

Teaching Case

When a No is not a No: Acquisition of Time Warner Cable

by

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When Comcast the number 1 cable TV distribution company terminated its proposed merger with number 2 cable TV company Time Warner Cable [TWC] in April 2015, question was what next for TWC.

But interestingly when John Malone a cable TV industry pioneer and key investor in Charter Communications, -the number 4 cable TV company that had made a failed bid for TWC in 2013 -was asked in an investor's conference in 2014, whether "Charter would look to buy TWC if its Comcast deal fell apart, and Mr. Malone said emphatically, "yes!" Charter has big ambitions"¹ So Charter might make another bid for TWC in 2015. Should it revive its failed bid from 2013, or change its bid and how?

As Tom Rutledge CEO of Charter mulls over making another bid for TWC he faces questions about how the acquisition will add value. Will it enhance scale and thus help cost efficiencies of the combined company? Will the new company be a stronger competitor in cable TV industry compared to either TWC or Charter standing alone? Will the company bring higher returns to shareholders? Will it offer better value to current and new subscribers?

INDUSTRY BACKGROUND

Cable TV Industry. Companies in the cable TV industry provided video programming, high-speed internet and voice-over-internet [VOIP] telephone services on a subscription basis. Total revenues for the industry were \$107.6 billion in 2016. Industry revenues grew at 2.9% per year between 2011 and 2016, and annual growth was expected to be 1.2% during 2016-2021. Residential subscriptions produced 63.1% of industry revenues and business customers 36.9% of revenues²

Major cable TV companies were Comcast Corporation, Time Warner Cable, Cox Enterprises, Charter Communications, and Cablevision Systems. Each provided a variety of bundled packages of television programming, pay-per-view movies, high-speed internet and digital phone services. Television programming includes programming from broadcast television networks like NBC, ABC, CBS and Fox and non-premium cable

channels networks like TBS, TCM and USA. Premium channel networks like HBO and Starz were available for additional subscription charges. Main sources of revenue for cable TV companies were subscription fees, and advertising. In 2015, Comcast was No. 1 company with a 40% market share, serving 22.3 million residential video customers and 23.3 million high-speed internet customers. Time Warner Cable was second with 16.1 million residential video customers and a 23.5% market share. Cox Enterprises, a privately held company was third largest with a 10.3% market share and over 6 million residential customers. Charter Communications was fourth with a 9.7% market share and about 6 million customers.

Cable TV industry in 2010 was mature with revenues projected to increase 1.0-1.6% annually between 2016-2021. Consolidation was a hallmark of this industry with number of establishments decreasing from over 9500 in 2011 to little over 7200 in 2016, and expected to be around 6200 by 2021. The top five cable providers earned 84.1% of industry revenue. Purchasing costs for programming and equipment accounted for 27.7% of the industry costs, and in 2016 industry average profits in earnings before interest and taxes were 14.1% of revenue.³ Companies were under constant pressure to provide upgrades in quality, speed and reliability of services and the associated investments in high speed internet and other new technologies tended to increase costs of operators.

Cost structure and profits varied between companies, but overall, while the industry was capital intensive, cost of customer service came down with growth in subscribers. The strategy of bundling core video, data, and voice services also helped profitability because it would spread costs of distribution infrastructure over multiple services. But customers were constantly demanding lower priced bundles of services.

Cable TV companies faced competition on multiple fronts. Other cable television companies and satellite television companies were competing for customers. At the same time new competitors were emerging from among telecommunications companies like AT&T and Verizon that used to provide only wireless telephone services but were now providing bundled phone, video and voice services for mobile devices. Over-the-top [OTT] or online streaming companies like Netflix and Amazon were another group of new competitors. Besides, customers increasingly preferred receiving their video and voice services on mobile devices. Content in terms of television and movie programming was provided by broadcast TV companies like ABC, Fox and CBS, and by cable network and movie production companies like Walt Disney, Viacom and 21st Century Fox. NBC Universal which was owned by the cable TV company Comcast also produced films, and programming for broadcast television and cable. Online streaming companies like Netflix, Amazon, Google [through YouTube] and Hulu also provided video content through internet. While they used the broadband internet connections provided by cable TV companies for delivering programs to customers, they were simultaneously partial substitutes to cable television distributors like Comcast and Charter. Previously customers had to subscribe to cable TV channels to receive programming. Now the OTT

companies streamed entertainment content both in original programming and in retransmitted television and movie programs on online and mobile devices. Therefore, customers could reduce or cancel their cable TV subscriptions and depend solely on broadband internet connections and receive news content from online websites.

