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Charter-Time Warner Cable-Bright House Networks Mergers: Overview and Issues

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Summary

In May 2015, Charter Communications, Inc. announced that it reached agreements with Time Warner Cable Inc. (TWC) to merge the two companies in a deal valued at \$78.7 billion, including the assumption of debt, and with Advance/Newhouse Partnership to acquire Bright House Networks (BHN) for \$10.4 billion. The combination of Charter, TWC, and BHN would create a single entity providing cable television and broadband access service to 23.9 million customers in 41 states, making it the nation's second-largest cable television operator and broadband access provider.

The proposed merger raises a number of potential concerns, reflecting the complex structure of the television industry and substantial changes in the way consumers choose to receive video programming. The many firms involved in content ownership, aggregation and packaging, and distribution of video programming often must cooperate with one another at the same time they are competing. Companies in the television industry are in frequent negotiation with one another for the right to transmit programming, and the merger of three players into a very large one could change the relative bargaining power of other parties. At the same time, growing numbers of consumers are now viewing programs online at a time of their choosing rather than subscribing to traditional cable or satellite services or watching based on a broadcaster's schedule. The proposed Charter transactions have the potential to affect the development of this relatively new online video distribution industry by inhibiting distributors' access to programming or their ability to send programs to customers over the Internet.

At the federal level, both the U.S. Department of Justice (DOJ) and the Federal Communication Commission (FCC) must approve Charter's transactions before they can close. The DOJ will investigate whether the proposed transactions would reduce competition. The FCC will investigate whether the proposed transactions would, on balance, be in the public interest.

As regulatory authorities begin their review of Charter's proposed transactions, three key issues related to television industry competition may merit analysis: 1) whether the presence of members of Charter's board of directors on the boards of several companies that create television programming, including the cable networks Discovery and Starz and film and television studio Lions Gate, might impede competition in the distribution of television programming; 2) whether the fact that a major investor in Charter, John Malone, also controls some shares of a competitor to Charter, DIRECTV (whose proposed sale to AT&T has met federal regulatory approval), could reduce competition among video distributors to acquire programming from creators and to sell programming to consumers; and 3) whether Charter's assumption of TWC's various joint ventures and partnerships with Comcast Corporation, the largest cable television and broadband access provider in the United States, would reduce competition to acquire programming from creators and disadvantage online video distributors.

In addition, the agencies may evaluate whether Charter's proposed commitments regarding service quality and availability would be sufficient to mitigate potential harms. To obtain FCC approval, Charter is likely to make a number of commitments regarding service quality and availability. However, the company would assume more than \$24 billion of debt through the transactions, and the FCC may be concerned that this debt could compromise Charter's ability to fulfil commitments to provide sufficient capacity to deliver online video and other services to its broadband subscribers.

Contents

Overview.....	1
Television Industry Background.....	2
Technology-Driven Changes.....	4
Competition Between MVPDs and OVDs.....	5
Consumption Trends.....	7
Charter-TWC-BHN Transactions Background.....	10
Regulatory Review.....	12
Criteria for Analysis and Process.....	13
Antitrust Review: The DOJ.....	13
Public Interest Review: FCC.....	13
Potential Issues for Analysis.....	16
Applicability of Program Access/Program Carriage Rules to Cable Networks.....	17
Applicability of VOD and OVD Merger Conditions to Studios.....	18
Malone’s Influence over Charter and DIRECTV.....	18
Joint Ventures Among Cable Operators.....	19
Charter’s Commitments/Proposed Benefits.....	20

Figures

Figure 1. U.S. Household Video Subscriber Trends.....	8
Figure 2. U.S. Broadband Access Subscriber Trends.....	9
Figure 3. MVPD Video Programming Revenue and Cost Trends.....	10

Tables

Table 1. Properties of Select Media Companies.....	3
Table A-1. MVPD Video Subscribers (in Thousands).....	23
Table A-2. Hypothetical Post-Merger MVPD Video Subscribers (in Thousands).....	24
Table A-3. Wireline Broadband Access Subscribers (in Thousands).....	25
Table A-4. Hypothetical Post-Merger Broadband Access Subscribers (in Thousands).....	26

Appendixes

Appendix. Estimated Market Shares Pre- and Post- Potential Transactions.....	22
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Contacts

Author Contact Information.....	26
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Overview

In May 2015, Charter Communications, Inc. announced that it reached agreements with Time Warner Cable Inc. (TWC) to merge the two companies in a deal valued at \$78.7 billion, including the assumption of debt, and with Advance/Newhouse Partnership to acquire Bright House Networks (BHN) for \$10.4 billion. The combination of Charter, TWC, and BHN would create a single entity providing cable television and broadband access service to 23.9 million customers in 41 states, making it the nation's second-largest cable television operator and broadband access provider.¹ At the federal level, the U.S. Department of Justice (DOJ) and the Federal Communications Commission (FCC) must approve the transactions before they can close.² If the deal is not approved by regulatory authorities, Charter will pay TWC a breakup fee of \$2 billion. Charter, TWC, and BHN filed an application for FCC approval in June 2015.³

As regulatory authorities begin their review of the proposed transactions, four key issues may merit analysis:

1. Members of Charter's board of directors also serve on the boards of several companies that create television programming, such as cable networks Discovery and Starz and film and television studio Lions Gate. These interlinks could potentially enable Charter to impede competition in the distribution of video programming. Charter's increased national market share after the proposed transactions would give it more leverage in negotiations with television programming creators.
2. John Malone, a major investor in Charter, controls a significant stake in Charter's competitor, DIRECTV. AT&T, a major provider of telephone, video, and broadband service, is in the process of acquiring DIRECTV, which would make it the largest U.S. distributor of video programming. Federal regulators have approved the transaction. That transaction, if completed, could result in Malone becoming a substantial shareholder in AT&T. Regulators may be concerned that Malone's influence over the combined AT&T-DIRECTV and the merged Charter could thwart competition among video distributors to acquire programming from creators and to sell programming to consumers.
3. TWC has various joint ventures and partnerships with Comcast Corporation, the largest cable television and broadband access provider in the United States.

¹ Charter Communications Inc., Time Warner Cable Inc., Bright House Networks, "Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks," press release, May 26, 2015, <http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-irhome>.

² The parties have also filed applications with the New York Public Service Commission and California Public Utilities Commission in July 2015 to transfer state and local franchises. (The New York applications are available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=48513&MNO=15-M-0388>, and the California applications are available at <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:5:5806261911258::NO:RP,5,RIR,57,RIR::>).

³ Although the Charter-TWC and Charter-BHN transactions are not exclusively contingent on each other, the parties are filing a consolidated public interest statement for the FCC's and other parties' convenience in light of the many similar issues arising from the two transactions. Charter Communications Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership, Application for Consent to the Transfer Control of Licenses and Authorizations, before the Federal Communications Commission, MB Docket No. 15-149, June 25, 2015, p. 2, notes 1-2. (Charter FCC Public Interest Statement.)

Regulators may be concerned that the merger would result in close relations between Comcast and Charter, potentially reducing competition to acquire programming from creators and among broadband access providers distributing programming from online video distributors.

4. Authorities may seek to investigate the reliability of Charter's claim that a key benefit of the transactions is Charter's commitment to investing in TWC's and BHN's products and services. The companies claim that the merged firm's wider national footprint and reduction in overhead costs will enable it to invest more than the three firms could on their own.⁴ However, Charter is expected to assume in excess of \$24 billion of debt to finance the transaction.⁵ The FCC may be concerned that the debt could limit Charter's ability to fulfil its commitments to improve service quality and availability.

To provide context for the analysis of these issues, this report describes recent trends in the television industry, the events leading up to the proposed transactions, and the criteria and process of regulatory review.

Television Industry Background

The television industry comprises many players. These players assume several distinct roles:

- **Content owners** produce or control the copyright to video programming. Examples of content owners include television studios, movie studios, sports teams, and broadcast stations that produce local news programs.
- **Aggregators/packagers** pay the content owners for the right to use their programming. Examples of aggregators and packagers include broadcast television networks, cable networks, and broadcast television stations.
- **Distributors** purchase video programming from aggregators/packagers, content owners, or other distributors and sell it to paying subscribers. Congress has defined a class of multichannel video programming distributors (MVPDs) that have certain rights and obligations under the law. These include cable operators, satellite operators, and some traditional telephone companies that own and operate their own distribution facilities. The FCC is considering expanding the definition of MVPDs to include companies that distribute certain types of video programming over the Internet.⁶

Many companies fall into more than one of these categories, and some have multiple operations within a category. For example, all of the leading broadcast television networks also own cable networks and broadcast stations and produce content. In addition, while TWC and BHN are two separate distributors, BHN currently relies on TWC to negotiate programming agreements.⁷

⁴ Charter FCC Public Interest Statement, pp. 17-42.

⁵ Charter Communications Inc., "Securities and Exchange Commission Schedule 14a Proxy Statement Pursuant to Section 14(a) of the Securities Act of 1934, Preliminary Proxy Statement," June 26, 2015, p. 59.

⁶ Federal Communications Commission, "Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services," 29 *FCC Record* 15995, 16000, December 19, 2014.

⁷ Notice of Ex Parte Communication MB Docket No. 14-57 from Steven J. Horbitz, counsel for Bright House (continued...)

Because of this complex structure, many companies in the television industry are in frequent negotiation with one another for the right to transmit programming or to retransmit broadcast signals. In some cases, these negotiations are governed by federal law, as when MVPDs negotiate with broadcast television stations for the right to carry broadcast signals.⁸ In other instances, negotiations over the right to broadcast or resell programming are based on market forces and reciprocal relationships, without government-imposed strictures.

Table 1 describes the involvement of several media companies in various parts of the television industry.

