Top Five Empty Promises by Comcast

Comcast is making a number of promises to the Federal Communications Commission and the Justice Department in an effort to persuade them that its merger with Time Warner Cable would be good for consumers and in the public interest for America. But a closer look at five of Comcast's top promises shows how these claims simply don't hold water.

1. "We'll improve customer service if the merger is allowed."[1]

Comcast and Time Warner Cable are already *the two biggest cable companies in the United States*. Both companies have grown into giants through numerous past mergers and acquisitions. And in almost every merger, you hear the same thing: They always promise that better customer service will result. But their track record shows that it has not. As is all too familiar to consumers, bigger often does not mean better when it comes to customer service.

Comcast and Time Warner Cable consistently rank near the very bottom for customer satisfaction, according to consumer surveys by the Consumer Reports National Research Center and the American Consumer Satisfaction Index. In the latest Consumer Reports Survey, Comcast comes in 15th out of 17 for customer satisfaction among pay-TV providers, and Time Warner Cable ranks 16th. Both companies have also earned poor ratings as Internet service providers.

The Director of the American Consumer Satisfaction Index pointedly notes that "it's a concern whenever two poor-performing service providers combine operations. ... It's hard to see how combining two negatives will be a positive for consumers."

Comcast claims it is "laser-focused" on improving customer service, and that the merger will bring this "laser focus" over to Time Warner Cable subscribers. But here's what experience shows is the more likely scenario. When Comcast and Time Warner Cable purchased and carved up the bankrupt cable provider Adelphia in 2006, the effect on customer service was a disaster. Newspapers in multiple states reported that Adelphia customers lost Internet service. They discovered that they could not send emails, and that their past emails had been deleted; that cable channels had been cancelled; that modems did not work. Call centers were swamped with complaints.

If Comcast and Time Warner Cable are serious about improving customer service, there is much work that needs to be done. But past experience tells us that another merger isn't going to help. An even bigger Comcast, with even more control over the market, would have even less reason to be responsive to customer needs.

2. "We'll help poor and rural communities if the merger is allowed."[2]

Comcast claims that this merger would help it "bridge the digital divide" by bringing more service to poor and rural communities. Comcast made this same promise when it was angling to get its merger with NBC/Universal approved in 2011, announcing a program it called "Internet Essentials."

What Comcast has delivered has fallen short of the picture it painted then. As of last May, it had enrolled only about 12% of eligible families. The speeds are too slow for anything beyond the most basic Internet search – nowhere even remotely near what the FCC says is the minimum requirement. And there are carefully crafted restrictions on who is eligible. For example, you must have a school-age child living at home who qualifies under the federal reduced-cost school lunch program. That cuts out senior citizens and many other low-income households. You also must not be signed up with Comcast already, or even have been signed up in the recent past. In other words, this program offers a low-cost, low-level service for some eligible new customers, not help for existing low-income customers, or for struggling seniors, singles, couples without children, or couples whose children are not school-age.

Without taking anything away from the stated goal, this program might more accurately be called "The Bare Essentials" – if that.

It's all too easy for a company to promise to do good works when seeking approval for a merger, and then go back to business as usual. If Comcast really wants to help bridge the digital divide, there is certainly more it – and Time Warner Cable – can do. But they don't need another merger to do it.

3. "We won't restrict access to choice programs we control if the merger is allowed."[3]

Four years ago, when Comcast was taking control of NBC/Universal, the FCC and the Justice Department were concerned that Comcast would hoard access to its popular programs – including Sunday Night Football, the Olympic Games, Saturday Night Live, CNBC, and the largest Spanish-language broadcast network, Telemundo, to name a few – so that consumers could get those programs only from Comcast, not from others competing with Comcast. Comcast had already used this tactic in its home town of Philadelphia, where it refused to give direct broadcast satellite companies access to its regional sports network.

Comcast was allowed to buy NBC/Universal, but only after pledging not to hoard content. Comcast promised it would give other video program distributors fair access to its programs, and agreed to other conditions that were supposed to ensure that. But sure enough, after the merger was approved, when Project Concord, a start-up online video distributor, tried to get NBC/Universal programs, Comcast refused, and fought tooth and nail. In the words of Project Concord, Comcast "used the very first test of the online video Conditions to send a chilling message to the marketplace – any attempt to enforce the Conditions would be met with a scorched earth resistance strategy that only a multi-billion dollar conglomerate can mount."

The merger would just make this problem worse, because Comcast would control even more of the "pipes" through which its own popular movies, television programs, and sports programs get to homes throughout the country, including in most of the largest metropolitan areas. More cable and broadband coverage in more cities equals more opportunities for Comcast to restrict access by competing distributors to the programs Comcast controls.

4. "We'll provide plenty of sports programming for local fans if the merger is allowed."[4]

Sports programs are a big draw for many consumers. Whether it is football, basketball, baseball, tennis, or something else, Americans love to watch live sports on television. As sports programs are increasingly being taken off of "free" television and put on specialized pay-TV networks, watching your favorite sports team depends on who owns that team's programs, and how they control access. And unfortunately, Comcast and Time Warner Cable already have a history of restricting access to popular sports programming, in over a dozen media markets across the country.

