader. With 26.4 million video customers, the post-merger AT&T has the potential to bring high-speed Internet, voice and video services to underserved markets across the United States.

NAME	SUBSCRIBERS
1. AT&T (including DirecTV)	26.3 million
2. Comcast	22.3 million
3. Charter-Time Warner Cable-Bright House *	17.2 million
4. Dish Network	13.9 million
5. Verizon Communications (FiOS)	5.8 million
6. Cox Communications	4.1 million
7. Cablevision Systems	2.7 million
8. Suddenlink Communications/Altice	1.1 million
9. Mediacom Communications	879,000
10. WideOpenWest	606,500
11. Frontier Communications/FiOS	570,000
12. Wave Broadband	415,000
13. Cable One	399,000
14. Service Electric	290,000
15. RCN	289,000
16. CenturyLink/Prism	258,000
17. Atlantic Broadband (Cogeco)**	247,000
18. Armstrong Cable	245,000
19. Midcontinent Communications	229,000
20. MetroCast/Harron Communications	200,000
21. Blue Ridge Communications	170,000
22. Rural Broadband Investments (GTCR)	150,000
23. Telephone & Data Systems	137,000
24. Vyve Broadband	120,000
25. General Communication Inc.	113,000

*Pending transaction **Pending Metrocast-Conn. purchase

SOURCES: SNL Kagan, MoffettNathanson, company reports and *MCN* estimates

Top 25 MSOs (1985)

Thirty years ago, when the cable-television industry was growing rapidly, there was no single dominant force: TCI was the top provider and Comcast stood at No. 18.

NAME	SUBSCRIBERS
1. Tele-Communications Inc.	3.7 million
2. American Television and Communications Group	2.5 million
3. Group W Cable	2.2 million
4. Storer Cable Communications	1.5 million
5. Cox Cable Communications	1.48 million
6. Warner Amex Cable Communications	1.2 million
7. Continental Cablevision	1.1 million
8. Times-Mirror Cable Television	997,000
9. United Cable TV	949,000
10. Newhouse Broadcasting	927,000
11. Viacom Cablevision	820,000
12. UA Cablesystems Corp.	711,000
13. Sammons Comunications	665,000
14. Cablevision Co.	592,000
15. Rogers Cablesystems	587,000
16. Heritage Communications	585,000
17. Jones Intercable	573,000
18. Comcast Cable	506,000
19. Telecable Corp.	445,000
20. McCaw Communications	382,000
21. Capital Cities Cable	376,000
22. Prime Cable	331,000
23. American Cable Systems	312,000
24. Wometco Cable TV	308,000
25. Centel Cable Television Co.	304,000

SOURCE: The Barco Library, The Cable Center

Top 25 MSOs (1995)

The impact of consolidation is apparent just 10 years later: TCI is still the leader, with 13.3 million customers, and Comcast Cable has leaped 15 spots from No. 18 in 1985 to No. 3 with 3.4 million customers.

NAME	SUBSCRIBERS
1. Tele-Communications Inc.	13.3 million
2. Time Warner Cable	10.1 million
3. Comcast Cable	3.4 million
4. Cox Cable	3.2 million
5. Continental Cablevision	3.1 million
6. Cablevision Systems	2.8 million
7. Adelphia Communications	1.6 million
8. Cablevision Industries	1.4 million
9. Jones Intercable	1.35 million
10. Viacom Cable	1.2 million
11. Falcon Cable TV	1.1 million
12. Sammons Communications	1.09 million
13. Century Communications	962,000
14. Colony Communications	814,000
15. Charter Communications	791,000
16. Scripps-Howard Communications	751,000
17. Lenfest Group	743,000
18. Prime Cable	648,000
19. TKR Cable	638,000
20. Marcus Cable	561,000
21. InterMedia Partners	560,000
22. Southern Multimedia Comm. (MediaOne)	512,000
23. TCA Cable TV	511,000
24. Post-Newsweek Cable	506,000
25. DirecTV	500,000

SOURCE: The Barco Library, The Cable Center a decade ago. The industry peaked at about 66.9 million total subscribers in 2001, and in 2014, it finished the year with a total of about 54 million subscribers, according to the National Cable & Telecommunications Association. Broadband, for years the profit center of the business, emerged as the subscriber leader last year — the first year that cable broadband customers exceeded video subscribers.

