Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership	)	MB Docket No. 15-149
	)	
For Consent Pursuant to Sections 214 and 301(d) of the Communications Act to Transfer Control of Licenses and Authorizations	)	

PETITION TO HOLD IN ABEYANCE OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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Executive Summary

Yet again, the Federal Communications Commission is being asked to bless a significant merger among already sizeable pay-TV providers. This time, Charter Communications, Inc., Time Warner Cable Inc. and Bright House Networks, LLC are proposing to merge into a new combined entity (New Charter). The National Association of Broadcasters (NAB) hereby petitions the Commission to hold the merging parties' joint applications in abeyance. The Commission has no legal or public policy basis for continuing to approve pay-TV mergers that tilt the competitive playing field against local broadcast TV stations subject to asymmetric FCC regulations uniquely disfavoring locally-oriented free television services.

Specifically, NAB requests the Commission to hold its consideration of the proposed merger in abeyance until it complies with its obligation under Section 202(h) of the Telecommunications Act of 1996 to complete the long-delayed 2010 and 2014 quadrennial reviews of all the broadcast ownership rules, and repeals or modifies those rules no longer "necessary" in the public interest as the result of "competition." By ignoring both its duty to "determine" whether its rules remain necessary and the competitive transformation of the video marketplace, the Commission has unlawfully retained its industry-wide broadcast TV ownership restrictions, including a local television rule originating in the World War II era.

If the Commission refuses to reform its broadcast-only ownership restrictions to reflect current competitive realities, however, then it should deny the proposed merger. While failing to meet its statutory requirements with regard to ownership of broadcast outlets, the Commission at the same time has approved a series of mergers resulting in a multichannel video programming distribution (MVPD) industry highly consolidated at the local, regional and national levels. That industry will only become more concentrated through the proposed

merger to combine the fourth, seventh and tenth largest MVPDs in the country. For example, if the pending merger is approved, then the top four MVPDs will control 79 percent of the nationwide MVPD market, measured in terms of subscribers, and the top three alone, according to SNL Kagan, “will control two-thirds of the video delivery universe.” If consummated, the merger also would exacerbate concentration levels at the local and regional levels, with clear implications for consumers, as empirical research has shown that large, clustered cable companies charge higher prices than smaller, unclustered ones.

The creation of yet another pay-TV behemoth would further competitively disadvantage local broadcast stations kept by outdated ownership rules from achieving a fraction of the vital economies of scale and scope that MVPDs enjoy and, as the FCC has recognized, can advance the public interest. The gross regulatory disparities between the pay-TV and the free-TV industries are illustrated in any number of ways, including the sheer size of MVPDs compared to TV broadcasters. The market capitalization of the combined AT&T/DIRECTV, for example, is more than *200 times* larger than the market cap of several of the most sizable broadcast TV companies. New Charter – which the merging parties describe as “modest” in size – will have a market capitalization *72 times* larger than some of the biggest broadcast TV station groups. Beyond this national scale, single pay-TV providers control access to significant percentages of viewers in many local markets. Even standing alone, Time Warner Cable (TWC), for instance, controls over 40 percent of the *total* MVPD market in 30 different Designated Market Areas (DMAs), and in eight DMAs, TWC’s share of the entire MVPD market exceeds 60 percent. Broadcast TV stations unable to combine under the FCC’s local TV ownership rule are at a notable disadvantage in negotiating retransmission consent agreements with such locally and nationally consolidated MVPDs.

The FCC's egregious regulatory double standard also is evident with regard to advertising – the lifeblood of over-the-air, free-to-all TV services. While essentially forbidding the joint sale of advertising time by two TV stations in the same market, the Commission has permitted all major pay-TV providers – large cable operators including TWC, satellite TV operators and the telcos – to join forces to create a single platform for local and national advertisers. The proposed merger will create a larger, regionally consolidated MPVD participating in interconnects with multiple other MVPDs, and which clearly will be able to compete more vigorously for advertising than a broadcast TV station prohibited from entering into even a single joint agreement for the sale of advertising. Approval of the merger will therefore further undermine economic support for the public's free TV option.

To date, the primary beneficiaries of the FCC's failure to meet its statutory duty have been pay-TV providers, including those now proposing to merge, which compete with TV broadcasters for viewers, advertisers and content. Certainly the public does not benefit; the competitive hobbling of free broadcast TV services only leaves viewers more dependent on increasingly expensive subscription services offered by companies with abysmal customer service ratings. Because a viable, free over-the-air broadcast service is more important than ever in an era of consolidated pay-TV providers that consistently raise consumer prices above the rate of inflation, the Commission should not consider yet another massive pay-TV merger until it complies with Section 202(h) by completing the 2010 and 2014 quadrennial reviews and reforming its competitively harmful broadcast ownership rules. If, however, the Commission continues to ignore the dramatic changes in the video marketplace and refuses to update its broadcast-only restrictions, then the Commission should refrain from tilting the competitive playing field even further against the public's free TV services by denying the proposed merger.

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To: The Commission

PETITION TO HOLD IN ABEYANCE OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)[1] hereby petitions the Commission to hold in abeyance the joint applications of Charter Communications, Inc. (Charter), Time Warner Cable Inc. (TWC) and Advance/Newhouse Partnership (together, the Merging Parties) to transfer various licenses and authorizations to effectuate a merger of Charter, TWC and Bright House Networks, LLC (BHN) into a new entity referred to as New Charter. Specifically, NAB requests the Commission to hold its consideration of yet another large pay-TV merger in abeyance until it complies with its statutory obligation to complete the long-delayed 2010 and 2014 quadrennial reviews of the broadcast ownership rules and modifies or eliminates those rules no longer necessary as the result of competition.

