

**REDACTED – FOR PUBLIC INSPECTION**

October 16, 2014

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: *Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57***  
**REDACTED – FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

Pursuant to the Modified Joint Protective Order in this proceeding,<sup>1</sup> Comcast Corporation hereby submits the enclosed redacted *ex parte* notice containing Highly Confidential and Video Programming Confidential Information (“VPCI”). The {{ }} symbols denote where Highly Confidential Information and VPCI have been redacted. The unredacted, Highly Confidential version of this filing was submitted to the Secretary’s Office under separate cover and will be made available for inspection pursuant to the terms of the Modified Joint Protective Order.

Please contact the undersigned should you have any questions regarding this matter.

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<sup>1</sup> *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57, Modified Joint Protective Order, DA 14-464 (Oct. 4, 2014) (“Modified Joint Protective Order”).*

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Respectfully submitted,

/s/ *Melanie A. Medina*  
Melanie A. Medina  
*Counsel for Comcast Corporation*

Enclosures



Comcast Corporation  
300 New Jersey Avenue, NW  
Suite 700  
Washington, DC 20001

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**Re: *Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57***  
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Dear Ms. Dortch:

On October 14, 2014, Greg Rigdon, Executive Vice President, Content Acquisition, and Sarah Gitchell, Senior Vice President and Deputy General Counsel, Content Acquisition, both of Comcast Cable, Lynn Charytan and Ryan Wallach of Comcast Corporation (“Comcast”), Art Burke of Davis Polk & Wardwell LLP, Michael Hurwitz of Willkie Farr & Gallagher LLP, and the undersigned met with the Commission staff copied below regarding issues related to the negotiations for and carriage of programming on Comcast Cable systems. Led by Mr. Rigdon and Ms. Gitchell, we discussed points made in Applicants’ Public Interest Statement relating to the TWC transaction<sup>1</sup> and Applicants’ Opposition and Response.<sup>2</sup>

In particular, we described how the video distribution marketplace is incredibly dynamic and competitive today and only getting more so. We noted that DBS providers have long provided significant competition nationwide, and telcos now have expanded their services very successfully across our footprint and are increasingly sophisticated buyers of programming.

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<sup>1</sup> See Applications and Public Interest Statement of Comcast Corporation and Time Warner Cable Inc., MB Docket No. 14-57 (Apr. 8, 2014) (“Public Interest Statement”).

<sup>2</sup> See Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57 (Sept. 23, 2014) (“Opposition and Response”).

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OVDs up to this point have been largely complementary to our video service – competing with premium channels and VOD offerings – but full multichannel OVDs are reportedly about to be launched, including by Dish and Sony, which will only add to the competitive environment.<sup>3</sup>

We explained that, in part because of this intense competition among MVPDs and other distributors, programmers have significant and growing bargaining leverage today. The evidence of carriage disputes over the past several years demonstrates that programmers have successfully leveraged demand for their content, and its availability on competing platforms, to negotiate favorable terms. As a result, and because programmers are increasingly seeking to obtain more uniform rates, we believe whatever historical price disparities there have been between large and smaller MVPDs have been diminishing in recent years – i.e., everyone is paying more, including us.<sup>4</sup> We noted that Comcast’s per-subscriber programming costs have increased by over 120 percent between 2004 and 2013, significantly outpacing increases in Comcast’s retail prices to customers.<sup>5</sup> We also noted that Comcast’s fees from retransmission consent agreements alone have experienced a compound annual growth rate of approximately {{ }} percent over a five-year period. We negotiate vigorously on price and economic issues to try to shield our customers from inordinate price increases, but prices are still going up (especially for retransmission consent), and our costs are continuing to rise.<sup>6</sup>

Notwithstanding these challenges and cost concerns, we explained that Comcast has a strong record of carrying independent channels – both launching new ones and expanding the carriage of channels we already carry. Today, Comcast carries more than 100 cable networks that provide programming of interest to Hispanic/Latino, African-American, Asian-American, and female audiences.<sup>7</sup> All told, Comcast carries over 160 independent networks, and six of every seven networks carried by Comcast are unaffiliated with the company. Since 2011, Comcast has added 20 independent networks and over the last four years has substantially expanded carriage of 141 independent networks by over 217 million subscribers, collectively.<sup>8</sup> Examples of unaffiliated networks that have been newly launched by Comcast in the past few years include Aspire, BBC World News, BabyFirst TV Americas, El Rey, Outside TV, PAC-12, Revolt, beIN Sport, and Crossings TV.

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<sup>3</sup> See Public Interest Statement at 20-22, 140, 143-46; Opposition and Response 152-53.

<sup>4</sup> See Public Interest Statement at 148-49; Opposition and Response at 158-59.

<sup>5</sup> See Opposition and Response at 292.

<sup>6</sup> See Public Interest Statement at 148-49; Opposition and Response 158-59, 291-92.

<sup>7</sup> This includes dozens of cable networks geared toward the Hispanic/Latino community, 14 geared to the African-American community, 28 geared to the Asian-American community, and 22 cable networks focused on women. Opposition and Response at 96-97.

