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Essay 1: Charter to Merge with Time Warner and Bright House

On May 26, cable providers Charter Communications, Inc. and Time Warner Cable Inc. announced a \$56.7 billion merger. Charter has also announced that it acquired Bright House Networks (owned by the Advance/Newhouse Partnership) for \$10.4 billion.¹ If approved, the company — dubbed New Charter — will become the second largest broadband and third largest cable provider in the U.S. with 19.4 million and 17.3 million subscribers for services respectively.¹

Charter, TWC, and the Advance/Newhouse Partnership filed applications with the FCC on June 25 seeking approval to transfer control of all associated FCC-issued licenses and authorizations in connection with the merger.² The proposed merger is drawing a lot of attention and a bit of criticism — most notably — because of the recent scrapped merger between Comcast Corporation and TWC. The merger would have propelled Comcast into an unreachable 30 million managed subscribers while netting an estimated \$1.5 billion in operating efficiencies.³ Recent news coverage in Multichannel, Forbes, MediaPost, AdAge and Variety has highlighted public comment on the merger.

The stable of recognizable names that have offered comment piqued my curiosity and I was compelled to better understand the details of this merger as well as the context of the regulatory environment and technology landscape that has created this opportunity.

After a series of failed cable system franchise expansions in the 1970s and 1980s, Congress passed the Cable Communications Policy Act of 1984. This legislation deregulated cable service pricing, shifted regulation to municipalities, codified the previously unstable franchise process and introduced the

¹ Brodtkin, Jon. *Charter to buy Time Warner Cable, become second biggest broadband provider*. *Ars Technica*, 26 May 2015. Web. 17 Oct. 2015. <<http://arstechnica.com/business/2015/05/charter-to-buy-time-warner-cable-become-second-biggest-broadband-provider/>>.

² N.p. *FCC Transactions*. Federal Communications Commission, N.d. Web. 17 Oct. 2015. <<https://www.fcc.gov/transaction/charter-twc-bhn>>.

³ N.p. *Time Warner Cable to merge with Comcast Corporation to create a world-class technology and media company*. Comcast Corporation, 13 Feb. 2014. Web. 17 Oct. 2015. <<http://corporate.comcast.com/news-information/news-feed/time-warner-cable-to-merge-with-comcast-corporation>>.

concept of “must-carry” for local access and local broadcast networks.⁴ Eight years later, the Communications Act of 1996 made a distinction between “telecommunications services” and “information services,” which removed common carrier restrictions for cable systems.⁵ As intended, the act created a fast-moving, competitive environment that encouraged consolidation of like business functions, innovative content delivery systems, and infrastructure upgrades (e.g. hybrid fibre-coax systems).

Today, the ubiquity of high-speed internet access made possible by these infrastructure upgrades means that access to OTT services like Netflix, Hulu, Amazon Prime and YouTube is seamless. On April 7 of this year, HBO announced the launch of OTT service HBO Now.⁶ Colloquially, the millennial generation is cutting the cord; cable subscriptions are down. Competition for viewers between programming, channels, and platforms is fierce.

For Charter, the opportunity is clear. Though Charter is the fourth-largest cable system in the U.S., it does not even rank in the top 10 for broadband. The acquisition of TWC will establish New Charter as the second-largest broadband provider behind Comcast. In April, Comcast attempted to acquire TWC. With pending antitrust recommendations from the U.S. Department of Justice as well as findings from the FCC, Comcast scrapped the deal. Critics saw the merger as an opportunity for Comcast to disrupt online streaming services.⁷ Charter is in prime position to take advantage of anti-Comcast sentiment. The combined application by Charter, TWC and Bright House included clear provisions regarding net neutrality (irrespective of future legislation), focus on broadband services, job creation, and an advanced infrastructure.⁸

Like the Comcast-TWC merger, the merger of Charter, TWC and Bright House will provide operating efficiencies for New Charter. Merging call centers, maintenance crews and administrative sections of all three companies will streamline operations. By expanding nationally, New Charter will have better leverage going into negotiations for cable networks and programming including retransmission

⁴Vogel, Harold. *Entertainment Industry Economics*. New York, NY, Cambridge University Press. 2011. Print.