[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

If, however, the Commission continues to ignore dramatic competitive changes in the video marketplace and refuses to reform its broadcast-only ownership restrictions, then the Commission should deny the proposed merger. The creation of another multichannel video programming distributor (MVPD) behemoth would contribute significantly to the rapidly increasing local, regional and national consolidation in the pay-TV industry; further competitively disadvantage local broadcast stations kept by the FCC's outdated rules from taking advantage of vital economies of scale and scope; and ultimately erode the public's free, over-the-air broadcast television service to the benefit of increasingly expensive subscription services offered by companies that have little or no interest in local service and consistently earn abysmal customer service ratings.

I. The Commission Has Failed To Comply With Its Statutory Mandate To Review Its Broadcast Ownership Rules In Light Of Competition

The Commission has strictly regulated the multiple ownership of broadcast outlets since the World War II era. It adopted rules prohibiting the common ownership of television stations serving substantially the same area in 1941, and similar rules for FM and AM stations in 1940 and 1943, respectively.[2] In addition, the Commission has regulated the cross-ownership of radio and television stations since 1970, and it prohibited the cross-ownership of a daily newspaper with even a single broadcast outlet in the same market in 1975.[3]

[2] *See* 27 Fed. Reg. 6846 (July 19, 1962). Beyond strict local ownership limits, FCC rules place an audience reach restriction on the ownership of TV stations nationwide. 47 C.F.R. § 73.3555(e). The FCC has imposed national limits on TV station ownership for three-quarters of a century as well. *See* Broadcast Services Other than Standard Broadcast, 6 Fed. Reg. 2282, 2284-85 (May 6, 1941) (imposing a national ownership limit of three television stations).

[3] First Report and Order, Docket No. 18110, 22 FCC 2d 306 (1970); Second Report and Order, Docket No. 18110, 50 FCC 2d 1046 (1975).

Despite the digital revolution and the transformation of the video marketplace in the last three-quarters of a century, FCC rules still prohibit the common ownership of two television stations in most local markets.[4] And although the Commission first requested comment on reforming the ban on common ownership of a broadcast station and a newspaper in the same market in 1996,[5] the now 40 year-old complete ban on newspaper cross-ownership stands unchanged today, despite the well-documented competitive decline of local newspapers. In stark contrast, local broadcast stations' online and multichannel video and audio competitors are not subject to any FCC local or national ownership limits.[6]

As NAB has explained on innumerable occasions, the Commission has a clear obligation under the Telecommunications Act of 1996 and federal administrative law to evaluate and reform its broadcast ownership rules so that they reflect the dramatic changes in the media marketplace and current competitive realities.[7] The courts have recognized both the FCC's special "obligation" to review its ownership rules under the "deregulatory" requirements of Section 202(h) of the 1996 Act,[8] and its general "duty to evaluate its policies

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[4] *See* 47 C.F.R. § 73.3555(b).

[5] *See Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13003 (1996).

[6] In particular, the Commission has no national horizontal or vertical ownership limits applicable to cable operators, despite a congressional mandate in 47 U.S.C. § 533(f) to impose such limits.

[7] *See, e.g.*, NAB Comments, *2014 Quadrennial Regulatory Review*, MB Docket No. 14-50, at 9-38 (Aug. 6, 2014); NAB Comments, *2010 Quadrennial Regulatory Review*, MB Docket No. 09-182, at 3-22 (July 12, 2010); NAB Comments, *2010 Quadrennial Regulatory Review*, MB Docket No. 09-182, at 5-8; 12-16 (Mar. 5, 2012); NAB Comments, *2006 Quadrennial Regulatory Review*, MB Docket No. 06-121, at 5-35 (Oct. 23, 2006); NAB Comments, *2002 Biennial Regulatory Review*, MB Docket No. 02-277, at 8-23 (Jan. 2, 2003).

[8] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 395 (3d Cir. 2004) (Section 202(h) imposes an "obligation" on the FCC that "it would not otherwise have" to periodically "justify its existing regulations" and vacate or modify those no longer in the public interest – a requirement that "makes § 202(h) 'deregulatory.'"). The D.C. Circuit Court of Appeals has gone farther, twice holding that Section 202(h) "carries with it a presumption in favor of repealing or modifying the ownership rules." *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 (D.C. Cir. 2002), *modified on reh'g*, 293 F.3d 537 (D.C. Cir. 2002); *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002).

over time," especially if "changes in factual and legal circumstances" occur.[9] Considering the growth of the Internet alone – which "drives" the U.S. economy and serves "every day" as a "critical tool" for Americans to "conduct commerce, communicate, educate, entertain, and engage in the world"[10] – relevant "factual circumstances" have most definitely changed. And while Section 202(h) specifically directs the Commission to review its rules quadrennially to "determine" whether they remain "necessary in the public interest as the result of competition" and "repeal or modify" those that are not,[11] the Commission has not complied with these explicit statutory mandates.

For both its 2010 and 2014 quadrennial reviews, the Commission has failed in its duties to reexamine all the broadcast ownership rules; to make a determination whether each one is still "necessary" in light of "competition"; and to modify or repeal any and all of them failing to meet that standard. Although the Commission began its mandated 2010 review in 2009, it never completed that review nor assessed the present state of competition, let alone made the requisite determinations about the necessity of any of the rules. Then, in 2014, the Commission, with another quadrennial review looming, simply punted. Rather than belatedly complying with Section 202(h), it rolled the unfinished 2010 review into the newly initiated (but already tardy) 2014 review.[12] And now, with 2016 rapidly approaching, the 2006

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[9] *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992).

[10] *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 1 (2015).

[11] Pub. L. No, 104-104, § 202(h), 110 Stat. 56, 111-112 (1996).

[12] *See 2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014). Beyond the FCC's March 31, 2014, decision declining to act on the long-pending 2010 quadrennial review, that same month the Media Bureau announced new, strict "guidelines" for reviewing television applications. Public Notice, *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, DA 14-330 (rel. March 12, 2014). This Public Notice declared new substantive requirements for the evaluation of broadcast television transactions and created a new standard of review for those transactions involving sharing arrangements and contingent or other financial interests. *See* Letter from Jane E. Mago, Executive

quadrennial review remains the last one completed. The Commission thus has evaded its basic obligations under Section 202(h) and unlawfully retained its ownership rules.