Table I. Properties of Select Media Companies

	Comcast	Disney	21 st Century Fox	Liberty	Time Warner Cable	Bright House Networks
CONTENT OWNERSHIP						
Television studio(s)	X	X	X	X	—	—
Movie studio(s)	X	X	X	X	—	—
Sports team(s)	X	X	—	X	—	—
AGGREGATION/PACKAGING						
Broadcast network(s)	X	X	X	—	—	—
Broadcast stations	X	X	X	—	—	—
National cable networks	X	X	X	X	X	X
Regional sports networks	X	—	X	—	X	—
Regional news networks	X	—	—	—	X	X
Online video distributor	X	X	X	X	—	—
DISTRIBUTION						
MVPD	X	—	—	X	X	X
Wholesale ISPs	—	—	—	—	—	—

(...continued)

Networks LLC to Marlene Dortch, Secretary, Federal Communications Commission, December 18, 2014, summarizing presentation by Steven Miron, CEO, Bright House Networks LLC and Ex Parte Communications Supplement, MB Docket 14-57, January 9, 2015, <https://www.fcc.gov/transaction/comcast-twc>. Charter’s announced agreements came after Comcast Corporation failed to receive regulatory approval to purchase TWC and trade systems with Charter.

⁸ See CRS Report R43490, *Reauthorization of the Satellite Television Extension and Localism Act (STELA)*, by (name redacted).

	Comcast	Disney	21 st Century Fox	Liberty	Time Warner Cable	Bright House Networks
Content Delivery Network	X	—	—	—	X	X
Retail ISPs (broadband access)	X	—	—	X	X	X

Sources: Company annual reports and websites; Charter FCC Public Interest Statement, Appendices G and H. See also 16th FCC Video Competition Report, Appendices B–D, Dan Rayburn, “How Transit Works, What It Costs & Why It’s So Important,” *StreamingMedia*, February 23, 2014, <http://blog.streamingmedia.com/2014/02/transit-works-costs-important.html>.

Technology-Driven Changes

Within the past decade, several companies have begun offering consumers the opportunity to view television programs, movies, and sports online. These companies license programming from content owners and rely on Internet service providers (ISPs) to distribute the programming to viewers. The FCC has called these firms online video distributors (OVDs).⁹ They fall into three general categories:¹⁰

1. **Electronic sell-through and rental OVDs** charge consumers a one-time fee to download a television program or movie for viewing for an indefinite or limited time period. These services are generally owned by retailers, including Apple, Amazon, and Walmart. They usually offer a limited selection of recent and popular movies and television series that are in high demand from consumers. This product is similar to the pay-per-view services offered by MVPDs.
2. **Subscription OVDs** charge consumers monthly or annual fees for unlimited access to video programming. Subscription OVDs share attributes of broadcast and cable networks as well as MVPDs. Hulu Plus is co-owned by three major broadcast networks (ABC, FOX, and NBC), which in turn are subsidiaries of major entertainment conglomerates. The other two major subscription OVDs are Netflix and Amazon Prime Instant. In 2015, however, several studios, networks, and MVPDs launched or announced plans to launch their own OVDs.¹¹ Subscription OVDs compete with the “TV Everywhere” services offered by MVPDs. The TV Everywhere services allow MVPD subscribers to view cable channels on computers and mobile devices, as well as on television sets.
3. **Advertising-supported OVDs** include advertising along with the programming and do not charge consumers directly. They are generally owned and operated by

⁹ See 14th FCC Video Competition Report, p. 8720. See also Federal Communications Commission, “Annual Assessment of the Status of Competition in the Delivery of Video Programming, Sixteenth Report,” 30 *FCC Record* 3253, 3352, April 2, 2015. (16th FCC Video Competition Report)

¹⁰ See 16th FCC Video Competition Report, pp. 3353- 3365.

¹¹ The networks include HBO (HBO Now), CBS (CBS All Access), and Nickelodeon (NOGGIN). The studio Lions Gate announced that it would launch two subscription OVDs: one in partnership with Tribeca Enterprises, and another in partnership with Comic-Con International. Direct broadcast satellite operator Dish’s Sling TV service offers limited access to cable network programming for less money than traditional MVPD video subscriptions.

television networks and studios. Two major advertising-supported OVDs are Hulu and Sony Corporation's Crackle.

Competition Between MVPDs and OVDs

In order to operate, OVDs need both the ability to negotiate for programming and the ability to interconnect with retail Internet service providers (also known as broadband access providers) to enable the delivery of programming to subscribers. Some programming and most broadband access providers are controlled by companies that also operate as MVPDs. The structure of the television industry, as described in **Table 1**, plays an increasingly important role in determining how MVPDs and OVDs compete with each other. The proposed Charter transactions, by altering the television industry's structure, could affect competition as well.

Competition for Access to Programming

MVPDs and OVDs may distinguish themselves by offering customers exclusive access to original programming, or exclusive access to programming during certain time periods. For example, subscription OVDs and MVPDs are battling over the right to offer their customers exclusive access to all of the episodes in a current season of a television program. (This is known in the television industry as "in-season stacking rights.")¹² Netflix reportedly demanded a discount for the online rights to the 21st Century Fox studio's television drama *Empire*, claiming that the studio devalued the program by providing MVPDs with in-season stacking rights. Hulu, which is partly owned by the studio and its affiliated broadcast network, reportedly stepped in by exceeding Netflix's original offer. Networks are increasingly choosing to license programming from co-owned studios rather than outside providers, in order to maximize revenues from licensing programs to MVPDs' video on demand (VOD) services and to OVD services.¹³

The FCC, pursuant to the 1992 Cable Act, has rules in place governing the behavior of cable operators and cable networks that have common ownership or control. The FCC rules prohibit cable operators from exercising "undue influence" over the decisions of affiliated cable and broadcast networks concerning the sale of programming (program access rules).¹⁴ The rules also bar cable and broadcast networks affiliated with cable operators from discriminating against unaffiliated MVPDs with respect to the prices, terms, and conditions for sale of programming (program carriage rules).¹⁵

These rules do not apply to television or movie studios owned by cable operators, and they do not guarantee program access or nondiscriminatory treatment to on-demand services offered by cable

¹² Andrew Wallenstein, "In-Season 'Stacking' Rights: TV Biz Battles for Binge Viewing," *Variety*, October 20, 2013, <http://variety.com/2013/digital/news/in-season-stacking-rights-tv-biz-battles-for-binge-viewing-1200749002/>.

¹³ Joe Flint, "Broadcasters Shop at Home for Shows," *Wall Street Journal*, May 28, 2015, p. B1. VOD enables MVPD subscribers to select individual movies and television programs to view on their television sets, "on demand" rather than at times scheduled by television networks.

¹⁴ 47 U.S.C. §548(2)(1); 47 C.F.R. §76.1002(a).

¹⁵ 47 U.S.C. §548(2)(1); 47 C.F.R. §76.1002(b). In 2012, the FCC allowed the prohibition against exclusive contracts between cable operators and affiliated program networks to expire. The sunset does not apply to regional sports networks. Federal Communications Commission, "Revision of the Commission's Program Access Rules et. al., Report and Order, FCC 12-123," 27 *FCC Record* 12605, October 5, 2012.

providers or OVDs. In 2014, the FCC proposed extending these rules to benefit certain OVDs.¹⁶ FCC Chairman Tom Wheeler stated that he expected the FCC to issue final rules about this proposal in the fall of 2015.¹⁷

Interconnecting with Broadband Access Providers

To deliver their programming to consumers, OVDs have different options for interconnecting with services that provide broadband access to the public, also known as retail ISPs. Several use specialized transit providers, known as wholesale ISPs, as intermediaries. Others generate sufficient traffic to make it economically feasible for them to bypass the intermediaries by using content delivery networks (CDNs), which store (“cache”) copies of the videos and deliver them to broadband access providers as close as possible to viewers’ locations.¹⁸ Netflix owns and operates its own CDN.¹⁹ MVPDs also use their own proprietary CDNs to store programming for services such as video on demand.²⁰

All transit providers and CDNs must interconnect with broadband access providers to reach individual homes and businesses. The charges and conditions imposed by the broadband access providers for this interconnection have been the subject of considerable debate, particularly because broadband access providers and MVPDs are often the same entities.²¹ In some cases, companies try to deal with this by “settlement-free Internet peering,” a relationship in which they reciprocally provide access to each other’s customers without charging each other a fee.²² However, if either party perceives the value derived from peering to be unequal, it may deny peering or suggest an alternative paid arrangement. There is no standard way to calculate the value derived from peering. For example, Netflix claims that by charging Netflix a fee to connect its CDN, broadband access providers are extracting arbitrary tolls.²³ Some broadband access providers, however, claim that Netflix wants to avoid paying its fair share for the cost of delivering video over the Internet by claiming it is entitled to settlement-free peering.²⁴

¹⁶ Federal Communications Commission, “Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services,” 29 *FCC Record* 15995, 16000, December 19, 2014.

¹⁷ FCC Chairman Tom Wheeler, “Remarks of FCC Chairman Tom Wheeler, the Brookings Institution,” Washington, DC, June 26, 2015, <https://www.fcc.gov/document/remarks-fcc-chairman-tom-wheeler-brookings-institution>.

¹⁸ William B. Norton, *The Internet Peering Playbook*, 2014 ed., pp. 134- 135, <http://drpeering.net/core/bookOutline.html>.

¹⁹ Netflix, “Netflix Open Connect: Overview,” <https://openconnect.netflix.com/>.

²⁰ Leslie Ellis, “iN Demand @ 3.0: the Technology Story (Special Advertising Section),” *Multichannel News*, June 15, 2015, p. 22A; Amit Chowdhry, “Comcast Reveals \$15 per Month Internet TV Service Called ‘Stream,’” *Forbes*, July 13, 2015, <http://www.forbes.com/sites/amitchowdhry/2015/07/13/comcast-stream/>.

²¹ Robert McMillan, “What Everyone Gets Wrong in the Debate Over Net Neutrality,” *Wired*, June 22, 2014, http://www.wired.com/2014/06/net_neutrality_missing/.

²² Norton, *Internet Peering Playbook*, p. 47.

²³ Ken Florance, Vice President of Content Delivery at Netflix, “The Case Against ISP Tolls,” *Netflix*, April 24, 2014, <http://blog.netflix.com/2014/04/the-case-against-isp-tolls.html>. Netflix states that it is assuming the costs and the transport function for which it used to pay third-party transit providers.

