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

In the Matter of

Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations

MB Docket No. 14-57

COMMENT OF
Open Media and Information Companies Initiative (Open MIC), *et al*

Submitted by:

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This comment is offered by the Open Media and Information Companies Initiative (Open MIC), a non-profit organization which works with investors to foster more open and democratic media through market-based solutions, and the investment firms Arjuna Capital/Baldwin Brothers Inc. and Trillium Asset Management LLC. Collectively, these organizations represent approximately $2.5 billion in assets under management (AUM).

The investors offering this comment have fiduciary interests in a broad range of industries and publicly-held companies. As investors, we firmly believe that a robust and competitive broadband Internet is an economic necessity. It is critical to economic growth, innovation and democratic engagement - serving the interests of business, society, and investors.

We write in opposition to the proposed transaction.

1. **The proposed transaction would not benefit consumers or business customers of Comcast and Time Warner Cable; it would threaten open Internet and network neutrality principles; it could be detrimental to entrepreneurial growth in the national economy.**

A combination of Comcast and Time Warner Cable would give the combined entity at least a 30% share of the national cable TV market and, according to some estimates, as much as 50% of the last mile high-speed interconnections in the United States. The combined firm would also have a significant if not dominant presence in 19 of the top 20 DMAs (designated market areas) in the country.[1]

A combined Comcast and Time Warner Cable would therefore possess unprecedented power to determine the cable TV programming available to hundreds of millions of Americans while, at the same time, controlling the economics of broadband Internet access for millions of individuals and businesses that depend on high-speed data connections for their livelihood.

We see this as fundamentally uncompetitive and therefore contrary to the interests of society, the economy and investors. Consequently, we cannot support the proposed transaction.

It has been argued that in the absence of a competitive marketplace, a comprehensive and robust set of conditions and regulations could adequately offset the negative impacts of this merger. However, we have not seen any proposed set of conditions and regulations that would accomplish that. In fact, given the current state of the law, the resources available to regulators, and the political hostility from Capitol Hill to an effective system for addressing the lack of competition, we have little confidence that a set of conditions could be devised.

Comcast's and Time Warner Cable's claims that the proposed transaction will enable "innovation" in the broadband Internet market belie their demonstrated reputations as being among the worst service providers in their industry.

[1] http://judiciary.house.gov/_cache/files/665684a1-49d4-4aca-9bc1-79ae9ad387b9/grunes-testimony.pdf

In a 2014 national survey of cable TV companies conducted by Consumers Union, Comcast ranked 15th among 17 television service providers and earned particularly low marks from consumers for value for the money and customer support. Time Warner ranked 16th overall for television service with particularly low ratings for value, reliability, and phone / online customer support. "Comcast and Time Warner Cable were mediocre on overall satisfaction with Internet service. Both companies received especially poor marks for value and low ratings for phone / online customer support," the survey found.[2]

Separately, the 2014 American Customer Satisfaction Index (ACSI) rankings reveal that Comcast and TWC ranked second-to-last and last in the Internet service market as well as the subscription TV and fixed-line telephone service markets. ACSI highlighted the proposed Comcast-Time Warner Cable merger because "it's a concern whenever two poor-performing service providers combine operations. ACSI data consistently show that mergers in service industries usually result in lower customer satisfaction, at least in the short term. It's hard to see how combining two negatives will be a positive for consumers."[3]

The combined market power of Comcast and Time Warner Cable would have very real and tangible negative impacts on communities served by the companies.

New York City, for example, is served largely by Time Warner Cable. In a recent public filing, city Comptroller Scott Stringer noted that "while there is a significant digital divide in New York on socioeconomic lines, the truth is that no neighborhood is immune from poor internet."[4]

Comptroller Singer added: "The public interest is not only served by closing the digital divide, but also by ensuring that the internet remains the modern-day agora where all people can engage in robust discussion on an equal footing and where the power of ideas, rather than the size of one's pocketbook, guides the marketplace."

2. **The proposed transaction would give rise to significant regulatory challenges for the Federal Communications Commission in protecting an Open Internet; approval of the proposed merger would provide further support for reclassification of broadband Internet service under Title II of the Communications Act.**

We believe the proposed Comcast-Time Warner Cable combination must be considered in the broader context of policy questions regarding open Internet principles, and competition within the broadband Internet industry, currently being considered by the Commission.

In a previous comment to the Commission (regarding *Notice of Proposed Rulemaking Protecting and Promoting the Open Internet GN Docket No. 14-28*), we have argued that reclassification of

[2] https://consumersunion.org/news/comcast-and-time-warner-cable-score-low-on-latest-consumer-reports-customer-satisfaction-survey/
[3] http://www.theacsi.org/news-and-resources/press-releases/press-2014/press-release-telecommunications-and-information-2014
[4] http://comptroller.nyc.gov/wp-content/uploads/2014/07/FINAL-Testimony-to-PSC-reComcastMerger7-21-14.pdf

broadband Internet service under Title II of the Communications Act would best protect the open Internet as a platform for economic growth and innovation.[5]

> For diversified investors…it is critical that public policy be developed with an eye toward the economic health of the entire economy since a systematic governance failure in only one area can be a detriment to the investor's portfolio. The economic and investment impact of open Internet policies and practices can be profound.

The proposed merger therefore provides further support for reclassification of broadband Internet access under Title II. While the current proposed combination might be of benefit to Comcast and Time Warner Cable, the cognizable benefits to consumers, investors and other stakeholders are far less clear.

Further, we believe the proposed merger could have much more far-reaching implications for the U.S. economy and consumers than the prior merger of Comcast with NBC Universal; monitoring Comcast's compliance with regulatory conditions related to a deal with Time Warner Cable could prove difficult, if not impossible.

As but one example, in 2011 – in an effort to persuade the Commission to approve its merger with NBC Universal - Comcast committed to an "Internet Essentials" program which was purportedly designed to bridge the "digital divide" by offering low-cost Internet access and computers to low-income Comcast customers.

That program has been a huge failure, however, subject to widespread criticism by civil rights advocates. The Center for Public Integrity recently found that of the 7.2 million low-income families in Comcast's service area, only 2.6 million are eligible for "Internet Essentials." The Center concluded: "The low participation rate suggests that relying on merger conditions to make private companies provide what has become an essential tool to participate in society may not be the best approach to bridge the digital divide."[6]

Finally, to the degree that the proposed Comcast-Time Warner Cable combination would significantly impact competition in the broadband market, we believe the Commission should take steps to encourage competition and promote rural and municipal broadband, especially by preempting state laws that limit local broadband solutions.

We thank the Commission for this opportunity to comment and look forward to participating in the ongoing discussion regarding these proceedings.

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[5] http://apps.fcc.gov/ecfs/comment/view?z=vvmkk&id=6017984411

[6] http://www.publicintegrity.org/2014/05/28/14808/comcast-time-warner-deal-may-hinge-anemic-low-cost-internet-plan?_ga=1.198744107.547209759.1400777110