II. Contrary To The Merging Parties' Characterization Of Its Transaction, The Proposed Merger Will Create Another Massive MVPD And Contribute Significantly To The Rapidly Increasing Local, Regional And National Consolidation In The Pay-TV Industry

While failing to meet its statutory requirements with regard to the ownership of broadcast outlets, the Commission at the same time has approved a series of mergers resulting in an MVPD industry highly consolidated at the local, regional and national levels.[13] The industry will only become more concentrated through additional large transactions, such as the proposed Charter/TWC/BHN merger combining the fourth, seventh and tenth largest MVPDs in the U.S. to create a combined entity serving 23.9 million paying customers across 41 states.[14] Despite the Merging Parties' best efforts to portray their merger as an innocuous

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Vice President and General Counsel, NAB to Marlene H. Dortch, Secretary, FCC (Apr. 10, 2014). These "guidelines" led to significant delays in the processing of applications for television station sales and forced many broadcasters to restructure proposed transactions despite their compliance with the FCC's (unreviewed) ownership rules. Needless to say, no similar standards apply to cable, DBS or wireless services.

[13] *See, e.g.*, *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 15-94, MB Docket No. 14-90 (2015); BRH Holdings GP, Ltd., Transferor, and EchoStar Corp., Transferee, *Applications for Consent to Transfer Control of Hughes Communications, Inc., Hughes Network Systems, LLC and HNS License Sub, LLC*, Order, 26 FCC Rcd 7976 (2011); *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011); *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194 (2011); *News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265 (2008); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006).

[14] FCC, Public Notice, *Commission Accepts for Filing Applications of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, DA 15-856, at 2-3, 5 (July 27, 2015).

one that "will not reduce competition in any relevant market"[15] – due in large part to "New Charter's modest size"[16] – even a relatively brief examination of the increasingly consolidated MVPD industry and New Charter's place in it belies these claims.

A. The MVPD Marketplace Is Highly and Increasingly Concentrated at the Local and Regional Levels

According to the most recent SNL Kagan data, TWC alone – even before any merger – controls over 40 percent of the *total* MVPD market in 30 different DMAs, ranging from the top-25 (*e.g.*, Cleveland, OH) to among the smallest (*e.g.*, Presque Isle, ME).[17] In eight DMAs, TWC's share of the entire MVPD market exceeds 60 percent.[18] Standing alone, Charter controls over 40 percent of the MVPD market in ten more DMAs, ranging from the mid-sized (*e.g.*, Madison, WI) to the very small (*e.g.*, Helena, MT), and in several additional DMAs, the merger of Charter, TWC and BHN would give the combined entity control of more than 40 percent of the MVPD market.[19]

By any standards, a combined Charter/TWC/BHN would have a dominant presence in a significant number of DMAs,[20] as do other MVPDs in numerous additional markets. If the

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[15] Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations, MB Docket No. 15-149, Public Interest Statement, at 42 (June 25, 2015) (Public Interest Statement).

[16] *Id*. at 56.

[17] SNL Kagan, Media Census estimates, Q2 2015.

[18] *Id*. These DMAs are Honolulu, HI (77.9%); Utica, NY (74.7%); Rochester, NY (69.2%); Albany, NY (67.4%); Watertown, NY (65.7%); Syracuse, NY (65.4%); Portland, ME (60.4%); and Laredo, TX (60.3%).

[19] *Id*. In Charlotte, NC, Green Bay, WI, Montgomery, AL and Lincoln, NE, the combined Charter/TWC/BHN would surpass the 40% market share threshold, and in other markets (Wilmington, NC and Milwaukee, WI) the combination with Charter would increase TWC's already 40%-plus market share to over 50%. The merger would also give the combined entity a dominant presence in large Florida markets, as BHN standing alone controls over 50% of the MVPD market in both the Orlando and Tampa DMAs.

[20] If the proposed merger were approved, New Charter would control over 40% of the entire MVPD market in 47 DMAs. SNL Kagan, Media Census estimates, Q2 2015.

Commission approves the proposed Charter/TWC/BHN merger, a single MVPD would control 40 percent or more of the entire MVPD market in 112 DMAs – or 53 percent of all DMAs in the country.[21] Clearly, the merger would exacerbate concerning levels of MVPD consolidation at the local level.

New Charter also would be increasingly consolidated on a regional basis. The Merging Parties' Public Interest Statement is replete with references about the merger increasing the "density of New Charter's presence in multiple regions" and leading to "a more complete regional footprint."[22] This admitted increase in regional consolidation is particularly concerning because clustering causes consumer harm. "Empirical research on cable industry prices demonstrates that large, highly clustered cable companies generally charge higher prices than small, unclustered cable companies."[23] Specifically, economic studies have found that higher consumer prices result from cable system clustering because clustering deters the entry of overbuilders into the market, the presence of which constrains the pricing decisions of incumbent cable MSOs.[24]

Increases in concentration due to clustering may help explain the inexorable rises in the rates consumers pay for MVPD service. The FCC's own reports on cable industry prices have shown that over the 19-year period from 1995-2014, expanded basic cable prices increased at a compound average annual rate of 5.9 percent, compared to a 2.4 percent

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[21] *Id*.

[22] Public Interest Statement, at 4. *See also id*. at 34 (noting "increases in geographic reach and density"); 33 (noting ability of New Charter to "serve more communities within particular regions"); 35 (referring to "more rationalized footprint"); and 38 (referring to "denser footprint" and "more geographically aligned footprint").

[23] Philip Reny and Michael Williams, *The Deterrent Effect of Cable System Clustering on Overbuilders*, 35 Economics Bulletin 519 (Mar. 2015).