²⁴ Letter from William H. Johnson, Vice President & Associate General Counsel, Verizon, re: GN Docket No. 14-28; GN Docket No. 10-127, to Marlene Dortch, Secretary, Federal Communications Commission, December 17, 2014, <http://apps.fcc.gov/ecfs/document/view;ECFSESSION=kjYZJSpJfr8ILrXc2Q9hCx6pRX8nGrYyFyJf656g3GTLkGVYt6Rq!1175060748!1957906226?id=60001010005>.

In 2015 the FCC adopted its Open Internet rules,²⁵ which

- ban blocking, throttling, and paid prioritization by mobile and fixed broadband access services that sell Internet access to consumers;
- create a general conduct standard that broadband access services cannot harm consumers or services (including OVDs) that rely on the Internet to reach consumers, and give the FCC the authority to address questionable practices on a case-by-case basis; and
- give the FCC authority to hear complaints and take enforcement action on a case-by-case basis if it deems the interconnection activities of broadband providers to be unjust and unreasonable.

With limited exceptions, the rules went into effect on June 12, 2015.²⁶ Various trade groups and selected individual providers have filed appeals to the courts challenging the rules' legality.²⁷

Consumption Trends

The structure of and competition within the industry are changing alongside viewers' habits. About 99% of the nation's 121 million households watch some form of television. The percentage of households subscribing to an MVPD service has fallen from a peak of 87.7% in 2009 to 83.6% in 2015, the lowest figure since 2005.²⁸ As **Figure 1** illustrates, the cable and satellite industries have lost video subscribers both to telephone companies that offer video service and to OVDs.

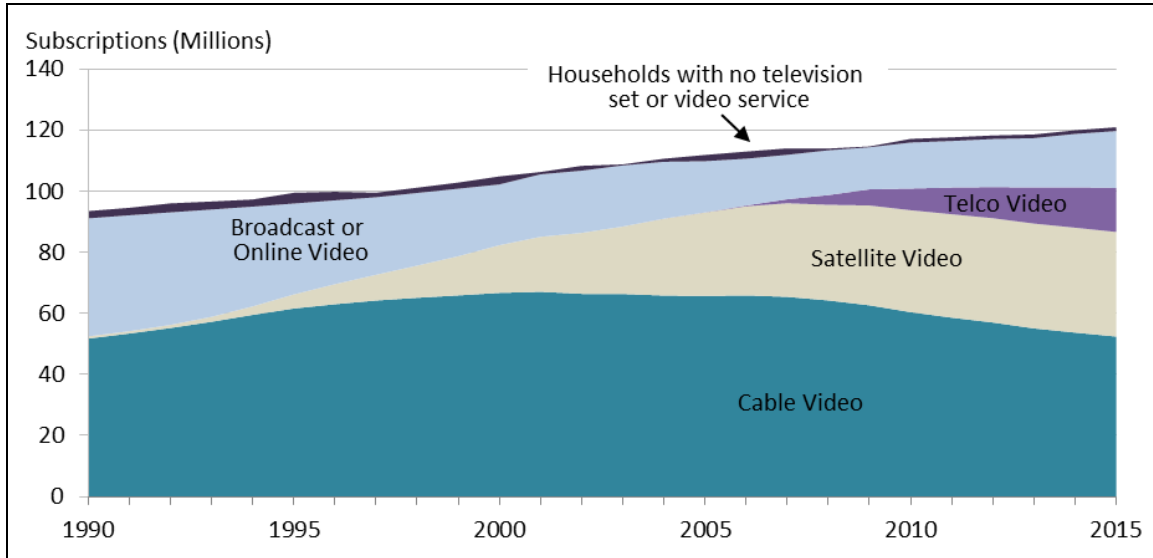
²⁵ Federal Communications Commission, "Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24," 30 *FCC Record* 5601, March 21, 2015.

²⁶ Federal Communications Commission, "Protecting and Promoting the Open Internet, Final Rule," 80 *Federal Register* 19738, April 13, 2015.

²⁷ For more details about the policies and legal issues related to these rules, see CRS Report R40616, *Access to Broadband Networks: The Net Neutrality Debate*, by (name redacted), and CRS Report R43971, *Net Neutrality: Selected Legal Issues Raised by the FCC's 2015 Open Internet Order*, by (name redacted).

²⁸ The remaining 13% of television households rely exclusively on over-the-air delivery of television signals or broadband delivery of video. In the fall of 2013, Nielsen changed its definition of "television households" to include broadband-only households with at least one operable television/monitor that receives video exclusively via a broadband Internet connection instead of via over-the-air transmission or an MVPD.

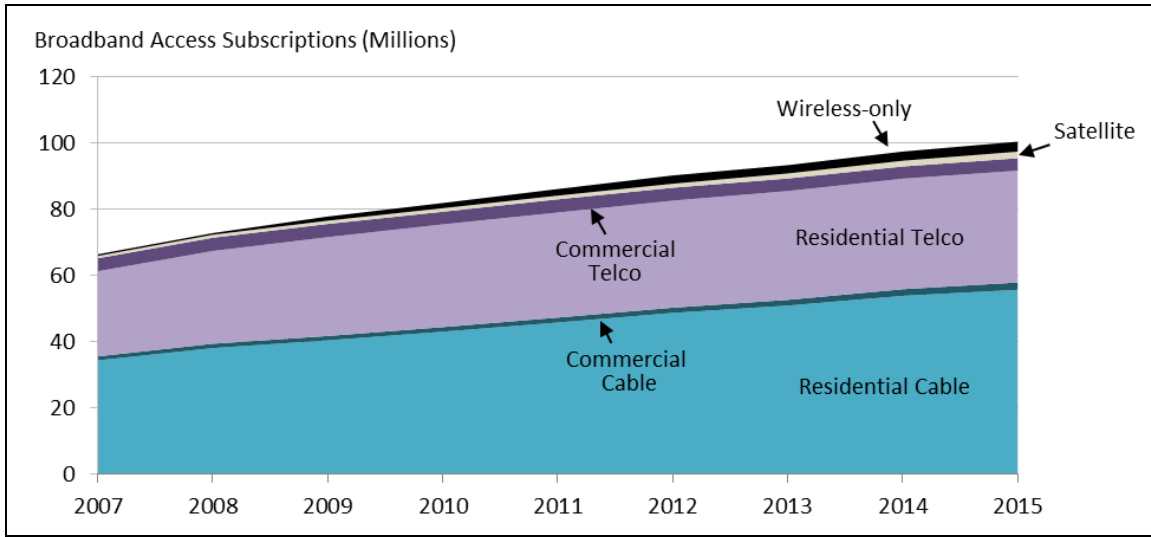
Figure I. U.S. Household Video Subscriber Trends
 Television Source, by Number of U.S. Households, 1990- 2015



Source: CRS analysis of data from SNL Kagan, “U.S. Multichannel Industry Benchmarks: 1990 – 2015.”

Notes: “Online” television households are broadband-only households with at least one operable television/monitor that receives video exclusively via a broadband Internet connection instead of via over-the-air transmission or an MVPD.

Even as cable operators have lost video subscribers, however, they continue to gain broadband access subscribers. As **Figure 2** illustrates, the number of broadband access subscribers has grown steadily between 2007 and 2015. About 94 million households and 6 million small- and medium-size businesses subscribe to broadband access services as of 2015. Of the total number of broadband access subscribers, about 58% rely on cable providers and 37% rely on telephone companies (telcos). Thus, about 95% rely on wireline technology for broadband access service to connect to the Internet, 3% of subscribers rely exclusively on wireless providers for broadband access service, and 2% rely on satellite providers.

Figure 2. U.S. Broadband Access Subscriber Trends

Source: CRS analysis of data from SNL Kagan, “U.S. High-Speed Data Projections,” various charts, dating from April 2008–April 2015.

Notes: For 2015, estimates are as of April 2015. Telco residential subscribers are those served with DSL and fiber-to-the-home-based services. “Commercial” subscribers represent small- and medium-size businesses.

In addition to facing weaker demand for video subscriptions, MVPDs have seen the cost of programming rise relative to revenues from these subscriptions (**Figure 3**). Although MVPDs bear franchise and regulatory fees, as well as marketing and operating expenses, programming is their single largest expense.²⁹ MVPDs have attempted to pass those costs along to consumers; the consumer price index for cable and satellite television services has risen almost 13% since the start of 2011, compared with 7% for consumer prices overall.³⁰ The increase in prices may be one factor leading viewers either to forgo video service or to downgrade to less expensive packages. In response, several MVPDs have begun to offer less expensive packages of video programming. For example, Dish Network, a satellite provider, offers the online video service Sling TV for \$20 per month³¹ and Verizon offers consumers a base a la carte package of 35 channels for \$55 per month.³² In addition, Comcast announced in July 2015 that it will launch a \$15-per-month online

²⁹ David Nicklaus, “Charter’s Pricey Purchase is a Bet on Cable’s Future,” *St. Louis Post-Dispatch*, May 31, 2015, p. E1, http://www.stltoday.com/business/columns/david-nicklaus/charter-s-pricey-purchase-is-a-bet-on-cable-s/article_f0dd8def-f33a-5367-bada-3677af97354b.html.