Buyers for cable television industry were residential and commercial subscribers to cable TV and internet and digital phone services. Companies that purchased advertising on these media were also buyers for cable companies. But residential subscribers constituted the principal group of customers for cable and satellite television companies.

In 2016, there were around 98.3 million subscriptions to broadcast TV cable company services, a decrease from 104 million subscriptions in 2010. High-speed internet service, however, had been a high-growth niche. Number of cable TV subscriptions had fallen 1.1% annually between 2011 and 2016, while broadband internet connections rose at a robust 11.2% during the same period. Cable TV demand had dropped partly because audiences were shifting to mobile devices⁴.

Demand for cable TV services depended on economic conditions and demographics. Demographic trends did not favor cable companies because younger audiences preferred to watch on mobile devices like smartphones, tablets and laptops and hence demand was shifting away from cable TV towards high speed wired internet connections. Changes in technology of wired and wireless internet connections also was driving demand away from cable TV services to mobile devices. Currently the technology of wireless connections that powered mobile devices did not equal the speed of wired connections but, as wireless providers upgraded to the next generation networks, this gap was likely to diminish, therefore hurting long-term growth of wired broadband internet.

Consumer choices between different cable TV providers depended on several variables: pricing or cost of subscription relative to the programming and services available, convenience in always-on service, ability to view programming anywhere, speed of connection network, and quality of video and voice. These factors also influenced customer decisions to switch to online streaming providers. Premium packages that bundled cable TV, high-speed internet, and VOIP services offered at higher subscription prices were more popular, and premium packages were expected to contribute a greater percentage of cable TV companies' revenues in future.

Regulation impacted this industry significantly. Federal Communications Commission [FCC] and other federal, state and local agencies monitored companies to prevent industry concentration, because fewer providers could mean higher prices and fewer service choices to customers. In 2015 FCC imposed the net neutrality rule which required that "all internet traffic should be treated equally regardless of what it is, where it comes from, and where it is going."⁵ Internet companies like Google, Amazon and Netflix supported this principle, while internet service providers including cable and

satellite TV and telecommunications companies protested this would slow investment in internet connections infrastructure because if companies were barred from charging higher fees/ prices to users of high network capacity, they could not recoup cost of investments. FCC also announced that it intended to classify cable TV companies as ‘public utilities’ and hence they would be barred from offering internet ‘fast lanes’ at a higher cost. There was intense opposition to this rule. Further, in 2014 and 2015 regulatory agencies frowned upon combinations among the various industry players like cable TV, satellite TV, movie and television production, and telecommunications companies and discouraged merger and acquisition activity.

Table 1: Cable TV Companies’ Cost Structure in 2015

Category	Average for Cable Companies [in per cent]	Average for All Information Sector Companies [in per cent]
Profit	14.1	16.4
Wages	16.5	21.2
Purchases	22.2	24.5
Depreciation	13.4	7.5
Marketing	8.4	4.8
Rent and Utilities	8.1	4.9
Other	17.3	20.7

Source: Nick Petrillo: *Cable Providers in the US*; IBIS World Industry Reports 2015. P. 22

TABLE 2: Cable TV Industry Statistics

Year	Revenue [\$m]	Per cent change-over previous-year	Industry value added [\$m]	Per cent change over previous year	Number of Enterprises	Per cent change over previous year	Cable TV customers [million]	Per cent change over previous year
2011	100,700.6	6.9	47,746.9	9.1	924	-8.4	104.0	-0.5
2012	106,519.6	5.8	48,257.9	1.1	873	-5.5	103.2	-0.8
2013	108,162.3	1.5	48,873.4	1.3	863	-1.1	102.7	-0.5
2014	113,332.4	4.8	50,373.1	3.1	849	-1.6	101.7	-1.0

2015	115,914.8	2.3	51,105.0	1.5	845	-0.5	100.8	-0.9
2016	119,890.2	3.4	52,384.3	2.5	830	-1.8	99.8	-1.0
2017	123,005.8	2.6	53,664.9	2.4	828	-0.2	98.7	-1.1
2018	126,222.5	2.6	54,987.8	2.5	813	-1.8	97.9	-0.8
2019	129,587.9	2.7	56,310.8	2.4	813	0.0	97.0	-0.9
2020	133,080.5	2.7	57,445.9	2.0	800	-1.6	96.1	-0.9

Source: [Nick Petrillo: *Cable Providers in the US*; IBIS World Industry Reports 2015.