[24] *Id*., Hal J. Singer, *Does Clustering by Incumbent Cable MSOs Deter Entry by Overbuilders?* (2003), available at http://ssrn.com/abstract=403720

compound average rate of growth in the Consumer Price Index.[25] In a truly competitive MVPD market, price increases notably above the rate of inflation could not be sustained for nearly two decades.

The Commission therefore should not ignore the impacts on consumers and the broadcasting industry resulting from MVPD concentration at the regional and local levels in the merger under review, or in the MVPD marketplace more generally. Indeed, the FCC's Chief Economist, David Waterman, on multiple occasions has identified "horizontal market power at the MSO level" as the "fundamental source" of potential "anticompetitive behavior" in the marketplace.[26]

B. The MVPD Market Is Similarly Consolidated at the National Level

A recent analysis from Multichannel News concluded that "consolidation creates a top-heavy list of [the] 25 largest MVPDs" nationally, and that "there is no doubt that further consolidation is coming."[27] In fact, further consolidation has already come, as just last month Altice, the owner of Suddenlink Communications, announced its acquisition of Cablevision,

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[25] *Report on Cable Industry Prices*, DA 14-1829, at ¶ 28 (Med. Bur. Dec. 15, 2014). NAB observes, again, that the MVPD industry cannot attribute these consistent increases in consumer prices to retransmission consent fees, as those price increases began years before cable companies started providing cash compensation to broadcasters. As late as 2005, the FCC found that "cash still has not emerged as a principal form of consideration for retransmission consent" and that "virtually all retransmission consent agreements" involve "in-kind consideration to the broadcaster." FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, at ¶ 10 (Sept. 2005).

[26] David Waterman, *Vertical Integration and Program Access in the Cable Television Industry*, 47 Fed. Comm. L.J. 511, 531 (1995). *See also* David Waterman and Sujin Choi, *Non-Discrimination Rules for ISPs and Vertical Integration: Lessons from Cable Television*, 35 Telecommunications Policy 970 (2011) (concluding that the "long history of the cable industry and the short history of the broadband Internet industry" demonstrate that the "fundamental policy concerns from an economic perspective" stem from "the presence of horizontal market power at the MSO or ISP level," and that "[b]oth local and national market shares of ISPs . . . influence this market power"); David Waterman and Andrew Weiss, Vertical Integration in Cable Television, The MIT Press and The AEI Press, at 141 (1997) ("horizontal market power, especially at the cable system operator level, is the basic ingredient for successful foreclosure of other MVPDs").

[27] Mike Farrell, *Eat or Be Eaten*, Multichannel News (Aug. 17, 2015) (Attachment A hereto).

resulting in the combination of two more of the top-10 MVPDs.[28] According to media analysts, the "Cablevision deal is likely to trigger a fresh round of consolidation that could roll up the last independent standouts among midsize to large U.S. cable companies."[29]

Even before this most recently announced merger and expected additional ones in the future, Multichannel News identified the top 25 MVPDs in 1985, 1995, 2000 and 2015, revealing extraordinary consolidation during the past 30 years. For example, in 1985, the four largest MVPDs had only 9.9 million subscribers, which rose to 30 million in 1995, 43.54 million in 2000, and 79.7 million today, if the Charter/TWC/BHN merger is approved.[30] Tellingly, the subscribership of the largest MVPD, the combined AT&T/DIRECTV, now exceeds by more than two million the subscribership of the top 25 MVPDs *combined* in 1985.[31] SNL Kagan confirms that, if the Charter/TWC/BHN merger is approved, then the top four MVPDs will control 79 percent of the nationwide MVPD market (measured in terms of subscribers),[32] and the top *three* alone "will control two-thirds of the video delivery universe."[33] In contrast, the FCC found that in 2002 the four largest MVPDs controlled under 50.5 percent of the MVPD market nationally.[34]

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[28] *See* M.J. de la Merced and A.R. Sorkin, *Altice in Deal to Take Over Cablevision*, The New York Times (Sept. 17, 2015).

[29] Kyle Daly, *Analysts: Cablevision Deal Signals Next Phase in Consolidation*, SNL Kagan (Sept. 17, 2015).

[30] *See* Farrell, *Eat or Be Eaten*, at 8-10.

[31] *Id*. at 8-9. AT&T/DIRECTV has 26.3 million subscribers, while the 25 largest MVPDs in 1985 had only 24.05 million subscribers.

[32] SNL Kagan, Media Census estimates, Q2 2015.

[33] Tony Lenoir, *AT&T, Comcast pro forma Charter control 66% of US video market based on MediaCensus Q2'15 data*, SNL Kagan (Sept. 1, 2015).

[34] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd 26901, 26958 (2002).

It is undisputable that the MVPD marketplace is much more concentrated now than in the past, and FCC approval of the proposed three-company merger will only make it more so. Just three of the top 25 cable multiple system operators (MSOs) of 1985 even exist today; the rest were subsumed by other entities. Of the top 25 MSOs in 1995, only five are in business today – TWC, Comcast, Cox, Cablevision and Charter – with two of these (TWC and Cablevision) set to be swallowed up.[35] As one analysis of the industry observed, "horizontal integration in the cable industry" – and now the MVPD industry as a whole – has "never shown any serious inclination to reverse or even stabilize."[36]

III. Local TV Stations Continue To Suffer Competitive Harm From The FCC's Failure To Reform The Ownership Rules, Especially In Light Of Unabated MVPD Consolidation

In examining the competitive harm local television stations suffer from continuing MVPD consolidation while broadcasters remain subject to asymmetric ownership restrictions, the Commission must take notice of the sheer size and scope of the leading MVPDs. As shown in Attachment B, broadcast television station groups are dwarfed by the consolidated telcos and cable/satellite operators, with the market capitalization of AT&T/DIRECTV and Verizon, for example, being *201 times* and *182 times* larger, respectively, than the market cap of even the largest local broadcast television companies.[37] Even the "modest"-sized New Charter[38] would have a market capitalization *72 times* larger than some of the biggest

[35] *See* Farrell, *Eat or Be Eaten*, at 8.