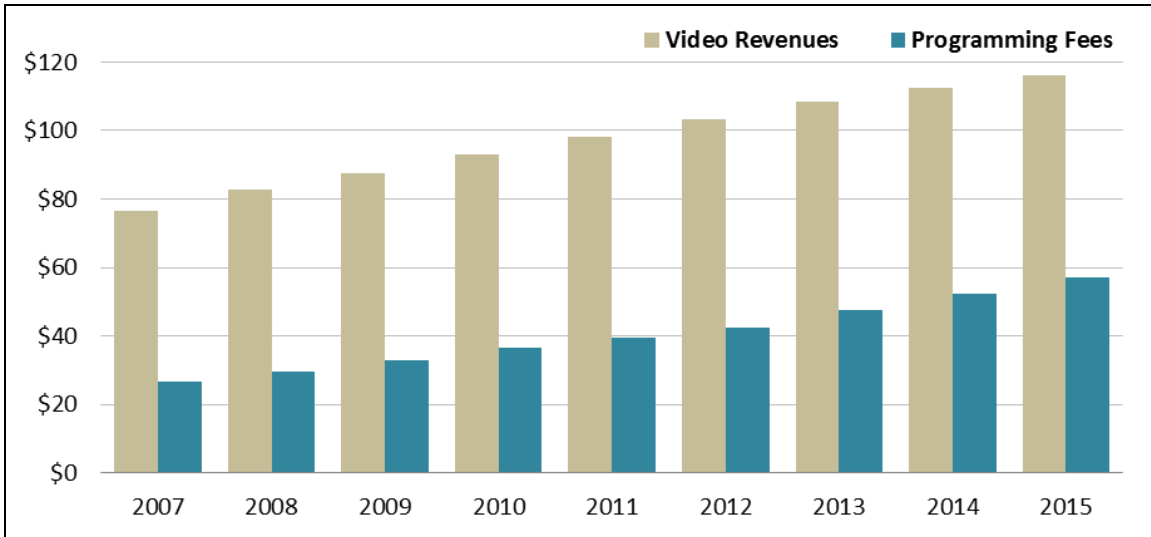
³⁰ Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, <http://www.bls.gov/cpi/>. In its annual survey of cable industry prices, however, the FCC found that between 1995 and 2014, the price per channel of the most popular tier of cable service remained virtually unchanged on an average annual compound basis. Federal Communications Commission, “Implementation of Section 3 of the Cable Television Consumer and Protection and Competition Act of 1992; Statistical Report on Average Rates of Basic Service, Cable Programming Service, and Equipment,” 29 *FCC Record* 14895, 14897, December 14, 2014.

³¹ Dish Network Corporation, “Sling TV to Launch Live, Over-the-Top Service for \$20 per Month,” press release, January 5, 2015, <http://about.dish.com/press-release/products-and-services/sling-tv-launch-live-over-top-service-20-month-watch-tvs-tablets>. Sling TV includes ESPN. Consumers do not need to sign a contract.

³² John Koblin, “ESPN Sues Verizon Over Customized FiOS Cable Packages,” *New York Times*, April 28, 2015, http://www.nytimes.com/2015/04/28/business/media/espn-sues-verizon-over-new-cable-packages.html?_r=0. In April 2015, ESPN filed a lawsuit against Verizon, alleging that Verizon breached its contract with the cable network.

streaming service consisting of broadcast stations, HBO, on-demand movies, and a digital video recorder.³³

Figure 3. MVPD Video Programming Revenue and Cost Trends
Billions of Dollars



Source: SNL Kagan, “Multichannel Programming Fees as a % of Multichannel Video Revenues,” April 2015.

Notes: Revenue figures include advertising revenues earned by DBS operators. Figures are not adjusted for inflation.

Charter-TWC-BHN Transactions Background

MVPDs have responded to these challenges to their business models by, among other things, undertaking mergers and acquisitions. Major transactions announced in 2014 and 2015 include AT&T’s proposed acquisition of DIRECTV³⁴ and Frontier Communications Corporation’s proposed acquisition of Verizon’s video, broadband access, and voice services within the states of California, Florida, and Texas.³⁵ DOJ declined to challenge the Frontier-Verizon transaction³⁶ and

³³ Shalini Ramachandran and Lisa Beilfuss, “Comcast Launches Streaming Service for Cord-Cutting Customers,” *Wall Street Journal*, July 13, 2015.

³⁴ AT&T, “AT&T to Acquire DIRECTV,” investor presentation, May 19, 2014, http://www.att.com/Investor/Financial/slides_directv.pdf.

³⁵ Verizon Communications Inc., “Verizon Sharpens Strategic Focus and Returns Value to Investors with Transactions Valued at \$15.54 Billion,” press release, February 5, 2015, <http://www.verizon.com/about/news/verizon-sharpens-strategic-focus-and-returns-value-investors-transactions-valued-1554-billion>.

³⁶ Federal Trade Commission, “Early Termination Notices,” [https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices?combine=&field_date_value\[value\]=&date_filter\[min\]=&date_filter\[max\]=&page=10](https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices?combine=&field_date_value[value]=&date_filter[min]=&date_filter[max]=&page=10). Section 5 of the Federal Trade Commission Act excludes common carriers from the FTC’s jurisdiction, P.L. 63-203, 15 U.S.C. §45(a)(2). The FTC may nonetheless announce on behalf of DOJ when a transaction has been granted early termination: “The following information is available on the FTC’s Web site: ... Early Termination Notices.” U.S. Department of Justice, “Merger Enforcement, Guidelines and Statutes,” <http://www.justice.gov/atr/public/merger-enforcement.html>.

the AT&T-DIRECTV transaction.³⁷ The FCC approved the AT&T-DIRECTV transaction³⁸ and is reviewing the Frontier-Verizon transaction.

Charter's proposed merger with Time Warner Cable (TWC) and acquisition of Bright House Networks (BHN) in May 2015 is the culmination of a series of attempts by both Charter and Comcast to merge with TWC, beginning in 2013. In May 2013, Liberty Media purchased 27.3% of the stock of Charter for \$2.6 billion.³⁹ At the time, Liberty Media's chairman and founder John Malone predicted that OVDs would upend MVPDs' traditional video services, and claimed that cable operators' broadband access services uniquely positioned them to take advantage of the trend.⁴⁰ He also stated that cable operators needed to consolidate and cooperate in order to achieve the required national scale necessary to compete with Netflix and other OVDs: "The fewer big players, the easier it is to get alignment."⁴¹

In June 2013, Liberty Media CEO Greg Maffei reportedly met with then-TWC CEO Glenn Britt to discuss a possible merger between TWC and Charter.⁴² In January 2014, Charter made a formal offer directly to TWC's shareholders in a hostile bid. In February 2014, TWC entered into a merger agreement with Comcast for a higher price.⁴³

Comcast's merger agreement with TWC did not specify whether Comcast would take over TWC's services agreements with Bright House Networks (BHN), another cable operator. Through the service agreements, TWC typically negotiates programming agreements and provides Internet connections beyond BHN's local systems.⁴⁴ In early 2014, Charter and BHN began to discuss the possibility of a strategic transaction.⁴⁵

In April 2014, Comcast reached an agreement with Charter Communications Inc. that would have entailed a spin-off of some of Comcast's systems, a purchase of some of Charter's systems, and an asset exchange. The parties terminated the agreements in April 2015 after it appeared that the

³⁷ U.S. Department of Justice, "Justice Department Will Not Challenge AT&T's Acquisition of DIRECTV," press release, July 21, 2015, <http://www.justice.gov/opa/pr/justice-department-will-not-challenge-atts-acquisition-directv>.

³⁸ Federal Communications Commission, "FCC Grants Approval of AT&T-DIRECTV Transaction," press release, July 24, 2015, <https://www.fcc.gov/document/fcc-grants-approval-att-directv-transaction>.

³⁹ "Liberty Media Corp. (LMCA) Q1 2013 Earnings Call, Corrected Transcript," *FactSet CallStreet, LLC*, May 8, 2013, p. 3.

⁴⁰ Greg Avery, "John Malone: 'Kamikaze' Charlie Ergen Is Needed by Industry," *Denver Business Journal Online*, June 4, 2013.

⁴¹ "LMC – Liberty Media Investor Day, Edited Transcript," *Thomson Reuters Streetevents*, October 10, 2013, p. 23.

⁴² David Faber, "Charter Communications Reviewing Acquisition Targets," *CNBC*, June 13, 2013, <http://www.cnn.com/id/100816661>. In its proxy statement filed with the SEC, Charter states that it made three acquisition proposals to TWC between July 10, 2013, and January 13, 2014. Charter Communications Inc., "Securities and Exchange Commission Schedule 14a Proxy Statement Pursuant to Section 14(a) of the Securities Act of 1934, Preliminary Proxy Statement," June 26, 2015, p. 124.

⁴³ Comcast entered into discussion with Time Warner Cable about a potential merger in mid-October 2013. Charter Communications Inc., "Securities and Exchange Commission Schedule 14a Proxy Statement Pursuant to Section 14(a) of the Securities Act of 1934, Preliminary Proxy Statement," June 26, 2015, p. 125.

⁴⁴ Notice of Ex Parte Communication MB Docket No. 14-57 from Steven J. Horbitz, counsel for Bright House Networks LLC to Marlene Dortch, Secretary, Federal Communications Commission, December 18, 2014, summarizing presentation by Steven Miron, CEO, Bright House Networks LLC, and Ex Parte Communications Supplement, MB Docket 14-57, January 9, 2015, <https://www.fcc.gov/transaction/comcast-twc>.

⁴⁵ Charter Communications, Inc., "Securities and Exchange Commission Schedule 14a Proxy Statement Pursuant to Section 14(a) of the Securities Act of 1934, Preliminary Proxy Statement," June 26, 2015, p. 125.

merger would fail to win regulatory approval.⁴⁶ The U.S. Department of Justice stated that “it had significant concerns that the merger would make Comcast an unavoidable gatekeeper for Internet-based services that rely on a broadband connection to reach consumers.”⁴⁷ FCC Chairman Tom Wheeler stated that

an online video market is emerging that offers new business models and greater consumer choice. The proposed merger would have posed an unacceptable risk to competition and innovation especially given the growing importance of high-speed broadband to online video and innovative new services.⁴⁸

In November 2014, Liberty Media Corporation created a new entity, Liberty Broadband, by spinning off its voting interest in Charter Communications, a wireless geolocation service company called TruePosition, and a minority equity investment in Time Warner Cable.⁴⁹

In May 2015, Charter Communications Inc. announced that it reached agreements with TWC to merge the two companies in a deal valued at \$78.7 billion, including the assumption of debt, and with Advance/Newhouse Partnership to acquire BHN for \$10.4 billion.

Regulatory Review

Although both the Department of Justice and the Federal Trade Commission have reviewed mergers between cable operators, only the DOJ has jurisdiction over mergers involving “common carriers.”⁵⁰ In 2006, the FCC affirmed its authority to apply the public interest standard when reviewing licenses and authorizations involved in cable television operations, claiming that the licenses and authorizations are both significant and material.⁵¹

⁴⁶ Comcast Corporation, “SEC Form 8-K,” April 24, 2015.