MAJOR PLAYERS IN CABLE TELEVISION.

Comcast Corporation. Comcast started as a small company in Tupelo, Mississippi in 1963 with 12,000 subscribers, and transformed itself into a Fortune 50 diversified cable and media corporation over a half century. It was incorporated in its present form in 2001. It was the largest of the cable TV companies with about 27.7 million subscriber relationships in 2016 and operated in 39 states. Subscriber relationships referred to residential and business customers that subscribed to at least one of its cable services. Its broadband internet service had about 23 million subscribers. Comcast is a diversified corporation that also owns NBC Universal, which includes the NBC TV network, cable networks like E! MSNBC and CNBC, the movie-maker Universal Studios, and Universal theme parks. Comcast's wide-ranging businesses in cable, broadcast TV, and filmed entertainment have been assembled through series of small and large acquisitions spanning several decades. Comcast made a multi-billion dollar purchase of AT&T Broadband cable assets over 2001 and 2002 and this made it the No.1 cable company with 22 million customers. Another major acquisition was the purchase of 51% ownership of NBC Universal from General Electric in 2011. In 2013, Comcast purchased the remaining 49% from GE. About 60% of company revenue comes from the cable service division. Its cable segment produced \$46.7 billion revenue with an operating margin of 40.8% in 2015.

Customers choose from a variety of offerings ranging from slimmed down lower price service packages with 20 channels to packages offering 300 channels and on-demand video service. It also offers the X1 service, a cloud-based video platform that makes available live video, video on-demand, and digital video recording. Recording on the X1 set-top box means customers can store more recording. This has been a popular service and company is adding more subscribers. Customer data on this platform also helps company target advertising. Its broadband internet services vary in speeds across regions, and speeds in a few selected markets reach 505Mbps. It is also rolling out newer cable modems offering higher speeds of at least 10Mbps on a broader scale. Its voice services include country wide unlimited calling and other services. Growth of upgraded video packages has been crucial in offsetting decline in subscriber base. Company has been

criticized that inadequate staffing and employee training leads to customer complaints. This is a common criticism against the industry.

Company's overall cable revenue grew 5.7% annually during the five years 2011-2015, with video revenue increasing 3.6% in 2014-2015, and high-speed internet revenue increasing 10.2% during the same period ^{6,7}. Programming costs accounted for 36.9% of its total operating costs in 2013 ⁸. Table 3 highlights financial performance of Comcast Corporation's cable TV segment. [See Exhibit 1 for additional financial information on Comcast.]

Table 3: Comcast Corporation: Financial Performance of Cable TV operations

Year	Revenue (\$ million)	%change over previous year	Operating income (\$ million)	% change over previous year
2011	37,226.0	5.3	8893.0	10.2
2012	39,604.0	6.4	9850.0	10.8
2013	41,836.0	5.6	10,811.0	9.8
2014	44,140.0	5.5	11,690.0	8.1
2015	46,656.0	5.7	12,825.0	9.7

Source: Nick Petrillo: *Cable Providers in the US*; IBIS World Industry Reports 2015.

Time Warner Cable. Time Warner Cable [TWC] was a provider of video, high speed data and voice services, and digital video recorder services. TWC separated from its parent Time Warner Inc. in 2008. Sixty percent of its customers subscribed to all services. Company provided data and voice services to residential and business customers. Like its peers, it offered several packages and tiers of services with different prices tailored to different tastes, such as sports or movie enthusiasts. It added specialty tiers of genre based programming such as Sports Pass and international programming. Customers could watch video-on-demand programming through its TWC TV app, on mobile devices like laptops, Apple iOS and Android smartphones and tablets⁹ Residential customers account for about 80% of its revenues. Its cable systems were located mainly in the five geographic areas of New York, Carolinas, Midwest, Southern California and Texas. In technology, company employed a hybrid fiber coaxial cable [HFC] network and in 2013 it also deployed the switched digital video [SDV] technology to expand its network capacity. Company's residential services also included security and home management services, and business services included networking and transport services and enterprise-class, cloud-enabled hosting, managed applications and services. To offset dwindling residential cable subscriptions, TWC attempted to gain and retain customers by extending services to mobile and non-TV devices like Xbox¹⁰. In 2011 it started offering select programming in 3D. At the end of 2014 TWC served about 15.9 million residential and business services customers.