[36] Patrick Parsons, *Horizontal Integration in the Cable Television Industry: History and Context*, 16 J. Med. Econ. 23, 38 (2003).

[37] According to Yahoo Finance, as of September 2, 2015, AT&T/DIRECTV had a market capitalization of $201 billion and Verizon had a market cap of $182 billion, while TV station group owners such as Media General, Scripps and Nexstar had market caps of $1 billion each. *See* Attachment B. Aside from the giant telcos, the largest cable operator (Comcast) had a market cap *142 times* larger than these broadcasters. *Id*.

[38] Public Interest Statement, at 56.

broadcast TV station groups.[39] And the average TV station group is tiny by comparison to the larger broadcast groups, let alone the telco and cable/satellite behemoths. In the spring, BIA/Kelsey estimated that there were 630 separate owners of the 1,785 full power television and 405 Class A television stations in the country—an average of only 3.5 stations per owner.[40]

The vast gulf between television broadcasters and their multichannel (and now online) competitors will only expand so long as the Commission allows unprecedented consolidation in the MVPD industry, while still preventing the common ownership of two broadcast TV stations in most DMAs. Remarkably, the Commission permitted the combination of AT&T and DIRECTV after it determined to prohibit two same-market TV stations from agreeing to jointly sell a modest amount of advertising time.[41] This gross regulatory disparity has produced an increasingly severe competitive disparity, as local stations are prevented from achieving even a fraction of the economies of scale and scope that their MVPD competitors enjoy. In fact, the broadcast television industry today is so diffusely owned that many stations – especially those in smaller markets – struggle to compete effectively and continue to serve their audiences.

As NAB has previously explained in detail,[42] current ownership and attribution rules severely constrain the ability of broadcast stations to compete for viewers, advertising dollars and investment capital, particularly against their less regulated and more consolidated rivals.

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[39] *See* Attachment B.

[40] *See* Letter to Marlene H. Dortch, Secretary, FCC from Kathleen A. Kirby and Jack N. Goodman of the FCBA Mass Media Practice Committee, MB Docket No. 12-268, at 2 (May 14, 2015); FCC News Release, *Broadcast Station Totals as of March 31, 2015* (Apr. 9, 2015).

[41] *See 2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4527 (2014) (attributing – and thus effectively prohibiting in most markets – the joint sale of more than 15% of one TV station's advertising time by another station).

[42] *See, e.g.*, NAB Comments, MB Docket No. 15-158, at 23-27 (Aug. 21, 2015); NAB *Ex Parte* Submission, MB Docket No. 09-182, at 3-10 (Mar. 21, 2014); NAB Comments, MB Docket No. 09-182, at 4-5; 12-22 (Mar. 5, 2012).

Local television ownership combinations and sharing agreements are vital in today's competitive marketplace to maintain stations' financial viability and their concomitant ability and duty to provide high-quality, high-cost programming, including local news, sports, weather and emergency information.

This is the case because, as multiple economists have explained in submissions to the Commission, television broadcasting generally, and local news production specifically, are "subject to strong economies of both scale and scope."[43] Placing undue limitations on broadcasters' ability to achieve economies of scale and scope "result[s] in higher costs, lower revenues, reduced returns on invested capital, lower output and, potentially, fewer firms," as well as "significantly reducing the output of news programming."[44] More specifically, "allow[ing] broadcasters, especially in small markets," to realize economies of scale and scope through local combinations and joint arrangements will "reduce their fixed costs" and enable them to continue "operat[ing] where it would otherwise be uneconomic to do so."[45] The Commission's failure to reform its broadcast-only ownership restrictions accordingly deprives local stations of these important scale and scope economies, impedes their competitiveness against entities able to achieve those economies, such as New Charter, and harms the public's free local television service.

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[43] Jeffrey A. Eisenach & Kevin W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 1-2 (2011) (Economies of Scale Report), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (Reply Decl.), NAB Reply Comments at Appendix A, MB Docket No. 10-71 (June 27, 2011). *Accord* Declaration of Mark Israel and Allan Shampine, NAB Comments, MB Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26, 2014) (finding that economies of scale and scope exist in television broadcasting and that both lead "to increased investment in news programming").

[44] Economies of Scale Report at 2-3.

[45] Reply Decl. at ¶ 26 (also concluding that "depriving stations, especially smaller ones, of the ability to engage" in joint arrangements and combinations could significantly impact "both the production of local news" and "stations' ultimate financial viability").

IV. The Commission Should Not Approve The Proposed Merger Until It Completes The Pending Quadrennial Reviews And Reforms Its Outdated Ownership Rules

While FCC rules keep local TV broadcasters in economically inefficient, and ultimately unviable, ownership structures, the Commission has fundamentally altered the competitive playing field against local stations by permitting their video competitors to increase exponentially in size and scope. Indeed, the FCC's disparate regulatory treatment of pay-TV mergers and even small broadcast transactions has become truly astonishing. While the Commission recently approved the creation of the largest pay-TV provider in the country it, for example, refused to grant a *six-month* temporary waiver of the radio/television cross-ownership rule in connection with the assignment of the licenses of one full-power TV station, along with the satellite and low-power stations repeating that station's signal.[46] Notably, the Merging Parties here state that their combination creating the third largest MVPD in the country does not implicate any of the FCC's media ownership rules.[47]

This egregious regulatory double standard must end. The Commission should decline to consider the Charter/TWC/BHN merger until it completes the 2010 and 2014 quadrennial reviews; adopts a competitively rational local television rule; and eliminates cross-ownership restrictions that the Commission has already tentatively found unnecessary to promote competition.[48] Approval of the proposed merger before any relaxation of the outdated

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[46] *See* Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC to Jack N. Goodman and Richard R. Zaragoza, DA 14-436 (Mar. 31, 2014) (granting only a 60-day waiver for the acquiring company to come into compliance with the radio/TV cross-ownership rule).

