August 22, 2014

Comments of Brandon Arnold
Executive Vice President, National Taxpayers Union
To the Federal Communications Commission
On the Proposed Merger between Comcast and Time Warner Cable

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: MB Docket Number 14-57

Dear Chairman and Commissioners:

On behalf of the 362,000 members of National Taxpayers Union (NTU), I write to express our views regarding the proposed merger of Comcast Corporation and Time Warner Cable Inc. (TWC). NTU is the nation's oldest taxpayer advocate organization. We are a nonprofit, nonpartisan citizen group that works for lower taxes, limited government, and free enterprise.

For nearly 20 years NTU has reached out to Members of the Commission on a number of telecommunications issues affecting taxpayer rights and consumer freedom of choice – two principles that our organization's members have sought to protect and expand. For example, NTU has long championed a streamlined competitive auction process for spectrum and was a founding member of the Coalition for Fair Spectrum Auctions. NTU has also submitted comments to the FCC on behalf of taxpayers during consideration of prior merger applications by XM and Sirius, NBC and Comcast, and AT&T and T-Mobile.

Given the size and scope of this proposed merger – a $45 billion acquisition – it is important that the interests of taxpayers and the general public are considered and protected. In examining the transaction, NTU has paid particular attention to any potential negative consequences that it could have on downstream consumers. After careful review of this matter, we perceive no detrimental effects to consumers and taxpayers.

There are several factors that contributed to our findings. First and foremost, Comcast and TWC do not directly compete with one another in any local markets, meaning the merger would not result in a reduction in consumer choice among multichannel video programming distributors (MVPD) or broadband Internet providers. Indeed, most consumers currently have one and only one option when it comes to cable providers. The vast majority of consumers are provided with multiple options for paid television services from other MVPDs such as satellite and fiber optic providers. Additionally, these services are seeing a surge in competition from online television content. The MVPD marketplace is dynamic and competitive and would continue to be so after the merger.

In terms of broadband Internet offerings, the marketplace is growing and improving as consumers are increasingly benefiting from several options for high-speed service including cable, digital subscriber line, wireless, and fiber offerings. As new technologies are developed and more investment is made in infrastructure, we anticipate this marketplace will evolve with many salutary effects on the economy. While the development of more competitive telecommunications markets is an important consideration for policymakers and regulators, it should be noted again that this proposed transaction would have no effect on the number of broadband options available to consumers.

Secondly, NTU has examined the potential effects that increased consolidation would have on consumers and related businesses. Per the terms of the agreement, Comcast would acquire 11 million TWC customers and subsequently divest nearly four million customers to other providers. The net result would bring Comcast's customer base from approximately 22 million to 29 million, while ensuring that Comcast's total share of subscribers remains below 30 percent of the total MVPD market. At this level of market share, it is unlikely that downstream consumers or upstream businesses – such as content providers – would be significantly disadvantaged by any increased bargaining power of Comcast-TWC.

NTU would also encourage Commissioners to consider other forms of upside potential in this merger. Current TWC customers in particular stand to gain. As of now, 100 percent of Comcast's footprint offers all-digital service, while the same is true for just 17 percent of TWC's. Comcast's strong emphasis on providing digital services to its customer base will likely accrue first to its new subscribers following the merger.

In reviewing the proposed merger, NTU urges the FCC to exercise thoroughness, but also restraint. It is important for the Commission to analyze the transaction through a "public interest" lens so as to carefully examine and balance the potential for consumer harm and benefit. At the same time, it should not exceed its statutory authority or use the review process as an opportunity to enact unrelated policy changes.

Of particular concern to taxpayers is the potential for “backdoor regulation” in which the FCC has pushed prior applicants into “voluntary” agreements as a condition for approval. Such agreements are troubling for several reasons: they often exceed the regulatory authority granted to FCC by Congress, they occur without the open rulemaking process that permits public comment, and they constitute an inappropriate use of government power. The FCC should not use this merger application as an opportunity to extract unrelated concessions from the applicants. Any such concessions should be directly related to the alleviation of merger-related harms – should the FCC determine that any such harm would result from this transaction.

The proposed merger for Comcast and TWC offers benefits for consumers, the economy, and the nation’s telecommunications infrastructure. Moreover, it does not pose a potential fiscal detriment to taxpayers or reduction in marketplace competition that would recommend the merger’s disapproval. For these reasons, NTU encourages the FCC to approve of this transaction in a timely manner.

Thank you for your consideration of and attention to our remarks.

Sincerely,

Brandon Arnold
Executive Vice President