⁴⁷ U.S. Department of Justice, “Comcast Corporation Abandons Proposed Acquisition of Time Warner Cable After Justice Department and the Federal Communications Commission Informed Parties of Concerns,” press release, April 24, 2015, <http://www.justice.gov/opa/pr/comcast-corporation-abandons-proposed-acquisition-time-warner-cable-after-justice-department>.

⁴⁸ Federal Communications Commission, “Statement from FCC Chairman Tom Wheeler on the Comcast-Time Warner Cable Merger,” press release, April 23, 2014, <https://www.fcc.gov/document/chairmans-statement-comcast-twc-merger>.

⁴⁹ Liberty Media Corporation, “Liberty Media Corporation Announces Completion of Liberty Broadband Corporation Spin-Off,” press release, November 4, 2014, http://files.shareholder.com/downloads/ABEA-4CW8ZW/332904700x0x791503/71C94290-851C-49EF-99E5-503AD357BA28/LMCA_News_2014_11_4_General_Releases.pdf.

⁵⁰ Section 5 of the Federal Trade Commission Act carves out common carriers from the FTC’s jurisdiction, P.L. 63-203, 15 U.S.C. §45(a)(2). The FTC may nonetheless announce on behalf of DOJ when a transaction has been granted early termination: “The following information is available on the FTC’s Web site: ... Early Termination Notices.” U.S. Department of Justice, “Merger Enforcement, Guidelines and Statutes,” <http://www.justice.gov/atr/public/merger-enforcement.html>.

⁵¹ Federal Communications Commission, “Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, FCC 06-105, Memorandum Opinion and Order,” 21 *FCC Record* 8203, 8219-8221, July 20, 2006.

Charter, TWC, and BHN have hundreds of licenses and authorizations that require FCC approval for transfer of control to the post-merger Charter under Sections 310(d) and 214(a) of the Communications Act.⁵² The DOJ is reviewing whether the proposed Charter-TWC-BHN transactions have the potential for substantial anticompetitive impact.

Criteria for Analysis and Process

Antitrust Review: The DOJ

The principal law governing mergers, acquisitions, and joint ventures is Section 7 of the Clayton Antitrust Act of 1914 (15 U.S.C. §18). The parties may not close their deal until the waiting period outlined in the Hart-Scott-Rodino Antitrust Improvements Act of 1976⁵³ has passed, or until the government has granted early termination of the waiting period. Under the Hart-Scott-Rodino Act, the parties must submit copies of any documents that have been prepared in connection with the transaction and that analyze the transaction with respect to competition, markets, and expansion into other geographic markets.⁵⁴ Thus, the DOJ immediately has access to highly confidential internal documents that analyze the transaction's impact on competition.

While the DOJ may disclose information gathered in its review to any duly authorized committee or subcommittee of Congress, it may not disclose the information to the public. Information the DOJ gathers in the course of merger investigations is exempt from Freedom of Information Act disclosure requirements.⁵⁵ The parties may, however, consent to allowing the DOJ to share information with the FCC and state attorneys general and to coordinate their reviews by signing waivers.⁵⁶ The DOJ bears the burden of proof to demonstrate that the proposed transactions might be anticompetitive. It may allow the deal to go forward unchallenged, enter into a negotiated consent agreement with the companies that includes provisions to maintain competition, or seek to stop the transaction by filing for a preliminary injunction in federal court.

Public Interest Review: FCC

The FCC has jurisdiction over transactions involving transfers of control of electromagnetic spectrum licenses. Pursuant to this jurisdiction, it reviews virtually all mergers involving cable, satellite, telephone, radio, and television operations. Under Section 214 of the Communications Act of 1934, the FCC must affirm that “neither the present nor future public convenience and necessity will be adversely affected” before a transaction may be approved.⁵⁷ The FCC also

⁵² Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership., Application for Consent to the Transfer Control of Licenses and Authorizations., before the Federal Communications Commission , MB Docket No. 15-149, Exhibit A, June 25, 2015.

⁵³ P.L. 94-435, 15 U.S.C. §18(a).

⁵⁴ These are known as “4(c)” documents, in response to Item 4(c) of the FTC’s Notification and Report Form. A copy of the form is available at Federal Trade Commission, “Enforcement: Premerger Notification Program: Form and Instructions,” <https://www.ftc.gov/enforcement/premerger-notification-program/form-instructions>.

⁵⁵ 15 U.S.C. §18a(h).

⁵⁶ U.S. Department of Justice, “Antitrust Division: About the Division: Sections and Offices: Telecommunications and Media Enforcement Section,” <http://www.justice.gov/atr/about/tel.html>.

⁵⁷ The FCC, declined, however, to apply Section 214 to enable the FCC to engage in the review of mergers of broadband providers, even though it chose to classify broadband providers as common carriers when adopting new rules in 2015. The FCC reasoned that its new rules would be sufficient to ensure just, reasonable, and (continued...)

reviews applications for wireless licenses, including those used to provide broadband, satellite, broadcast television, and broadcast radio services. Section 310(d) of the Communications Act of 1934 (47 U.S.C. §310(d)) prohibits the transfer, assignment, or disposition of any construction permit or license of a broadcast station unless the FCC determines that the public interest, convenience, and necessity will be served.

Transactions that present complex legal, economic, or other public interest issues likely to elicit a significant amount of public comment, are subject to review by the FCC's commissioners.⁵⁸

Congress has several opportunities to weigh in on the FCC's merger review process, as illustrated in the FCC's decision regarding Comcast's acquisition of NBC Universal in 2010. Based on CRS analysis of the FCC's electronic comment filing database, 51 Representatives and 15 Senators filed comments.⁵⁹ In addition, the FCC cited one of the applicant's commitments in a congressional hearing about the transaction, as a basis for analyzing a potential harm of the transaction.⁶⁰ Finally, the FCC incorporated an agreement between the applicants and Representative Bobby Rush under which, among other commitments, Comcast agreed to carry at least 10 new independently owned and operated cable networks for at least eight years as a condition of the acquisition's approval.⁶¹

The FCC's merger review process differs from the Hart-Scott-Rodino process in several ways:

- Rather than taking the merger applicants to court to block a deal, the FCC itself decides whether a deal may proceed.
- The FCC, as an independent regulatory agency, is bound by the Administrative Procedure Act (5 U.S.C. §§551-559), which is designed to develop a public record upon which interested parties may comment and participate.⁶² The FCC

(...continued)

nondiscriminatory conduct by providers of broadband Internet access service. Federal Communications Commission, "Protecting & Promoting the Open Internet," 2015 FCC LEXIS 731, 858-859 (F.C.C. March 12, 2015). Section 310 (47 U.S.C. §160) directs the FCC to "forbear" from applying the Communications Act to a telecommunications carrier or telecommunications service if it determines that forbearance will promote competitive market conditions.

⁵⁸ Federal Communications Commission, "Overview of the FCC's Review of Significant Transactions," published August 15, 2014, <http://www.fcc.gov/guides/review-of-significant-transactions>. Pursuant to 47 CFR 47 C.F.R. §§0.261, 0.283, 0.291, and 0.331, FCC staff have delegated authority to act on routine transactions, but must refer matters involving novel questions of fact, law, or policy to the full commission for review.

⁵⁹ Using the search terms "Representative" and "Senator" in the "Name of Filer" category for the proceeding number "10-56," and filtering out elected officials from state legislative bodies, http://apps.fcc.gov/ecfs/comment_search_solr/form.

⁶⁰ "Statement of Brian L. Roberts, Chairman and Chief Executive Officer, Hearing on An Examination of the Proposed Combination of Comcast and NBC Universal before the House Energy and Commerce Subcommittee on Communications, Technology and the Internet, Transcript at 56 (Feb. 4, 2010) (responding to question from [Representative] Peter Welch)," Federal Communications Commission, "Application of Comcast Corporation and General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer of Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4266, n. 154, January 19, 2011.

⁶¹ Comcast NBCU Order, 26 *FCC Record* 4238, 4287, n. 288; 4513, n. 485, 4463-4466. Comcast also agreed to conduct a benchmark study of the diversity initiatives in the areas of governance, workforce recruitment and career development, supplier diversity, programming, and community investment and partnerships.

⁶² Some have argued that aspects of the interagency cooperation between the FCC and antitrust agencies violate the spirit of the Administrative Procedure Act. Larry Spiwak, *It's Time for the FCC/DOJ Inter-Agency Cooperation to Come into the Sunlight*, The Phoenix Center, @lawandeconomics Blog, May 2, 2013, <http://www.phoenix-center.org/blog/archives/1356>.

must disclose who comments on the proposed transactions and what the commenters say, and must address the commenters' concerns in its final decision. Members of the public may file official petitions to deny or "informal comments" seeking conditions or voicing their support.

- While the FCC may impose deadlines for public comments on the merger, its self-imposed 180-day period for reaching a decision is a guideline and is not legally binding.⁶³
- The parties, not the agency, have the burden of demonstrating that the proposed transactions would be in the public interest based on a preponderance of evidence.

The FCC's review of merger applications involves a balancing test, in which the commission weighs the transaction's potential public interest harms against the potential public benefits. The FCC counts as benefits several broad aims of the communications laws, including accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the public, managing spectrum in the public interest, and assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁶⁴ In contrast to the antitrust agencies, the FCC considers whether a transaction will enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue. Benefits must be merger-specific and verifiable. In addition, the benefits must flow to consumers.

At the conclusion of the review, the FCC staff makes recommendations to the five commissioners, including a draft order. Ultimately, the commissioners meet and vote whether to approve the proposed transaction with or without conditions, or designate a merger for a hearing before an administrative law judge.⁶⁵ If such a hearing is ordered, people and entities who file petitions to deny the transaction become parties to the proceeding and may participate fully. Full participation may include seeking access to confidential information, seeking reconsideration of FCC decisions, and filing appeals of the FCC's final decision to the U.S. Court of Appeals.⁶⁶

⁶³ See Federal Communications Commission, "Guide: Frequently Asked Questions About Transactions," <https://www.fcc.gov/guides/mergers-frequently-asked-questions>. In March 2002, the FCC adopted merger review procedures that allow certain transactions among common carriers to be reviewed within 30 days if the applications meet certain criteria. Federal Communications Commission, "Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations," 17 *FCC Record* 5517, March 20, 2002.