[47] Public Interest Statement at 61.

[48] *See 2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4421, 4465 (2014) (repeating previous tentative conclusions that radio/television and newspaper/broadcast cross-ownership rules are not necessary to support either its competition or localism goals). The FCC's double standard extends to the audio world as well. In reviewing its radio ownership rules including the AM/FM subcaps, which remain unchanged since 1996, the Commission has essentially ignored the profound competitive changes wrought by the

ownership limits will only further injure local stations' competitive standing and their ability to offer consumers a viable, free television viewing option.

A. Unrestrained MVPD Consolidation Imperils the Economic Support for the Public's Free, Local Television Service

Consummation of the proposed merger will impair the ability of local TV broadcasters to compete with consolidated MVPDs for local, regional and national advertising revenues and to negotiate for fair compensation through retransmission consent. To support a service free to consumers, television broadcasters must rely very heavily on advertising revenues. In previous proceedings, NAB demonstrated that local TV stations today fiercely compete with cable and other MVPDs and, increasingly, online video providers, for local and national advertising dollars.[49]

The video advertising marketplace has been fundamentally altered by the creation and expansion of MVPD interconnects, especially those combining multiple cable operators, satellite providers and telephone companies, which enable advertisers to purchase advertising in many local markets and on many channels from multiple MVPDs through a single contract. While the Commission has strictly limited the joint sale of advertising time by two television stations in the same market, the Commission has permitted all major pay TV providers – large clustered cable operators including TWC, satellite TV operators and the telcos – to join forces to create through NCC Media a single platform for local and national

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online music revolution. Similar to its actions in the multichannel video market, the Commission also permitted the merger of the only two satellite radio providers.

[49] *See, e.g.,* NAB Comments, MB Docket No. 14-50, at 41-50 and Attachment A, Kevin Caves and Hal Singer, *Competition in Local Broadcast Television Advertising Markets* (Aug. 6, 2014); NAB Reply Comments, MB Docket No. 09-182, at 2-10 (Apr. 17, 2012); NAB Comments, MB Docket No. 09-182, at 12-18 (Mar. 5, 2012); NAB Comments, MB Docket No. 09-182, at 10-15 (July 12, 2010).

television advertisers.[50] The MVPD participants regard this "arrangement" as "crown[ing] a decade-long effort by NCC and its [cable] owners to *consolidate the advertising reach of all US MVPDs*" for local and national television advertisers.[51] The Merging Parties specifically noted TWC's leading role in selling "video and online advertising to local, regional, and national customers by itself, through a consortium of cable companies under NCC Media, and through a number of local/regional interconnects" that TWC "manages on behalf of itself and other cable operators."[52]

Local stations directly compete with these MVPD interconnects for advertising and frequently lose sales to jointly sold interconnect advertising.[53] Broadcasters have explained that interconnects have "enormous advantages over stand-alone broadcast stations in the sale of local advertising," and allow "MVPDs, working together, to compete directly with broadcasters for local television advertising buys" that previously would have been earned by local stations.[54] For example, a broadcaster in the small market of Chico, CA (DMA #132) has estimated that the cable interconnect there takes "some $3 to $4 million in local advertising"

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[50] NAB has previously discussed the "alliances" between NCC Media (which itself is owned by large cable operators), "cable operators and satellite and telco programming distributors," including DIRECTV, AT&T U-Verse and Verizon FiOS, to "offer advertisers a local market ad platform." *The Essential Guide to NCC Media: Planning & Buying Local Market Cable Television & Digital Media*, at 2 (Sept. 2011). *See Ex Parte* Submission of NAB, MB Docket No. 09-182, at 5-6 (Mar. 18, 2014).

[51] NCC Media News, *DISH and NCC Media Join Forces, Greatly Extending Consumer Reach and Targeting for National and Local Television Advertisers* (Aug. 26, 2013) (emphasis added). NCC Media describes itself as being "jointly owned by three of the nation's largest cable operators," including TWC, and "represent[ing] virtually every other TV service provider in the country." NCC Media, Owners & Affiliates, http://nccmedia.com/about/owners-affiliates/.

[52] Public Interest Statement at 12.

[53] *See, e.g., Ex Parte* Communication of LIN Television, MB Docket No. 09-182, at 2 (Feb. 26, 2014); *Ex Parte* Letter of Gregory L. Masters, Wiley Rein, MB Docket No. 09-182, at 2 & Attachments A, B (Feb. 26, 2014); *Ex Parte* Letter of Joshua N. Pila, MB Docket No. 09-182 (Jan. 15, 2014); *Ex Parte* Letter of Jack N. Goodman, MB Docket No. 09-182, at 3 (Dec. 19, 2012).

[54] *Ex Parte* Letter of John Hane, Pillsbury Winthrop Shaw Pittman LLP, MB Docket No. 09-182, at 1 (Jan. 16, 2013).

that formerly would have been likely to go to local TV stations.[55] Needless to say, MVPD interconnects dwarf local stations – especially those unable to form any kind of local combination – in size and scale, and this disparity will only expand as interconnects "are growing rapidly."[56]

Given the unfettered ability of MVPDs to "consolidate" their "advertising reach" locally and nationally,[57] and TWC's direct involvement in NCC Media, NAB believes that the proposed merger will adversely impact television broadcasters' ability to compete effectively for local, regional and national advertising. Indeed, the Merging Parties assert that the "increased scale" and "denser footprint" of New Charter will allow it "to better compete for advertisers" on their cable systems.[58] No doubt this is true – clearly, a larger, regionally consolidated MVPD participating in interconnects with multiple other MVPDs will be able to compete for advertising revenue "better" than a broadcast station forbidden from even entering into a single joint agreement for the sale of advertising time.