⁵N.p. *Why its a good thing that broadband isn't a common carrier*. Platform. 27 Jan. 2014. Web. 17 Oct. 2015. <<https://www.ncta.com/platform/public-policy/why-its-a-good-thing-that-broadband-isnt-a-common-carrier/>>

⁶Welch, Chris. *HBO Now hands-on: It's HBO Go without cable. What else do you need?* The Verge. 7 April 2015. <<http://www.theverge.com/2015/4/7/8363811/hbo-now-apple-tv-hands-on>>

⁷Team, Trefis. *Comcast-TWC merger called off; Where do these companies stand now?* Forbes. 28 April 2015. Web. 17 Oct. 2015. <<http://www.forbes.com/sites/greatspeculations/2015/04/28/comcast-twc-merger-called-off-where-do-these-companies-stand-now/>>

⁸Charter Communications. *Public Interest Statement*. Federal Communications Commission. 25 June 2015. Web. 17 Oct. 2015. <<https://transition.fcc.gov/transaction/charter-twc-bhn/charter-twc-bhn-public-interest.pdf>>

consent. As stated in the public filing, New Charter will be in a better position to negotiate for national advertising as well as compete for distributed enterprise customers.⁸

Since the June 25 filing, the FCC has received plentiful public comment from public interest groups; companies like Netflix,⁹ Dish,¹⁰ and AT&T;¹¹ TV and movie studios;¹² and lobbyists like the National Association of Broadcasters. While OTT providers are praising the merged companies' commitment to net-neutral broadband services, broadcasters are outraged by the continued freedom granted to MSOs and are using this opportunity to call for review of the now decades-old Communication Act.

"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," according to public comment submitted by the NAB. "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."

The FCC is currently allowing Charter to respond to statements submitted during the public comment window. The review is contained within a 180-day "shot clock" that is regulated by the FCC and can be paused as needed. Pending unexpected disruptions, the FCC review process will conclude on March 9, 2016.

It seems likely that the FCC review committee, which includes an attorney on loan from the Department of Justice Antitrust Division, will approve the merger. The merged companies have preempted some of the scrutiny that was imposed on Comcast by speaking directly to net neutrality and network infrastructure in its FCC applications. The companies' friendly attitude toward OTT services seems compelling. Also, the FCC has a rare opportunity to create a competitor to Comcast.¹³

⁹Ramachandran, Shalini. *Netflix lends support to Charter-Time Warner Cable deal*. Wall Street Journal. 15 July 2015. Web. 17 Oct. 2015. <<http://www.wsj.com/articles/netflix-lends-support-to-charter-time-warner-cable-deal-1436982048>>

¹⁰Eggerton, John. *Dish Asks FCC to Deny Charter-TWC*. Multichannel News. 13 Oct. 2015. Web. 17 Oct. 2015. <<http://www.multichannel.com/news/fcc/dish-asks-fcc-deny-chartertwc/394526>>

¹¹N.p. *AT&T says not opposed to Charter-Time Warner deal, asks FCC for careful review*. CNBC. 15 Oct. 2015. Web. 17 Oct. 2015. <<http://www.cnbc.com/2015/10/15/att-says-not-opposed-to-charter-time-warner-deal-asks-fcc-for-careful-review.html>>

¹²Eggerton, John. *Studios, Nets Ask FCC to Rethink Charter-TWC Protective Orders*. Multichannel News. 13 Oct. 2015. Web. 17 Oct. 2015. <<http://www.multichannel.com/news/fcc/studios-nets-ask-fcc-rethink-charter-twc-protective-orders/394524>>

¹³Granados, Nelson. *Three Strong Reasons Why Regulators Will Let Charter Buy Time Warner Cable*. Forbes. 27 May 2015. Web. 17 Oct. 2015. <<http://www.forbes.com/sites/nelsongranados/2015/05/27/will-charters-acquisition-of-time-warner-cable-be-approved/>>