Time Warner Cable also grew through acquisitions, notable being acquisition of Adelphia jointly with Comcast in 2007, which added 3.3. million cable customers. More recently TWC acquired cable providers Insight Communications, and DukeNet in 2013 further

increasing its customer base. Company had been criticized for ineffective operations management and aggressively marketing for but not supporting new subscribers with adequate customer service. Company's cable revenues increased 4.9% annually during 2011-2015 reaching \$23.9 billion in 2015. Company enjoyed healthy operating margin of 20.7% in 2013. Programming costs at \$4.7 billion out of total operating costs of \$10.3 billion accounted for 46% of its total operating costs that year ¹¹. Infrastructure investments and marketing to customers upgrades to expensive digital services helped profitability. Profit was expected to be 20.9% revenues in 2015.¹² Charter Communications acquired TWC in 2016. After that, the combined company's services to residential customers were being offered under the Charter Spectrum brand name. Table 4 below provides highlights of financial performance of Time Warner Cable's cable business until 2015. [See Exhibit 2 for more financial information for TWC.]

Table 4: Financial Performance of Time Warner Cable's cable television operations

Year	Revenue (\$ million)	%change over previous year	Operating income (\$ million)	% change over previous year
2011	19,675.0	4.3	4069.0	10.3
2012	21,386.0	8.7	4445.0	9.2
2013	22,120.0	3.4	4580.0	3.0
2014	22,812.0	3.1	4632.0	1.1
2015	23,926.0	4.9	4907.0	5.9

Source; Nick Petrillo: *Cable Providers in the US*; IBIS World Industry Reports 2015.

Charter Communications. Charter began operations as a very small company in 1993 and grew through numerous acquisitions and alliances with other companies over the ensuing decades. Aggressive acquisitions burdened the company with excessive debt, and in early 2009, a year of deep recession, company filed for bankruptcy. Working under a pre-arranged restructuring plan, company eliminated \$8 billion dollars in debt and reemerged out of bankruptcy at the end of 2009. A recent acquisition by the company was Optimum West from Cablevision. This company offered cable television, high-speed internet, telephone services and other advanced video services like HDTV video-on demand. It had 5.4 million customers in 2013 and 6.2 million residential and business customers in 2015. It offered choices in bundles of services and at least 60% customers subscribed to bundles. Similar to other cable companies, for Charter also subscriptions to internet and phone services had increased while video subscriptions dwindled. Its main markets were in Midwest, West, and New England. Company made substantial

investments in infrastructure. It upgraded its network to the DOCSIS 3.0 high-speed data capability standard, which was put in place for about 95% of the homes it passed. This allowed internet speeds up to 100Mbps. ¹³ Its operating margins were 11.1% in 2013, and 9.9% in 2015 and thus were lower than that of either Comcast or TWC. Programming costs was the major cost item at 40% of operating costs. They were \$2.1 billion out of a total operating cost of \$5.3 billion in 2013. ¹⁴ Like most cable companies Charter did not rank high in surveys on customer satisfaction, though it was rated higher than TWC.

It pursued TWC in 2013 but was rebuffed when Comcast made a friendly acquisition offer to acquire TWC. Charter ended its bid for TWC, but as part of that planned Comcast acquisition it was agreed that if the Comcast deal were completed, Charter would gain 1.4 million subscribers that would be divested by TWC to appease anticompetitive concerns of regulatory agencies. Also Comcast and Charter would swap about 1.6 million customers to achieve more geographically contiguous markets for each company. Around the same time, Charter entered into an agreement to acquire Bright House Networks to add 2 million customers. In 2015 when Comcast terminated its deal with TWC, Charter made a successful bid to acquire TWC. Charter expanded in size significantly in 2016 with the completion of TWC and Bright House Networks to become No. 2 in the cable television industry. Table 5 below shows financial performance of Charter's cable business during 2011-2015. [See Exhibit 3 for additional financial information for Charter.]

Table 5: Financial Performance of Charter Communications' cable television operations

Year	Revenue (\$ million)	% change over previous year	Operating income (\$ million)	% change over previous year
2011	7204.0	2.1	1041.0	1.70
2012	7504.0	4.2	915.0	-12.10
2013	8155.0	8.7	909.0	-0.68
2014	9108.0	11.7	971.0	6.80
2015	9713.0	6.6	961.0	-1.00

Source; Nick Petrillo: *Cable Providers in the US*; IBIS World Industry Reports 2015.