⁶⁴ Federal Communications Commission, "Applications of Comcast Corporation, General Electric Company, and NBC Universal Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4248, January 19, 2011.

⁶⁵ Generally, although the votes may be split three to two, commissioners approve transactions subject to conditions. A rare example of the full commission voting to designate a merger for a hearing involved the potential merger of the two major DBS operators, Dish and DIRECTV. Federal Communications Commission, "Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Corporation (Delaware Corporations); (Transferors) and EchoStar Communications Corporation (a Delaware Corporation); (Transferee), Hearing Designation Order, FCC 02-284," 17 *FCC Record* 20559, October 16, 2002. The parties subsequently abandoned the proposed transaction.

⁶⁶ ABA Section of Antitrust Law, *The Merger Review Process: a Step-by-Step Guide to U.S. and Foreign Merger Review*, 4th ed. (Chicago: ABA Publishing, American Bar Association, 2012), pp. 125-126.

Potential Issues for Analysis

Under the terms of the proposed Charter-TWC-BHN transaction, Liberty Broadband would have the right to vote up to 25.01% of the stock of Charter after the merger. Liberty Broadband may nominate up to three directors and Advance/Newhouse may nominate up to two directors to Charter's 13-member board. If Advance/Newhouse reduces its ownership stake in Charter, Liberty Broadband's stake cannot exceed 35%.⁶⁷

In analyzing MVPD mergers and acquisitions, the FCC investigates whether MVPDs have "attributable interests" in cable or broadcast networks—that is, whether firms have the ability to exercise control over other firms through arrangements short of outright ownership.⁶⁸ To assess whether such interests exist, the FCC generally uses three principal criteria. One is whether one firm is able to exercise actual working control over another.⁶⁹ Another is whether individuals controlling 5% or more of the stock of one corporation will also control 5% or more of the stock of another. Sharing officers or directors is also deemed an attributable interest, unless the duties and responsibilities of the officer or director involved are wholly unrelated to the media subsidiary, and the subsidiary submits a certification properly documenting this fact to the FCC.

In previous merger transactions involving MVPDs, programming networks, and studios, the FCC imposed conditions to fortify its program access and program carriage rules. When it reviewed Liberty Media Corporation's acquisition of DIRECTV from News Corporation in 2008, the commission attributed John Malone's investments in cable programming networks to DIRECTV for the purpose of applying program access conditions.⁷⁰ When the FCC reviewed Comcast's merger with the NBC Universal in 2010, the FCC considered Comcast's interests in movie and television studios as well as broadcast and cable networks, and for the first time extended program access conditions to OVDs.⁷¹ DOJ imposed similar conditions on Comcast.⁷² The agencies may embark on a similar analysis in considering Charter's proposed transactions.

⁶⁷ Charter FCC Public Interest Statement, pp. 53-54. See also Charter Communications Inc., "Securities and Exchange Commission Schedule 14a Proxy Statement Pursuant to Section 14(a) of the Securities Act of 1934, Preliminary Proxy Statement," June 26, 2015, pp. 272-273.

⁶⁸ See, for example, Federal Communications Commission, "News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control," 23 *FCC Record* 3265,3300 - 3301, February 26, 2008, and Federal Communications Commission, "Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4243, 4355, January 19, 2011.

⁶⁹ 47 C.F.R. §1000(b); 47 C.F.R. §76.501, Notes 1 - 6. Holders of debt and instruments such as warrants, convertible debentures, options, or other non-voting interests with rights of conversion to voting interests are not attributed unless the holder converts the debt to stock, unless the combination of equity and debt exceeds 33%.

⁷⁰ Because the FCC's rules do not apply to satellite operators, the FCC imposed conditions on Liberty Media's acquisition of DIRECTV. Federal Communications Commission, "News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control," 23 *FCC Record* 3265,3266, February 26, 2008. The DOJ approved the transaction without imposing conditions.

⁷¹ Federal Communications Commission, "Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4263, 4270-4288, January 19, 2011.

⁷² U.S. Department of Justice, "Justice Department Allows Comcast-NBCU Joint Venture to Proceed with Conditions," press release, January 18, 2011, <http://www.justice.gov/opa/pr/justice-department-allows-comcast-nbcu-joint-venture-proceed-conditions>.

Against this background, three key issues related to potential harms to competition in the television industry may merit analysis in the regulatory review process:

1. Whether John Malone, through his companies' ownership interests in Charter, television networks, and studios, would enable Charter to interfere in the negotiations for access to programming between these studios and networks and Charter's competitors.
2. The degree to which John Malone, through his ownership of non-voting DIRECTV stock, could thwart competition among MVPDs acquiring programming from creators and selling programming to consumers.
3. The extent to which Charter, by assuming control of TWC's joint ventures and partnerships with Comcast, could curb competition among MVPDs acquiring programming from creators, as well broadband access providers distributing programming from OVDs.

In addition, the agencies may evaluate whether Charter's proposed commitments would be sufficient to mitigate potential harms.

Applicability of Program Access/Program Carriage Rules to Cable Networks

Liberty Media began in 1991 as a portfolio of investments in cable networks that had been owned by a large cable operator, Telecommunications Inc., which has subsequently gone out of business.⁷³

Today, John Malone, through the various Liberty affiliates, has interests in a television and movie studio (Lions Gate), cable networks (Starz and Discovery), and MVPDs (Charter and DIRECTV). The proposed transactions would increase his control over the broadband access market, as well as the video services market. John Malone is the largest voting shareholder of Starz, holding about 32.1% of the voting power.⁷⁴ He also has a 29% voting stake in Discovery⁷⁵ and a 3.4% stake in Lionsgate, the parent company of the Lions Gate studio.

Because of his holdings in Discovery, Starz, and Charter Communications, as well as his positions on the companies' boards of directors, Malone's interests count as attributable under the FCC's rules. In addition, the Advanced/Newhouse Programming Partnership has a 32.81% interest in Discovery Communications, Inc. and three designees on Discovery's board of directors, including Advance/Newhouse's CEO, thereby making Discovery an attributable interest of BHN.⁷⁶

⁷³ Liberty Media, Corp., "Company Overview: Company History," <http://www.libertymedia.com/company-history.aspx>; Mark Robichaux, *Cable Cowboy: John Malone and the Rise of the Modern Cable Business* (Hoboken, NJ: John Wiley & Sons, 2002), pp. 112-119.

⁷⁴ Etan Vlessing, "Lionsgate to Take Starz Stake, Adds John Malone to the Board," *Hollywood Reporter*, February 11, 2015, <http://www.hollywoodreporter.com/news/lionsgate-acquires-starz-stake-adds-772482>.

⁷⁵ Shalini Ramchandran and Ben Fritz, "Liberty's John Malone Eyes Content Consolidation," *Wall Street Journal*, June 3, 2015, <http://www.wsj.com/articles/libertys-john-malone-eyes-content-consolidation-1433360774>. Malone is reportedly interested in merging Starz with Lions Gate as well as other content owners, and increasing collaboration between Lions Gate and Discovery.

⁷⁶ Charter FCC Public Interest Statement, Exhibit H.

The DOJ and FCC, as part of their review, may request that Charter identify all such programming networks. In addition, the agencies may wish to request that Charter submit all agreements between John Malone, Liberty, or any of their affiliates and the applicants that parties filed with the Security and Exchange Commission as part of their merger agreement.⁷⁷ Doing so would enable the agencies to identify the extent to which the program access and program carriage rules apply to the Starz networks or other cable networks in which Malone has interests.

Applicability of VOD and OVD Merger Conditions to Studios

The agencies may also consider extending program access conditions to television and movie studios that license television programs and movies for distribution online or on an on-demand basis, as they did when Comcast purchased the film and television studios of NBC Universal.⁷⁸

As part of their review, the agencies could ask for Charter to provide a list of all studios and other content owners (e.g., sports teams) in which Malone has stock interests and/or holds a board seat. In addition, to learn more about Malone's incentives with the licensing of programming for OVD and video-on-demand services, they could request correspondence between Malone, Charter, TWC, and BNH related to the licensing of content from the Lions Gate studios, the Atlanta Braves baseball team, and any other content owners.

Malone's Influence over Charter and DIRECTV

In December 2006, News Corp. and Liberty Media reached an agreement to exchange Liberty's voting stake in the company for News Corp.'s stake in DIRECTV and three regional sports networks. In 2008, the FCC approved News Corp.'s application to transfer control of DIRECTV to Liberty Media, subject to conditions. Among those conditions, the FCC required Liberty Media to sever all attributable interests (e.g., voting stock and membership on the board of directors) connecting DIRECTV to Liberty's cable systems in Puerto Rico, in order to maintain MVPD competition in that region.⁷⁹

In 2010, Malone and two other executives of Liberty Media resigned from the board of DIRECTV and Malone reduced his voting interest in DIRECTV from 24.3% to 3%, in exchange for non-voting stock.⁸⁰ As part of Malone's 2010 agreement with DIRECTV, Malone and DIRECTV agreed not to take action that would cause Malone to have an attributable interest in DIRECTV, including a prohibition on Malone or his family from acquiring ownership of 5% or

⁷⁷ Charter FCC Public Interest Statement, Exhibit B, *Agreement and Plan of Mergers*, Section 5.15 "Certain Agreements," pp. 59-60.

⁷⁸ Federal Communications Commission, "Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4273-4288, January 19, 2011. U.S. Department of Justice, "Justice Department Allows Comcast-NBCU Joint Venture to Proceed with Conditions," press release, January 17, 2011, http://www.justice.gov/atr/public/press_releases/2011/266149.pdf.

⁷⁹ Federal Communications Commission, "News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control," 23 *FCC Record* 3265, 3268, February 26, 2008.