In addition to their vast cable and broadband operations, Comcast also owns NBC Sports and an array of regional sports networks throughout the nation, and Time Warner Cable's holdings include key regional sports networks in Los Angeles and New York. Both companies have taken unfair advantage of this position, shutting off opportunities to see local sports through other distributors. Just as Comcast blocked satellite TV rivals from carrying its regional sports network in Philadelphia, Time Warner Cable did the same thing this past year in Los Angeles, keeping 70% of L.A. Dodgers fans from watching their home team during that great season.

Comcast has also restricted consumer choice by choking off distribution of independent sports networks. For example, when the Baltimore Orioles and the Washington Nationals launched their own sports network, MASN, for their baseball games, Comcast refused to show that network to its 1.6 million cable subscribers in the Maryland, Washington, DC, and Virginia area. The result was that a majority of viewers in the area couldn't watch the Washington Nationals' first season, or most of the second.

This merger would do nothing to reduce this sort of gamesmanship. It would only increase it – and that would be strike three for many sports fans.

5. "The merger wouldn't harm competition – in fact, it couldn't."[5]

Comcast claims that because it already doesn't compete with Time Warner Cable for the same subscribers in any particular local area, the merger can't possibly result in any loss of competition. But that misses what's really at stake here.

This merger would give a single company unprecedented control over key programs, together with unprecedented control over the "pipes" by which those programs are brought into American homes. For many years, those pipes have been the local cable monopoly. And for many years, the cable monopoly has forced consumers to buy the programs they want in big, expensive packages that also include many programs they don't want.

Today and for the future, the key competition question is whether consumers will have other choices *besides* the cable monopoly – including choices like Netflix, Apple, Amazon, Hulu, and others we don't even know about yet. These other choices could break the hold on consumers that cable monopolies like Comcast and Time Warner Cable have profited from for so long – by giving consumers the freedom to leave the expensive cable package behind, and just get what they want to watch, when and where they want to watch it. This is already starting to happen.

But Comcast does not want to give up the high profits it makes on expensive cable packages. Comcast has already been making it harder for consumers to make other choices – with obstacles like charging almost as much for an Internet broadband connection alone as for broadband and cable combined, making subscribers rent set-top boxes that Comcast controls in order to get any cable programs, and charging Internet-based companies like Netflix an extra fee to effectively get their programs to consumers through the Comcast broadband pipes.

The merger would give Comcast even more control over the broadband gateway that Internet-based companies use to reach consumers. The FCC has now determined that 25 Mbps is the minimum speed needed for today's Internet broadband. Based on that threshold, a combined Comcast/Time Warner Cable would start out controlling half of all residential broadband connections in the country, with that percentage certain to increase even further. It's no exaggeration to say that the resulting harm to competition could touch everyone who uses or might use the Internet.

Comcast's greater national dominance would give it broader power to dictate what programs are offered to consumers, and broader power to weaken Internet-based companies, as well as satellite and other wires into the home, as potential alternatives to the cable monopoly.

And the problem would be compounded because competing startups and innovators would be discouraged from even trying to get off the ground, and they would find it harder to get the financial backing needed to challenge Comcast's hold. Comcast would have the power to control the pace of innovation to be in line with its own business plan, rather than competition driving innovation according to what is possible and what consumers want.

From local monopoly to national gatekeeper. Welcome to Comcast Country – literally.

"We're certainly not promising that customer bills are going to go down or even increase less rapidly."[6]

This didn't make our Empty Promises list – because we think Comcast's Executive Vice President is on to something. We agree that prices won't go down if the merger is allowed. They will go up. The merger would give Comcast more control, more leverage to elbow out competition, and a freer hand to boost its profits – by keeping prices as high as its captive customers will put up with, and by cutting corners on customer service. Comcast and Time Warner Cable have repeatedly raised the rates on their monopoly cable service – in the 18 years between 1995 and 2013, cable rates rose at 2½ times the rate of inflation.

Comcast now says the prices consumers pay for TV and Internet service should not be a factor in considering the merger.

Really?

[1] See, e.g., http://corporate.comcast.com/images/Public-Interest-Benefits-Summary.pdf, at 2.
[2] See Comcast Public Interest Statement (April 8, 2014), http://corporate.comcast.com/images/Comcast-Public-Interest-Statement-April-8.pdf, at 59-60.
[3] See, e.g., http://www.judiciary.senate.gov/imo/media/doc/04-09-14CohenMinsonJointTestimony.pdf, (p. 47).
[4] See, e.g., Comcast Opposition to Petitions to Deny, http://apps.fcc.gov/ecfs/document/view?id=7522909787, at page 175.
[5] See, e.g., http://www.judiciary.senate.gov/imo/media/doc/04-09-14CohenMinsonJointTestimony.pdf .
[6] See, e.g., http://arstechnica.com/tech-policy/2014/02/comcast-no-promise-that-prices-will-go-down-or-even-increase-less-rapidly/.