ACQUISITION ROUNDS

Round 1: Charter Bids for Time Warner Cable. In June 2013 Charter Communications made public its bid to acquire the number 2 cable TV company Time Warner Cable [TWC]. At this time Charter was number 4 in market share.

TWC and the other cable TV companies' margins had been decreasing because of increasing programming fees imposed by media companies like CBS and Fox. Further, TWC had been weak performer, losing residential cable subscribers and also adding fewer broadband subscribers during the previous two years. Company responded saying it was working on improving customer service and had established dedicated "retention centers" to field customer calls. Also, their new video products would improve service.^{15,16} Regarding Charter, Liberty Media and its key investor John Malone, had acquired a 27% stake in Charter earlier during 2013, and analysts felt Liberty Media intended to use Charter to make more deals and achieve consolidation in the US cable industry. Evidence for this plan lay in the fact that a sister company of Liberty Media, Liberty Global had acquired several cable companies in Europe over the last several years and had become number 1 cable TV company in Europe. Charter made the offer public after TWC rejected two earlier offers that were made informally by Charter. While acknowledging that TWC as well as cable industry as a whole could benefit from consolidation, TWC said it would participate only if a merger offer were in the best interests of its shareholders.

Charter's logic in making the offer was that consolidation and scale were necessary "to combat rising programming costs and capitalize on the business services opportunity.... to operate well."¹⁷ Charter said that consolidation and scale would increase efficiency through reduced overhead costs and infrastructure consolidation. Also the combined company would have enhanced bargaining power in future *vis a vis* broadcast and cable networks like Fox and CBS. Importantly, union of TWC and Charter would not hurt consumer interests because subscribers of the two companies did not overlap geographically.

Yet several analysts were of the view that Charter with four million subscribers and enterprise value of about \$25 billion including a debt load of \$14 billion, was less than half the size of TWC with its 12 million subscribers and an enterprise value of \$54 billion including a debt of \$25 billion. A counter point to this criticism was that TWC was a weak company because their performance in the previous year was lackluster and company had run into numerous customer complaints and was losing both cable and internet subscribers. In addition, TWC top management had paid more attention to maximizing short-term profits than to making investments necessary to keep the company competitive. Management's decisions had recently eroded the technological edge company once had in high-speed internet¹⁸

Charter initially offered TWC a stock price below \$130, and TWC stock was trading between \$110-120 at that time. But by December 2013 they were willing to offer a price in the low-\$130s, for a total price of \$37.4 billion. TWC rejected this third and public

offer saying it was too low and would also involve too much risk for TWC shareholders. Charter's existing debt of \$14 billion combined with TWC's own debt of \$25 billion would lead to excessive debt. Besides, Charter was planning to raise an additional \$25 billion in debt to finance the transaction. Resulting debt load would be too much for shareholders of the combined company. TWC would be open to an "offer that's better than the value we can create on our own".¹⁹

During this time Comcast had been mulling whether and how to acquire TWC for itself. As it turned out, TWC approached Comcast in late 2013 inviting an acquisition bid by the company to counter Charter's bid.²⁰ Comcast with a subscriber base of 22 million and a market capitalization of \$130 billion, could much more easily afford the combination compared to the smaller company Charter. But the proposed combination of number 1 and number 2 cable companies would attract intense regulatory scrutiny. Given that, the question was whether Comcast would be seriously interested. Some analysts argued that Comcast may not like Charter acquiring TWC, because with nearly 16 million customers, the new company would become a formidable competitor. There were also rumors that there could be a joint Charter-Comcast bid for TWC. In such a deal, Comcast could take control of TWC customers in the New York City area, and Charter could take over TWC customers in the Los Angeles area, and that may ease approval by regulatory agencies. Another wrinkle in the events was that, in a hostile move towards TWC management, Charter announced in February 2014 that they would nominate their own slate of directors to TWC board, presumably because these newly elected directors would be more receptive to Charter's bid.