The Merging Parties additionally note that New Charter will increase opportunities for advertisers to reach broader "audiences on multiple screens, including mobile devices, and across multiple platforms, including VOD and online."[59] MVPD mergers, such as the present one, increasing consolidation in the online environment thus will disadvantage TV broadcasters trying to compete for advertising revenue in other sectors, including the most

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[55] *Ex Parte* Communication of NAB, MB Docket No. 09-182, at 2 (Mar. 14, 2014).

[56] Video Advertising Bureau, *Local Cable FAQs*, http://www.thevab.com/local-cable-faqs.php

[57] NCC Media News, *DISH and NCC Media Join Forces, Greatly Extending Consumer Reach and Targeting for National and Local Television Advertisers* (Aug. 26, 2013).

[58] Public Interest Statement at 38.

[59] *Id*.

rapidly growing ones.[60] For these reasons alone, the Commission should refrain from considering the proposed merger until after it reviews and reforms its competitively harmful ownership rules. Only by being able to compete on a reasonably level playing field for vital advertising revenue can local broadcasters hope to improve – or even maintain – their over-the-air, free-to-all services.

Beyond a decreased capability to earn necessary advertising revenues, further MVPD consolidation, particularly locally and regionally, challenges local stations' ability to negotiate for fair retransmission consent compensation. Today, TV stations unable to form local combinations under the FCC's rules often must negotiate retransmission consent with a dominant MVPD possessing significant negotiating leverage, particularly in the many DMAs where a single pay TV provider controls a high percentage of the MVPD market and, thus, controls access to a significant percentage of viewers. MVPDs, moreover, do not need to be the size of AT&T/DIRECTV or New Charter to possess a dominant share of the total MVPD market in individuals DMAs.[61] As discussed above, approval of the proposed Charter/TWC/BHN merger would create yet more markets where a single MVPD enjoys a dominant position. To prevent additional MVPD concentration from further tilting the retransmission consent marketplace in the favor of large pay-TV providers, the Commission should not consider the proposed merger until it completes the pending quadrennial reviews and permits local TV stations to form rational ownership structures. Asymmetric ownership

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[60] *See* Derek Baine, *Domestic ad rev up 4.4% to $229B in 2014; National trails local, a rarity*, SNL Kagan (Dec. 5, 2014) (projecting mobile as the most rapidly growing ad sector for 2015-2014 and projecting that cable TV, Internet and mobile will be the three sectors dominating the ad market by 2024).

[61] For example, Cable One control 51% of the entire MVPD market in Biloxi-Gulfport, MS, and Suddenlink controls 60.1% of the MVPD market in Parkersburg, WV, 59.9% in Victoria, TX, and between 40-50% in a number of other DMAs. SNL Kagan, Media Census estimates, Q2 2015.

restrictions should not be allowed to warp either the advertising marketplace or the retransmission consent marketplace.[62]

B. The Commission Must Comply with its Statutory Duty before Permitting Yet More MVPD Consolidation

As the Merging Parties note, the Commission has expressly recognized that in the pay-TV industry "greater scale and scope" can "advance the public interest by spurring investment" and enable MVPDs to offer an increased variety of services at reduced prices.[63] Greater scale and scope in the broadcast television industry similarly would advance the public interest. The Commission, however, has refused to recognize those basic economic truths about the benefits of economies of scale and scope for television broadcasters and their viewers. Indeed, the Commission has ignored its statutory obligation to determine every four years whether its ownership rules remain necessary in the public interest as the result of competition *and* to repeal or modify any that are not.

To date, the primary beneficiaries of the Commission's failure to meet its statutory duty have been pay-TV providers, including those now proposing to merge, which compete with television broadcasters for viewers and advertisers locally and nationally. Certainly the public does not benefit; the competitive hobbling of free broadcast TV services only leaves

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[62] Just as in the advertising marketplace, competitive imbalances in the retransmission marketplace harm the public's local, free broadcast TV service. A 2014 study of retransmission consent and the U.S. market for video content found that the monies stations received in retransmission consent fees in 2013 "accounted for 34 percent of their spending on programming"; that is, "in the absence of retransmission consent compensation broadcasters would have had to reduce the amount they spend producing content by more than a third." Jeffrey A. Eisenach, Ph.D., *Delivering for Television Viewers: Retransmission Consent and the U.S. Market for Video Content*, NERA Economic Consulting, at 28 (July 2014) (also finding that retransmission consent: (i) "allowed broadcasters to retain (or regain) rights to programming, especially sports programming, that would not otherwise have been available on free over-the-air television"; (ii) "led to increases in local television news and public affairs programming"; (iii) "enabled broadcasters to invest in digital multicasting"; and (iv) "helped to finance" the transition to high definition broadcasting). *Id*. at 29-32.

[63] Public Interest Statement at 28, 35.

viewers more dependent on increasingly expensive subscription services offered by companies with abysmal customer service ratings.[64] In fact, at least two of the three Merging Parties were among the companies that led Consumer Reports to conclude in its most recent survey on telecommunications services that "lousy cable service seems to be one of life's certainties," "[a]long with death and taxes."[65]

Because a viable, free over-the-air broadcast service is more important than ever in an era of consolidated pay-TV providers with questionable (at best) records of serving the viewing public, the Commission should not consider yet another massive pay TV merger until it complies with Section 202(h) by completing the 2010 and 2014 quadrennial reviews and reforming its unnecessary and, in fact, competitively harmful broadcast ownership rules. If, however, the Commission continues to ignore dramatic competitive changes in the video marketplace and refuses to reform its broadcast-only ownership restrictions, then the Commission should deny the proposed merger. The Commission has no legal or public policy justification for continuing to permit pay-TV mergers tilting the competitive playing field against locally-oriented free television services while at the same time maintaining asymmetric regulations uniquely disfavoring local broadcast stations.