⁸⁰ DIRECTV recognizes the common stock issued to Malone and his family as a liability. DIRECTV SEC Form 10-K for the Fiscal Year Ended December 31, 2014, pp 115-116. As part of the agreement, Malone and DIRECTV agreed not to take action that would cause Malone to have an attributable interest in DIRECTV, including a prohibition on Malone or his family from acquiring ownership of 5% or more of DIRECTV's stock. DIRECTV SEC Form 8-K, *DIRECTV-Malone Stock Exchange Agreement*, April 6, 2010, p. 1.

more of DIRECTV's stock.⁸¹ According to press reports, however, as of 2013, Malone was the largest individual investor in DIRECTV, with a 5% stake in the company.⁸²

When the FCC approved Liberty Media's acquisition of DIRECTV, it stated the following:

We note that determining whether a particular interest is attributable is a fact-intensive inquiry, and, even where an interest may appear non-attributable under the bright-line attribution rules, the Commission retains the discretion to review individual cases that present unusual issues. Such would be the case where there are combined interests that are so extensive that they raise an issue of significant influence notwithstanding the fact that the interests do not come within the parameters of a particular attribution rule.⁸³

In light of AT&T's pending merger with DIRECTV, the regulatory agencies might examine the degree to which Malone still exercises influence over AT&T, despite not having de facto control pursuant to the FCC's cable attribution rules. Influence over the merged Charter, as well as the combined AT&T-DIRECTV, could potentially enable Malone to reduce competition among MVPDs. The FCC did not ask DIRECTV to provide information about Malone's influence in its review of the proposed AT&T-DIRECTV merger.⁸⁴

Joint Ventures Among Cable Operators

According to John Malone:

You don't have to consolidate ownership necessarily to benefit from scale. Cooperation in amongst players is an important ingredient in scale.⁸⁵

To examine whether the proposed transactions could reduce competition by enhancing cooperation among cable operators, the FCC could ask TWC and BHN to supply information about their joint ventures, which currently include Comcast and or other cable operators but exclude Charter. There are several examples of such joint ventures.

Both TWC and BHN have attributable interests in iN Demand LLC, which operates video-on-demand and pay-per-view services.⁸⁶ Other owners of iN Demand include Comcast and Cox Communications. Through iN Demand, TWC obtains rights to carry movies and events and to

⁸¹ DIRECTV SEC Form 8-K, *DIRECTV-Malone Stock Exchange Agreement*, April 6, 2010, p. 1.

⁸² Alex Sherman and Jonathan Erlichman, "Liberty's John Malone Urges Ergen to Merge Dish with DIRECTV," *Bloomberg Business*, July 11, 2013, <http://www.bloomberg.com/news/articles/2013-07-11/liberty-s-john-malone-urges-ergen-to-merge-dish-with-directv>.

⁸³ Federal Communications Commission, "News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control," 23 *FCC Record* 3265, 3294, n. 193, (citing Federal Communications Commission, "Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy, Report and Order [R&O], FCC 99-207," 14 *FCC Record* 12559, 12581 August 6, 1999).

⁸⁴ Federal Communications Commission, *DIRECTV Information and Discovery Requests*, MB Docket No. 14-90, September 9, 2014, <https://www.fcc.gov/article/doc-329323a2>.

⁸⁵ "LMCA-Liberty Media Corp. Investor Day, Edited Transcript," *Thomson Reuters Streetevents*, November 19, 2014, p. 26.

⁸⁶ Charter FCC Public Interest Statement, Exhibits G and H.

sell and/or rent video programming online.⁸⁷ iN Demand also negotiates on behalf of Comcast with studios for the right to sell electronic copies of movies directly to consumers, enabling Comcast to compete directly with Apple's iTunes and Amazon Prime Instant.⁸⁸ In addition, iN Demand produces promotional programming on behalf of TWC, BHN, and Cox Communications.⁸⁹ iN Demand also owns and operates content delivery networks on behalf of its affiliates. By acquiring TWC's and BHN's interests in iN Demand, Charter could potentially facilitate coordination among cable operators with respect to the acquisition and marketing of programming for MVPDs' on-demand services.

TWC, together with Comcast and Cox, owns National Cable Communications (NCC), which sells advertising time to national and regional advertisers on behalf of "virtually every other TV service provider in the country."⁹⁰ Charter is not among the MVPDs listed. The transactions could potentially increase Charter's ability to facilitate coordination among MVPDs in the sale of advertising.

In December 2011, several cable operators entered into marketing agreements with Verizon Wireless. These agreements allow the companies to sell bundled offerings that include Verizon Wireless services and the cable operators' residential wireline voice, video, and Internet access services in areas where Verizon Wireless's parent company, Verizon Communications Inc., sells DSL Internet access service.⁹¹ With the proposed transaction, the incentive and ability of Charter to coordinate its activities with Verizon might increase, given the larger number of cable and Internet access subscribers whom the agreements would affect.

Charter's Commitments/Proposed Benefits

The agencies could investigate whether Charter's proposed commitments would be sufficiently beneficial to mitigate potential harms of the transaction.⁹²

Among the benefits of the proposed transaction, Charter claims that the transactions would increase TWC's and BHN's incentives to invest in new services, infrastructure, and customer service.⁹³ To verify this claim, the FCC would need to investigate whether TWC and BHN were planning to make such investments independently, absent the proposed transaction. Moreover, the FCC could investigate the extent to which Charter's reliance on secured debt to fund the

⁸⁷ Time Warner Cable Inc., SEC Form 10-K for the Fiscal Year Ended December 31, 2014, p. 7.

⁸⁸ Kent Gibbons, "Helping Operators Take Care of Business: iN Demand Gets Affiliates Ready for Era of EST (Special Advertising Section)," *Multichannel News*, June 15, 2015, p. 28A.

⁸⁹ Kent Gibbons, "iN Demand's Mod Squad: Customized Marketing Drives Movies on Demand (Special Advertising Section)," *Multichannel News*, June 15, 2015, p. 30A.

⁹⁰ NCC Media, "Owners and Affiliates," <http://nccmedia.com/about/owners-affiliates/>.

⁹¹ U.S. Department of Justice, "Justice Department Requires Changes to Verizon-Cable Company Transactions to Protect Consumers, Allows Procompetitive Spectrum Acquisitions to Go Forward," press release, August 15, 2012, <http://www.justice.gov/opa/pr/justice-department-requires-changes-verizon-cable-company-transactions-protect-consumers>. The DOJ reached a settlement with Verizon Communications, Inc., and the cable companies in 2012. Among other conditions, the DOJ required the parties to terminate the marketing agreements in December 2016, unless the DOJ gave the parties permission to renew them.

⁹² John Malone has advocated for differentiated pricing in high-speed data services to enable providers, such as Charter, to manage Internet traffic during periods of high demand. "LMCA – Liberty Media Corp. Investor Day, Edited Transcript," *Thomson Reuters Streetevents*, November 19, 2014, p. 23.

⁹³ Charter Public Interest Statement, pp. 17-33.

transactions could limit Charter's ability to spend extensively on improving its products and services.⁹⁴ If, after the transactions close, Charter's costs are higher than, or revenues are lower than, what it anticipates today, Charter may need to reduce spending on investments or sell off assets in order to repay debt holders.

In July 2015, Charter pledged to the FCC that, as a condition of the agency's approval of the proposed transactions, it would maintain a settlement-free interconnection policy until December 31, 2018.⁹⁵ According to its revised interconnection policy, Charter will interconnect its network at no charge with OVDs (or other applicants delivering content to Charter's subscribers) under certain conditions. Among the conditions, the applicants must deliver a minimum amount of traffic to Charter as set forth in the agreement. Both Charter and the applicants agree to maintain a certain level of capacity to meet the demand from Charter's broadband access subscribers. Either party may increase capacity at no charge to support the exchange of Internet traffic. Netflix responded by supporting the proposed transactions if the FCC incorporates Charter's new interconnection policy as a condition.⁹⁶ The FCC may be concerned that Charter's debt could compromise its ability to fulfil commitments to provide sufficient capacity to deliver online video and other services to its broadband subscribers.

In its public interest statement, Charter committed to abide by the FCC's 2015 Open Internet Order, as well as additional constraints on its behavior, for three years after the close of the transaction. Among those commitments, it pledged that the merged firm would not block or throttle Internet traffic or engage in paid prioritization, whether or not the FCC's Open Internet order is upheld in court. It also agreed to submit interconnection disputes to the FCC, and to refrain from engaging in data usage caps or usage-based billing.⁹⁷

⁹⁴ Moody's Investors Services, "Moody's Places Time Warner Cable's Baa2 Senior Unsecured and Prime-2 Ratings on Review for Downgrade," press release, May 26, 2015, https://www.moodys.com/research/Moodys-places-Time-Warner-Cables-Baa2-senior-unsecured-and-Prime-PR_326169. See also Gilliam Tan, "Time Warner Cable Deal Stirs Debt Concerns," *Wall Street Journal*, May 26, 2015, <http://www.wsj.com/articles/time-warner-cable-deal-stirs-debt-concerns-1432682489>.

⁹⁵ Letter from Samuel L. Feder, counsel for Charter Communications, Inc., re: MB Docket No. 15-149., to Ms. Marlene Dortch, Secretary, Federal Communications Commission, July 15, 2015, including a copy of Charter's updated interconnection policy <http://apps.fcc.gov/ecfs/document/view;ECFSESSION=QTbVVmZDtk6DstyKKJmwYSlvFzV2vZcXBtLNVsnT27yFV1yybbG3!-774309124!-1954627099?id=60001115477>.

⁹⁶ Letter from Christopher D. Libertelli, Vice President, Global Public Policy, Netflix, re: MB Docket 14-57, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, July 15, 2015, <http://apps.fcc.gov/ecfs/document/view?id=60001115480>.

⁹⁷ Charter FCC Public Interest Statement, p. 3.

Appendix. Estimated Market Shares Pre- and Post-Potential Transactions

Cable operators, direct-broadcast satellite (DBS) operators, and telcos all offer video and broadband access services. Consumers can get video services from all three types of operators, but generally rely on cable operators and telcos for broadband access services. The geographic areas in which these types of firms operate vary. The largest cable operators generally do not compete directly with each other at the retail level. Instead, they operate in non-overlapping geographic regions. DBS operators are available throughout the United States. Telcos compete directly with the DBS and cable operators.⁹⁸ The local market shares of each company indicate the extent to which these companies compete with one another for subscribers.