Round 2: Comcast Bids for Time Warner Cable. Two days after Charter's announcement, Comcast in a surprise move announced its friendly acquisition offer to TWC for a \$45.2 billion price.²¹ In 2013, Comcast had 21.7 million subscribers \$64.7 billion revenue, and market capitalization of \$143 billion. TWC had 11.4 million subscribers, \$22.1 billion in revenue and market capitalization of \$38 billion.²² Comcast proposed to divest 3 million of its subscribers to keep its market share below FCC's 30% cap and avoid regulatory challenges. Comcast claimed that geographically the two companies' subscriber base did not overlap and hence a merger would not reduce consumer choice. Additionally, TWC subscribers would benefit from Comcast's more advanced video technologies like X1 Entertainment Operating System, VOD platform, plus higher internet speeds and more streaming choices available on Xfinity TV.com. TWC also stated that this was a compelling financial and strategic transaction for their shareholders.

In the Comcast deal TWC shareholders would receive \$158.82 a share, a much higher price than Charter's latest offer of \$132.50. This appeared to put an end to the eight-month battle by Charter to acquire TWC.

Comcast share price decreased 3% after the announcement, suggesting that investors were wary. One reason to worry was that there were formidable hurdles for regulatory

approval. Comcast's ownership of NBC the broadcast TV network, as well as the content company Universal film studios would be of concern for Department of Justice and Federal Communications Commission [FCC]. Investors also read absence of the usual 3% breakup fee in the bid as a signal that both companies saw significant hurdles²³. Post-merger Comcast would dominate 30% of cable including the top urban cable markets and control 40% of the high-growth high-speed internet market. It should be noted that Satellite TV companies like DirecTV and Dish could not offer high speed internet connections yet and the wireless telecom companies which provided mobile internet connections could not match the speeds of wired broadband connections.

The news that a mega cable provider might emerge from this deal worried cable networks and broadcast TV companies like Discovery, Scripps, AMC and CBS. Fees they charged cable providers for carrying their programs had risen sharply recently and companies like TWC often had to give in to the networks' demands. But after this merger, the content companies might no longer win in negotiations with cable TV companies. Analysts contended that Comcast, as owner of NBC and Universal, would be less inclined to view content companies as adversaries. Local television stations that received fees from cable providers also saw themselves to be at a disadvantage in negotiating with a giant like the new Comcast. Besides, this union could hurt rival cable providers like Cablevision, and Charter. Hence the smaller companies would try to bulk up against the new mega provider, triggering a spate of new consolidations all round ²⁴.

If merger was completed, Comcast with 30 million subscribers would be number 1 among cable and satellite TV distributors, followed by DirecTV with 20 million, Dish with 14 million, and AT&T and Verizon each with 5 million. Charter and Cox would have 4 million subscribers each. As noted earlier satellite TV providers did not offer wired broadband internet and hence would not compete with Comcast in that market. Congressional members were gearing up to criticize the deal as anticompetitive and overall it was unclear how regulators would evaluate the proposed merger ²⁵. Critics alleged innovation and customer service would suffer when large companies dominate key market segments. Coincidentally after the announcement Netflix entered into a fee agreement with Comcast reportedly in multimillion dollars, to ensure reliable cable distribution access to its programming. Such fees would not only raise costs for streaming companies and their customers, but more importantly they would over time stifle streaming innovations because such high fees would be unaffordable for small startups.

Michael Copp, acting chairman of FCC was quoted as saying: "There is a strong case to be made why this merger shouldn't be approved... It is just so much power for one company to amass, and it is not just cable. They're a broadband company, they're a broadcast company, they're new media, they're old media, they're telecom, they're everything"²⁶. Review by federal agencies therefore was likely to focus on access to high speed internet and less on access to general cable services. Critics noted that absence of overlap in cable between TWC and Comcast was a result of government-granted

geographic monopolies in the highly regulated cable TV industry and not voluntary actions of the companies involved. In the unregulated broadband internet services market, large players could gain pricing leverage with other players in the industry and restrict customer access in variety of ways. Comcast would control 40% of internet connections in general, but looking at just the high-speed, i.e., 25 mbps [megabits per second] or higher mbps connections, post-merger Comcast would have a share of at least 50%. In fact these high-speed connections are the backbone of mobile consumption of media, and the future of internet. In a few geographic areas Comcast would practically be the only provider of these services because satellite TV or telecom companies did not match Comcast speeds as of 2015. Most mobile broadband service providers transmitted data only up to 8 mbps, a speed well below that of the average cable modem. Competition from Verizon's powerful fiber optic cable existed only in 15 per cent of the geographic markets, and Google Fiber was available in just three cities. Then, as customers steadily switched to mobile devices for news and entertainment, the new Comcast would have unprecedented control of high-speed internet segment and could raise broadband prices and limit programming choices ²⁷.

