DISH Network Petitions FCC to Deny Comcast Time Warner Merger

ENGLEWOOD, Colo.--(BUSINESS WIRE)--Citing irreparable harm to competition and consumers, DISH Network Corp. (NASDAQ: DISH) petitioned the Federal Communications Commission (FCC) to deny the merger of Comcast Corp. and Time Warner Cable, Inc. The petition to deny, available here, outlines, among other things, the critical role high-speed broadband plays in the video industry and the potential for the merger to significantly damage competitive development of over-the-top (OTT) video and limit consumer access to online video programming. Some key points from the petition on the following topics include:

MERGER PRESENTS RISK OF SIGNIFICANT HARMS:

p. 3

- "**Choke Points on the Comcast/TWC Broadband Network:** The combined Comcast/TWC would be able to foreclose or degrade the online video offerings of competing MVPD and OTT video providers at any of three "choke points": (1) the points of interconnection to the combined company's broadband network, in effect the "on ramp" to the Comcast/TWC network; (2) the last mile "public Internet" portion of the pipe to the consumer's home; and (3) managed or specialized service channels, which can act as super HOV-lanes and squeeze the capacity of the "public Internet" portion of the Comcast/TWC broadband pipe.
- **Discriminatory Data Caps:** The combined Comcast/TWC would be able to impose anti-competitive data caps on competing MVPD and OTT services. This could be done by exempting Comcast/TWC affiliated content from such data caps and then setting caps so low that consumers are incentivized to choose Comcast/TWC services over competing MVPD and OTT video services.
- **Programming Foreclosure:** The combined Comcast/TWC would be able to foreclose access to, or raise the prices of, its own affiliated programming to harm competing MVPD and OTT services.
- **Restriction of Third-Party Online Rights:** The combined Comcast/TWC would be able to coerce third-party content owners and programmers to withhold online rights from online video platforms, thereby stifling a crucial source of competition and innovation in the video industry."

p. 26

"The rapid rise of broadband-powered online video services has been great for consumers. In many ways, we are in the Golden Age of video. But this Golden Age risks being cut short by the proposed transaction."

p. 10-11

"Here, the public interest benefits the Applicants claim are unlikely and speculative. Further, the claimed benefits do not come close to outweighing the anti-competitive effects of the transaction, and the serious damage that will be inflicted on consumers if the merger is approved. The cost of "getting it wrong" is immense. If the Commission approves the merger under a set of conditions purportedly designed to alleviate the harms, and those conditions fail to work (which DISH strongly believes would be the case), competition and consumers would be irreparably and permanently harmed. The risks are simply too great here, and the *only* outcome that will serve the public interest is to deny the merger or designate it for hearing."

p. 66

"The Applicants want the Commission to believe that they will not act on their incentive and ability to shut out video competitors by leveraging their control over broadband connections in an anti-competitive fashion. But too much is at stake here to "trust" the Applicants' claims of benevolence. In this regard, past is prologue. As Comcast's history shows, it has had no apparent qualms about engaging in anti-competitive conduct when the opportunity has arisen. There is little doubt that Comcast will do so again when foreclosure is even more profitable than today, and when its ability to engage in successful foreclosure is dramatically enlarged."

OVER-THE-TOP VIDEO:

p. 28-29

"In DISH's experience, large amounts of throughput are required to provide a typical household with HD video through the Internet. An HD video stream requires on average 5 Mbps of data throughput; a typical household could require 15 Mbps (5 Mbps x 3 TVs) for HD video alone. When added to a typical household's other Internet and broadband usage habits, such as personal computers, Wi- Fi-enabled mobile devices, and "connected devices" (such as a home security system), another 5- 10 Mbps of throughput may be required to avoid degrading the television viewing experience. Thus, a typical household relying on the Internet to deliver all video therefore should optimally have no less than 25 Mbps in broadband connectivity. This means that 25 Mbps would be the minimum *actual* (as opposed to advertised) experienced speed provided to the residence in order to sustain, for example, a robust OTT video product capable of supplanting today's traditional linear pay-TV service."

p. 2

"High-speed broadband connections are the lifeblood of these new online services, and these connections will only become more important with each passing year. The services provided by DISH and other OTT video providers optimally require a household to have actual and consistent download speeds of at least 25 Megabits per second ("Mbps"). If approved, the combined Comcast/TWC would control 50 percent of the broadband pipes in the United States that have speeds of at least 25 Mbps. Most households will have no alternative to the combined company's high-speed broadband pipe. Some will have one alternative at best. As companies such as DISH innovate and invest to meet the growing consumer appetite for broadband-reliant video products and services, this chokehold over the broadband pipe would stifle future video competition and innovation, all to the detriment of consumers."

p. 39

"In sum, cable and fiber-based broadband are the only types of Internet access service capable of offering speeds of at least 25 Mbps consistently. Thus, if the merger is approved, the combined Comcast/TWC entity would not only pass almost two thirds of U.S. households, but would control *50 percent* of the high-speed, high capacity U.S. residential broadband connections. Even at a more conservative threshold of 10 Mbps or faster as the relevant product market for broadband, Comcast/TWC would command more than *42 percent* of the market. And, even at the abysmally low 3 Mbps cut-off proposed by Applicants, the merger would still result in the combined company controlling *35.5 percent* of the market, which by itself would be sufficient to raise serious competitive concerns."

PROGRAMMING FORECLOSURE:

p. 4

"Comcast will have a greater incentive to foreclose rivals from its NBCU programming. And, even more concerning, this transaction would remove a key rationale for the Commission's approval of the NBCU acquisition. To defend that acquisition, Comcast argued that it would not foreclose its competitors from popular NBC programming because it would have to share the spoils with other operators—primarily with none other than TWC. The proposed merger would allow Comcast to pocket TWC's profits, too, and create the incentive that Comcast itself said it lacked without controlling TWC."

p. 83

"In particular, the combined Comcast/TWC—with its much greater scale than any other pay-TV provider—would also possess even more leverage than the two companies have now to: (a) acquire the most robust OTT distribution rights from third-party programmers in order to increase the appeal of its own video platform; and (b) restrict the ability of third-party programmers to grant online rights to competing OTT services, like DISH's."

p. 85

"The combined Comcast/TWC's leverage over programmers may squeeze their margins, as Comcast/TWC uses its control over access to almost one-third of the nation's MVPD households to push down the prices it pays for programming. This is a standard monopsony effect."

About DISH

DISH Network Corporation (NASDAQ: DISH), through its subsidiaries, provides approximately 14.053 million pay-TV subscribers, as of June 30, 2014, with the highest quality programming and technology with the most choices at the best value. Subscribers enjoy a high definition line-up with more than 200 national HD channels, the most international channels, and award-winning HD and DVR technology. DISH Network Corporation is a Fortune 250 company. Visit www.dish.com.

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