While that had been anticipated — and in some cases, encouraged — for years, cable operators are beginning to turn the corner on basic-video subscriber growth. The four top cable service providers have drastically reduced their customer losses over the past three years; Comcast alone has cut losses by nearly 75% since 2010.

Telcos, which had been engines of video-subscriber growth for more than a decade, began reporting losses for the first time in the second quarter. AT&T said it lost about 22,000 U-verse TV customers in the most recent quarter, while Verizon Communications saw its growth cool considerably, adding 26,000 FiOS TV customers in the period compared to 100,000 additions in the prior year.

At the same time, satellite subscriber growth has stalled — DirecTV lost 133,000 net subscribers in the second quarter, well below the 60,000 additions in the first three months of the year. No. 2 satellite company Dish Network lost 81,000 net subscribers in the second quarter, almost twice the 44,000 it lost during the previous year.

Top 25 MVPDs (2000)

Just five years later, the cable picture shifted yet again, with AT&T's purchase of TCI and satellite-TV providers DirecTV and EchoStar Communications cracking the Top 10.

NAME	SUBSCRIBERS
1. AT&T Broadband	16.4 million
2. Time Warner Inc.	12.7 million
3. DirecTV	8.3 million
4. Charter Communications	6.14 million
5. Cox Communications	6.1 million
6. Comcast Cable	5.7 million
7. Adelphia Communications	5 million
8. EchoStar Communications	3.9 million
9. Cablevision Systems	3.1 million
10. Insight Communications	1.4 million
11. Mediacom Communications	747,000
12. Cable One	741,000
13. Classic Communications	413,000
14. Service Electric	294,000
15. RCN	292,000
16. Ameritech	280,000
17. Tele-Media	267,000
18. Northland Communications	261,000
19. Midcontinent Communications	215,000
20. Armstrong Cable	205,000
21. Susquehanna Communications	189,000
22. Millennium Digital	175,000
23. Blue Ridge Communications	167,000
24. Buckeye Cable	162,000
25. U.S. Cable	140,000

SOURCES: Individual companies; *Multichannel News*, *B&C* estimates

REUTERS/MIKE SEGAR

Time Warner Cable is in line to be the next big cable brand to fall by the wayside in the wake of cable consolidation.

Dish Network lost about 79,000 net subscribers in 2014, compared to a gain of 1,000 in 2013.

DISRUPTING THE DISRUPTOR

As satellite- and telco-TV service stagnates, a new distribution model is disrupting TV's early disruptor — cable operators. Over-the-top services like Sling TV, HBO Now and Sony's PlayStation Vue have burst onto the scene with much fanfare, and pay TV operators who may have dismissed those services in the past are now scrambling to come up with their own solutions.

In the second quarter, pay TV lost its traditional growth engines — satellite TV was down 284,000 customers while telco TV providers lost 2,000 subscribers — and perennial loss leader cable cut its losses almost in half to 280,000 from 534,000 a year ago.

Indeed, pay TV subscriber growth dipped to a record low of -0.7% in the past 12 months, according to Moffett. The pay TV industry lost 566,000 subscribers in the second quarter, 76% worse than the 321,000 it lost during the same period in 2014.

With more OTT services slated to launch later this year — Verizon is expected to debut its "mobile-only" Go90 service in the late summer and other programmers are considering launching their own direct-to-consumer services — cord-cutting will likely get worse. And cable operators will likely meet the challenge by trying to add scale.

But just how many customers will migrate over remains to be seen. Years of consolidation have narrowed the number of large available properties. While there are about 660 cable operators and 5,208 cable systems in the United States, more than 80% of the nation's 116 million TV households are represented by the top eight MVPDs.

And unlike other years when an MVPD could buy the operator below it on the list and move up several spots on the list, today the fifth-largest provider (Verizon) could could buy the next three largest distributors below it and still be stuck at No. 5 with 13.7 million customers, behind Dish Network's 13.9 million subscribers.