Arguments supporting merger countered that this combination would not be anticompetitive because cable television industry should be defined more broadly than just cable, and should include the satellite TV, telecommunications companies supporting mobile devices and the OTT media companies. Combining Comcast and TWC would give cable providers a fighting chance to withstand competitive onslaught from all these companies. While some contended that cable and satellite subscriber costs had risen over the past few years and concentration would make things worse, this was an invalid argument. Subscriber costs increased mainly due to content providers like CBS and Time Warner [the cable content company] raising prices to cable companies like TWC. A combined Comcast-TWC would be a stronger negotiator with networks and better at holding down customer costs ²⁸. Also given its record as a leading innovator Comcast would offer more advanced technology to all cable subscribers. Comcast in its application with FCC claimed that merger would benefit public because Comcast would significantly upgrade cable systems and invest in increasing its broadband speeds.

Comcast also reached a deal with Charter in which the latter would buy 3 million cable customers that Comcast planned to divest after completion of the merger with TWC ²⁹. US House and Senate committees held hearings in May 2014 to investigate impacts of the deal on industry and customers. Consumer groups, satellite TV, and online media companies expressed opposition to FCC, saying the post-merger company would have undue leverage in the cable market, particularly in the high-growth broadband market. Meantime other merger proposals were announced later in 2014, prompting criticism that approval of Comcast-TWC merger would cause a flurry of consolidation moves in media related industries and hurt consumers. For example, in May 2014 AT&T and satellite television company DirecTV announced an agreement for a \$48.5 billion for a friendly take-over by AT&T and the acquisition was completed a year later in 2015. In July 21st

Century Fox made public its \$80billion dollar offer for Time Warner the cable content network and film production company. This offer was later withdrawn by Fox.

Review by FCC and some state agencies continued well into late 2014, and opposition mounted towards the Comcast-TWC and other merger proposals among media companies, consumer groups, and labor unions. Fluctuating share prices of Comcast and TWC during this period reflected investors' nervousness that the merger might be ultimately blocked. Tom Wheeler then chairman of FCC said in a speech in September 2014 that there was little choice for majority of Americans who wanted high-speed internet in their homes, adding that "three quarters of American homes have no competitive choice for the essential infrastructure of 21st century economics and democracy." Market nervousness increased further when President Obama said in an October town hall meeting that he was 'unequivocally committed' to net neutrality and against 'paid prioritization' or internet fast lanes ³⁰ Still the hope was that free-market oriented Republican Congress might not bar the merger. That raised the question of whether FCC would outright reject the deal on account of potential threat to net neutrality, or make approval contingent on TWC and Comcast agreeing to a net neutrality condition even though courts had already rejected that rule. If the net neutrality rule were imposed only on this particular deal, then Comcast could argue that their merger plans faced a 'material adverse change,' in which case it would not be required to complete the deal. If Comcast could meet the tough standards set for proving 'material adverse change', they could terminate the agreement without penalty ³¹.

A year after it was announced, the proposal was still being scrutinized by regulatory agencies, and analysts' impression was that FCC and Justice Department were taking a dim view of Comcast's control of the cable and internet markets after merger, and might be proposing tough new rules for ensuring internet openness. Comcast reiterated that while it had a strong interest in the merger, "we have a very broad right to walk away from the transaction" if burdensome conditions were imposed for approval ³². In April 2015, FCC recommended 'hearing designation order,' an order that would put the merger proposal in front of an administrative law judge. Such an order typically signals that FCC was not persuaded the merger would serve public interest. Past history in other merger cases, such a recommendation to be a deal-killer, even though in principle the two companies have a right to make their case to the judge at a hearing. Most media companies had privately voiced their strong opposition to the FCC and other regulators, and thus they would be pleased if the deal did not go through ³³

A few days later in April 2015 Comcast terminated its deal to acquire Time Warner Cable. ^{34, 35}

Why did Comcast give up on the deal? Would Charter bid for Time Warner Cable now that Comcast has withdrawn? If yes, what would be the bid by Charter?

FOOTNOTES

¹ Shalini Ramachandran, Joe Flint and Brent Kendall, FCC Staff Recommends Hearing on Comcast-Time Warner Cable Merger. *Wall Street Journal* April 23, 2015 , <https://www.wsj.com/articles/fcc-staff-recommends-hearing-on-comcast-time-warner-cable-merger-1429751499>

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