MVPDs' national market shares indicate the relative bargaining power the MVPDs have when negotiating with studios and networks to deliver programming to video subscribers. Broadband access providers' national market shares indicate the relative bargaining power the broadband access providers have when negotiating with wholesale transit providers and CDNs over charges for delivering programming to broadband access subscribers under interconnection agreements.

Table A-1 and **Table A-2** describe the national market shares of MVPDs using subscriber numbers from March 30, 2015, before and after the closing of the potential transactions described in "Charter-TWC-BHN Transactions Background." **Table A-3** and **Table A-4** describe the national market shares of the wireline broadband access service providers using subscriber numbers from March 30, 2015, before and after the closing of the potential transactions described above. This information is based on CRS analysis of data from the market research firm SNL Kagan.

There is no industry-wide standard definition of "broadband" services. In 2015, however, as part of its congressionally mandated effort to evaluate regularly whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, the FCC adopted the benchmark of 25 Megabits per second (Mbps) downstream and 3 Mbps upstream for "advanced telecommunications capability."⁹⁹ In its evaluation of the now abandoned transactions involving Comcast, TWC, and Charter, the FCC's Media Bureau entered into the record broadband subscriber data that the FCC collects, including each provider's nationwide shares of 25 Mbps/3 Mbps broadband subscribers. The FCC considered that data to be confidential, however, and limited access to members of the public willing to sign an order protecting the distribution of that data.¹⁰⁰ Charter claims that after the merger it would serve fewer

⁹⁸ Verizon Communications has announced that it will cease to build out its FiOS wireline network, and instead invest more in its wireless operations. Chris Moran, "Verizon Nearing End of Plans to Build FiOS network," *Consumerist*, January 25, 2015, <http://consumerist.com/2015/01/26/verizon-nearing-end-of-plans-to-build-fios-network/>.

⁹⁹ Federal Communications Commission, "Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, FCC 15-10," 30 *FCC Record* 1375, 1377, February 4, 2015. See also 47 U.S.C. §1302(b).

¹⁰⁰ Federal Communications Commission, "Media Bureau Makes Available Broadband Subscriber Data Relevant to Review of Proposed Comcast-Time Warner Cable-Charter Transactions, MB Docket No. 14-57," Public Notice, December 14, 2014, https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1803A1.pdf. See also Exhibit 1, Residential Fixed Broadband Subscriber Counts by Provider and Speed (Nationwide), https://apps.fcc.gov/edocs_public/attachmatch/DOC-330922A2.pdf.

than 30% of U.S. customers whose broadband service meets the FCC’s benchmark of 25 Mbps/3 Mbps or greater.¹⁰¹

Table A-1. MVPD Video Subscribers (in Thousands)

As of March 30, 2015

Provider Name	Video Subscribers	National Share
Comcast	22,375	22.2%
Time Warner Cable	11,025	10.9%
Charter	4,288	4.2%
Cox Communications Inc.	4,070	4.0%
Cablevision Systems Corporation	2,653	2.6%
Bright House Networks LLC	2,026	2.0%
Cequel Communications Holdings I, LLC d/b/a Suddenlink Communications	1,132	1.1%
All Other Cable	6,001	5.9%
Cable Total	53,570	53.0%
DIRECTV	20,412	20.2%
DISH Network	13,844	13.7%
DBS Total	34,256	33.9%
AT&T U-verse	5,993	5.9%
Verizon FiOS	5,739	5.7%
Frontier Communications	246	0.2%
All Other Telephone	1,202	1.2%
Telephone Total	13,180	13.0%
MVPD Total	101,006	100.0%

Source: CRS analysis of data from Ian Olgeirson, Tony Lenoir, and Chris Young, “Seasonal Surge Fails to Rescue First Quarter Multichannel Video Subscriptions,” *SNL Kagan*, May 15, 2015.

Notes: Data for the public filing MVPDs is gathered from quarterly filings. Data for the privately held operators (i.e., Cox Communications Inc. and Bright House Networks LLC) is collected from quarterly surveys returned by individual companies. Data for privately held companies that do not participate in the surveys is estimated by SNL Kagan based on prevailing industry trends and individual company performance expectations. Total represents the aggregate of the information collected and does not provide a full industry total for the U.S. cable segment.

¹⁰¹ Charter Communications Inc., Time Warner Cable Inc., Bright House Networks, “Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks,” investor presentation, p. 23, May 26, 2015, <http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-irhome>.

Table A-2. Hypothetical Post-Merger MVPD Video Subscribers (in Thousands)

Based on Subscribers as of March 30, 2015

Provider Name	Video Subscribers	National Share
AT&T-DIRECTV ^a	26,405	26.1%
Comcast	22,375	22.2%
Charter-Time Warner Cable-Bright House Networks ^b	17,338	17.2%
DISH Network	13,844	13.7%
Verizon FiOS ^c	4,539	4.5%
Cox Communications, Inc.	4,070	4.0%
Cablevision Systems Corporation	2,653	2.6%
Frontier Communications ^c	1,446	1.4%
Altice-Suddenlink ^d	1,132	1.1%
All Other MVPDs	8,335	8.3%
Total	101,006	100%

Source: CRS analysis of data from Ian Olgeirson, Tony Lenoir, and Chris Young, “Seasonal Surge Fails to Rescue First Quarter Multichannel Video Subscriptions,” *SNL Kagan*, May 15, 2015.

Notes: Data for the public filing operators is gathered from quarterly filings. Data for the privately held operators (i.e., Cox Communications Inc. and Bright House Networks LLC) is collected from quarterly surveys returned by individual companies. Data for privately held companies that do not participate in the surveys is estimated by SNL Kagan based on prevailing industry trends and individual company performance expectations. Total represents the aggregate of the information collected. Numbers are rounded.

- a. If the proposed AT&T-DIRECTV transaction closes.
- b. If the proposed Charter-TWC-BHN transactions close.
- c. If the proposed Frontier-Verizon FiOS transactions close. Estimates of Frontier and Verizon video subscribers based on Frontier Communications Corp. and Subsidiaries SEC Form 10-Q, for the period ended March 31, 2015. Estimates are based on the number of Verizon FiOs video subscribers in California, Florida, and Texas, as of Dec. 31, 2014
- d. If the proposed Altice-Suddenlink transaction closes.

Table A-3. Wireline Broadband Access Subscribers (in Thousands)

As of March 30, 2015

Provider Name	Broadband Access Subscribers	National Share
Comcast	22,369	23.7%
Time Warner Cable	12,581	13.3%
Charter	5,208	5.5%
Cox Communications Inc.	4,915	5.2%
Cablevision Systems Corporation	2,767	2.9%
Bright House Networks LLC	2,162	2.3%
Cequel Communications Holdings I, LLC d/b/a Suddenlink Communications	1,249	1.3%
All Other Cable	5,759	6.1%
Cable Total	57,010	60.4%
AT&T	16,097 ^a	17.1%
Verizon	9,246 ^b	9.8%
Frontier	2,387	2.5%
All Other Telephone	9,630	10.2%
Telephone Total	37,360	39.6%
Total Fixed Wireline Broadband Access	94,370	100.0%

Source: CRS analysis of data from Ian Olgeirson, “HSD Subscriber Count Produces Q1 Lift,” SNL Kagan, May 20, 2015.

Notes: Broadband access services listed include those that do not meet the FCC’s benchmark definition. Data for the public filing operators is gathered from quarterly filings. Data for the public filing operators is gathered from quarterly filings. Data for the privately held operators (i.e., Cox Communications, Inc. and Bright House Networks, LLC) is collected from quarterly surveys returned by individual companies. Data for privately held companies that do not participate in the surveys is estimated by SNL Kagan based on prevailing industry trends and individual company performance expectations. Total represents the aggregate of the information collected. Subscriber numbers include residential and commercial subscribers.

- a. Includes 16.6 million U-verse subscribers and 3.497 million traditional digital subscriber line (“DSL”) subscribers. DSL is a technology that increases the capacity of ordinary telephone lines. PC Magazine, Encyclopedia, Definition of DSL, <http://www.pcmag.com/encyclopedia/term/42043/dsl>.
- b. Includes 6.749 million FiOS subscribers and 2.497 million DSL subscribers.

Table A-4. Hypothetical Post-Merger Broadband Access Subscribers (in Thousands)

Based on Subscribers as of March 30, 2015

Provider Name	Broadband Access Subscribers	National Share
Comcast	22,369	23.7%
Charter-Time Warner Cable-Bright House Networks ^a	19,951	21.1%
AT&T	16,097 ^b	17.1%
Verizon ^c	7,046 ^d	7.5
Cox Communications, Inc.	4,915	5.2%
Frontier Communications ^c	4,587	4.9%
Cablevision Systems Corporation	2,767	2.9%
Altice-Suddenlink ^e	1,249	1.3%
All Other	15,389	16.3%
Total Fixed Wireline Broadband Access	94,370	100.0%

Source: CRS analysis of data from Ian Olgeirson, “HSD Subscriber Count Produces Q1 Lift,” SNL Kagan, May 20, 2015.

Notes: Broadband access services listed include those that do not meet the FCC’s benchmark definition. Data for the public filing operators is gathered from quarterly filings. Data for the privately held operators (i.e., Cox Communications, Inc. and Bright House Networks, LLC) is collected from quarterly surveys returned by individual companies. Data for privately held companies that do not participate in the surveys is estimated by SNL Kagan based on prevailing industry trends and individual company performance expectations. Total represents the aggregate of the information collected. Subscriber numbers include residential and commercial subscribers.

- a. If the proposed Charter-TWC-BHN transactions close.
- b. Includes 16.6 million U-verse subscribers and 3.497 million traditional digital subscriber line (“DSL”) subscribers.
- c. If the proposed Frontier-Verizon FiOS transactions close. Estimates of Frontier and Verizon broadband access subscribers based on Frontier Communications Corp. and Subsidiaries SEC Form 10-Q, for the period ended March 31, 2015. Estimates are based on the number of Verizon broadband access subscribers in California, Florida, and Texas, as of December 31, 2014.
- d. Includes 6.749 million FiOS subscribers.
- e. If the proposed Altice-Suddenlink transaction closes.

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