Comcast to Merge with Time Warner Cable

By John Vanderhoef

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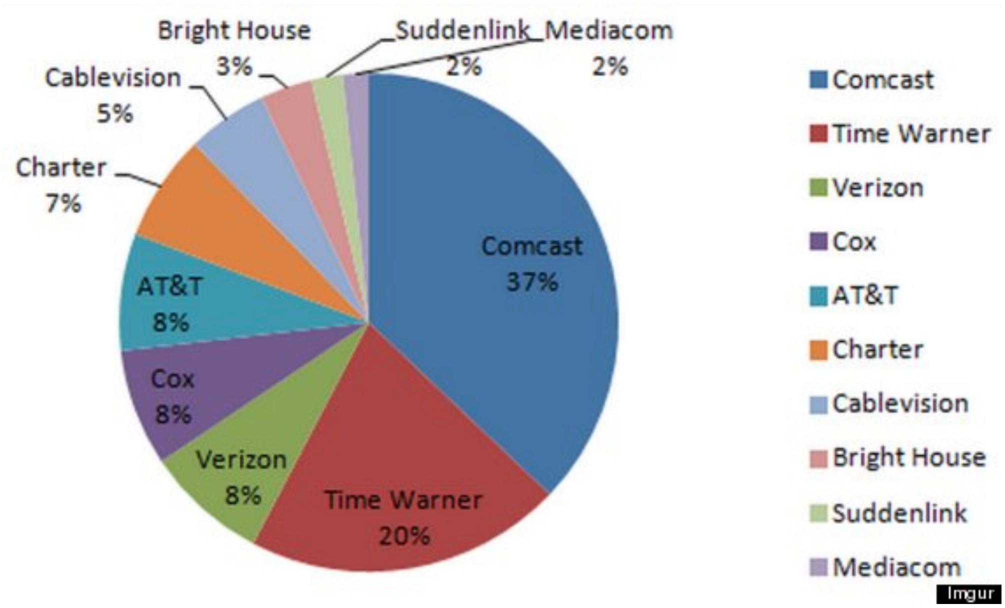
Comcast recently announced a deal to fully acquire Time Warner Cable through an all-stock purchase worth $45.2 billion. Already the nation's largest cable company, Comcast will increase its penetration by almost 54 percent after absorbing TWC, the second largest cable company in the US. This level of concentration is quite troubling for citizens and consumers, particularly given Comcast's ownership interests in the content its wires carry, which includes NBC networks and countless popular cable channels. Consequently, despite the fact that Comcast and Time Warner Cable operate in different markets, the merger has raised antitrust concerns among the FCC, the Justice Department, and advocacy groups.

With a history of buyouts and acquisitions merging content and conduits, most recently with its purchase of NBCUniversal, Comcast is now poised to take control of roughly one third of all U.S. pay-TV households and almost half of the market for bundled services, including cable, voice, and broadband services. Comcast also will gain multiple local stations and regional sports networks. Significantly, the deal will put Comcast in 19 of the nation's top 20 markets, including New York and Los Angeles, which gives the cable giant unprecedented power in its negotiations with both content providers and advertisers.

Ultimately, Comcast has to prove its acquisition of TWC will benefit, or at the very least not harm, the consuming public, something the company is hard pressed to do despite its concerted PR efforts. For instance, Comcast execs preempted any critics by claiming the merger does not impact the broader competitive landscape, since the two companies don't actually overlap in any markets. This lack of overlap notwithstanding, increased consolidation in the cable industry will certainly impact the level of competition and choices available for the public. Execs also stress the merger will enable the company to improve its broadband infrastructure and expand the rollout of its VOD options and TV Everywhere initiative, developments which they suggest benefit the consumer. Nonetheless, the conglomerate makes no promises that prices will go down or even increase at a slower pace if the deal is allowed to go through, largely undercutting the company's rhetoric concerning benefits for the public.



Watchdog groups like Free Press and Public Knowledge immediately expressed alarm over the market reach that the deal will give Comcast, which they fear will lead to price fixing and skyrocketing rates on cable programming and delivery services, as well as on national advertising rates. These groups also worry that an enlarged Comcast will gain unfair leverage in carriage disputes, especially with smaller, independent networks. Moreover, broadcasters may lobby against the merger unless the cable company agrees to extend its promise not to go after retransmission reform.

The proposed merger also underscores the growing importance of broadband to multichannel video program distributors as a source of growing revenues, and as a way of securing their dominance against the threat of streaming video companies like Netflix and Amazon in a marketplace slowly migrating to Internet video options. Net neutrality advocate and law professor Susan Crawford has criticized the proposed merger, arguing alongside others that the deal is precisely about controlling broadband access. If approved, the merger will make Comcast the largest Internet provider in the world outside of China—in all, that's about 33 million broadband subscribers across roughly 37 percent of the nation's broadband markets. Crawford suggests Comcast will invest as little as possible into its broadband infrastructure in order to maximize profits for its shareholders. This is especially harmful in regions where Comcast is the only Internet provider.

Accordingly, citizen critics took to social media to communicate their disdain for the merger, using the hashtag #ComCrapstick to protest the proposed deal.

Following the FCC's recent defeat in court, FCC chairman Tom Wheeler has announced plans to rewrite the open Internet rules in accordance with the authority that the court affirmed the FCC retains over the Internet. While there is little to indicate these new rules will stand up to scrutiny any more than the last ones, the Comcast/TWC merger presents another limited but unique opportunity for the commission. The FCC can potentially leverage its ability to block the acquisition in order to convince Comcast to extend its promise to follow the now defunct Open Internet rules past 2018, in what would be a small but symbolic victory for the commission.

However, the recent "peering agreement" between Comcast and Netflix to give Netflix direct access to Comcast networks, as opposed to going through a middleman, calls into question any assumptions that we're currently dealing with an open Internet. Along with AT&T's recent questionable "sponsored data" program, the Comcast/Netflix deal poses a significant threat to net neutrality principles, and further casts doubts over the public benefit of allowing Comcast to extend its market and infrastructural power.