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[64] *See supra* pp. 7-8 (discussing MVPDs' consistent practice of raising consumers' subscription fees above the rate of inflation).

[65] Consumer Reports, *Cable-TV and Internet Subscribers Remain Unhappy Customers* (May 29, 2015). Consumer Reports observed that, if "it weren't for Mediacom," "Time Warner Cable would have landed at the bottom for both TV service and bundled packages in the survey," and that "Charter, just a few steps up in the TV Ratings, didn't fare much better."

V. Conclusion

For all the reasons set forth above, the Commission should grant NAB's petition to hold its consideration of the proposed Charter/TWC/BHN merger in abeyance.

Respectfully submitted,

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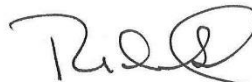

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Rick Kaplan
Jerianne Timmerman

Theresa Ottina
NAB Research

October 12, 2015

Attachment A

Eat or Be Eaten

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

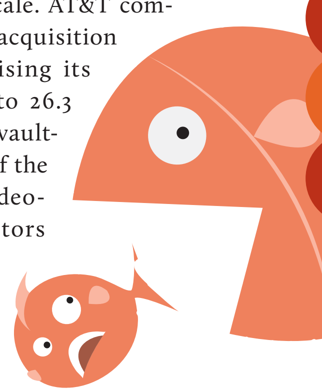
The cable universe is shrinking.

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.

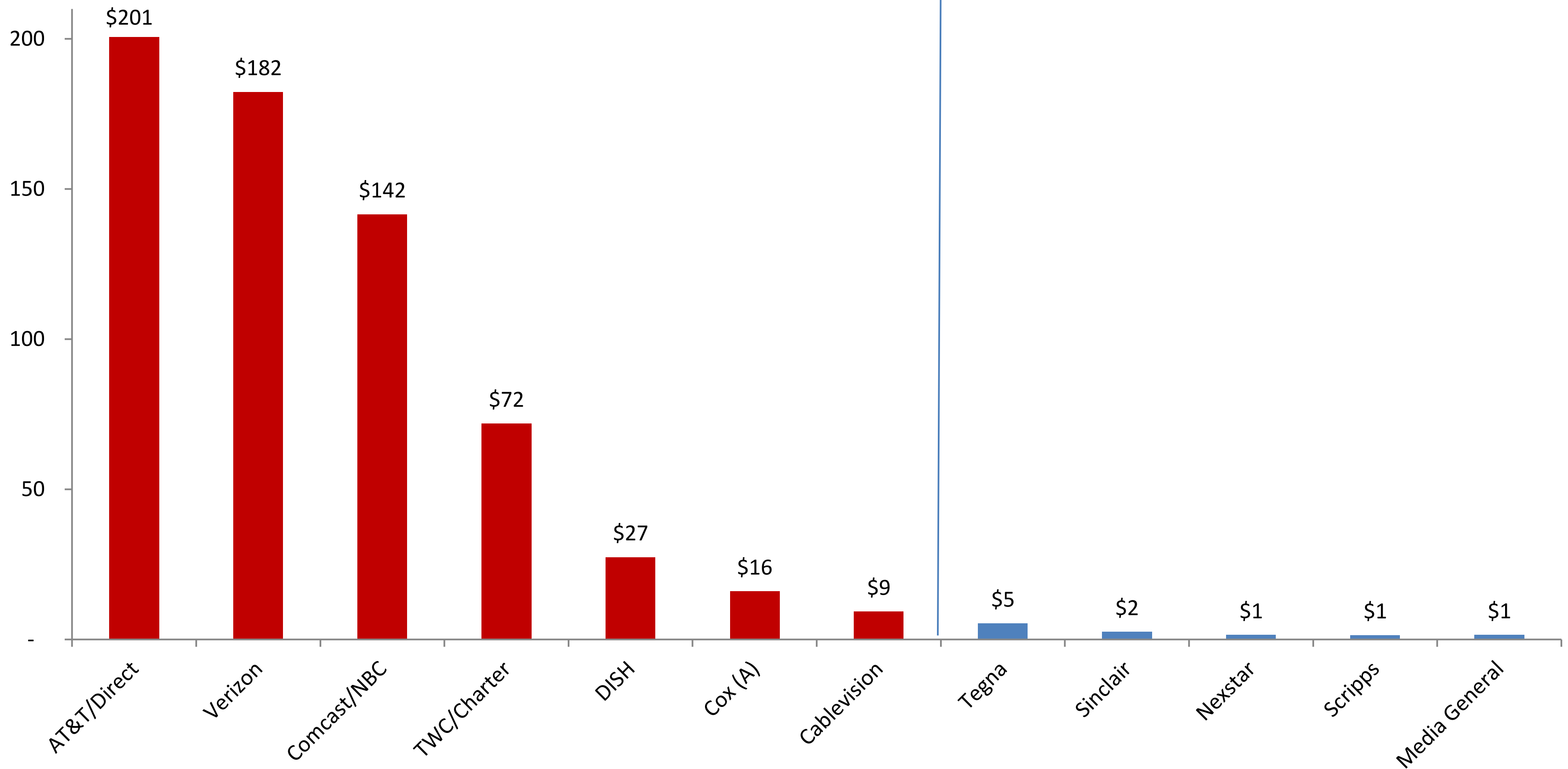
With more OTT services slated to launch later this year — Verizon is expected to debut its "mobile-only" Go90 service in the late summer and other programmers are considering launching their own direct-to-consumer services — cord-cutting will likely get worse. And cable operators will likely meet the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

Attachment B

Market Cap Comparables



Source for all market caps: YahooFinance 9/2/15

(A) Cox is privately held. Market cap is a conservative estimate based on valuation of $4,000 per subscriber.