<sup>8</sup> See *id.* at 96-104; see also Public Interest Statement at 149.

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We explained that one of Comcast’s major goals in negotiations is to provide additional value to customers and improve the customer experience, which means (among other things) securing robust VOD rights and new media/TV Everywhere rights. Our multi-platform approach to content negotiations – and our focus on VOD in particular – provides additional opportunities for programmers to increase the demand for and value proposition of their programming.<sup>9</sup> For example, one of Comcast’s priorities is to secure “stackable” rights to current-season programming on Comcast’s VOD platforms – that is, the rights to every previously aired episode of an in-season series, so that a customer can catch up from the beginning even if the series is past the traditional “rolling 4” episodes made available on VOD platforms. In 2011, we had virtually none of these full-season rights, and today we offer stackable in-season episodes for approximately 500 programs. These rights are not exclusive, and they do not interfere with programmers licensing the same content or related content to OVDs.

But not all of these rights are available – not because the programming has been licensed in that same window, but because {{

}}. Notably, when this happens, customers may be without access to that content on any platform (apart from standalone purchases on iTunes, etc.) for many months. In addition, older seasons of stackable content are also unavailable for licensing on our platforms because OVDs like Netflix have secured significant exclusivity for such content (such as all past seasons of *Walking Dead*). We noted that the NBCUniversal Conditions and DOJ Consent Decree broadly prohibit us from obtaining similar exclusivities on our MVPD platform.<sup>10</sup>

With respect to TV Everywhere rights, we noted in response to questions that these rights sometimes involve substantial negotiation concerning what rights we are able to obtain, how customers are authenticated, on what platforms and devices customers may be authenticated (which is often driven by rights issues), whether the programmer has a privacy policy in place when it authenticates our customers on its site, and other issues. These negotiations can be complex, and coming to agreement can take time.

We discussed the concerns that have been raised by programmers and others about Comcast’s greater distribution scale. We explained that we do not expect to have any greater bargaining leverage from acquiring approximately seven million more subscribers; if anything, the Transaction may increase the stakes for us of losing access to content – i.e., we have more customers to lose by not being able to come to a mutually acceptable deal with programmers. In this regard, we noted the recent industry trend that several *smaller* MVPDs, and not Comcast,

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<sup>9</sup> See Public Interest Statement at 74-78, 103; Opposition and Response at 61, 79.

<sup>10</sup> See Opposition and Response at 169-72.

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have decided to forego carriage of certain content following disputes with programmers. At the same time, we believe our greater scale following the Transaction may be good for programmers because it gives them the opportunity to make available more programming on additional platforms. We also responded to questions about the programming cost-savings Comcast preliminarily estimated in connection with the announcement of the Transaction. Comcast projected no incremental cost-savings with respect to its own pricing, but did estimate some savings with respect to TWC contracts. We explained that this rough estimate was principally driven by {{

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With respect to MFN provisions, we explained that, as a general matter, MFN provisions are pro-competitive and beneficial to our customers because they permit our customers to secure the benefit of price breaks or other value that a programmer may provide to other distributors. MFNs are also one of the best contractual mechanisms we have to allow our relationships with networks to grow and adjust to new technology or other marketplace developments without having to inefficiently negotiate every new issue prior to renewal discussions. This provides our customers earlier access to functionality and content they otherwise may not have. Once a network decides what its strategy is with respect to a new platform or business model, an MFN on such terms would allow our customers to have the benefit of that decision prior to the next contract negotiation, which may be years away.<sup>11</sup>

MFN provisions also give us confidence to enter into long-term arrangements with new or fledgling networks. Networks get the benefit of rate certainty and carriage certainty over time, and we get the benefit of insurance against having paid too much for programming before the marketplace settles on what the right price for the programming is, or before the network settles on what rights it may confer on distributors for VOD, TV Everywhere, etc.<sup>12</sup>

We explained that MFN provisions are the subject of intense negotiation with sophisticated parties. Each network cares about different things when negotiating an MFN with us, depending on what the network's content is, what its business model is, what its rights profile is, what other deals it has already done, etc. Networks that have a more standardized rate, for example, may be more willing to agree to a rate MFN than other networks.

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<sup>11</sup> See *id.* at 169-70.

<sup>12</sup> *Id.*

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Because they are only one heavily negotiated term in a significant value exchange, MFNs vary widely in terms of how they apply. {{

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Although there is a lot of variety in MFN terms, we explained that our MFNs {{

}}. What this means in practice is that our MFNs are not implicated when a network (or a related studio) enters into a licensing deal with an OVD for discrete content, or even for a substantial amount of library content (e.g., a Netflix or Amazon library deal). With regard to reported licensing deals between programmers and “multichannel” OVDs for live linear content, our understanding is that the programmers are not pointing to MFNs as the basis for their refusal to license certain content to those OVDs, but instead, that programmers have chosen not to do so for their own business reasons.

In response to questions about the scope and conditionality of our MFNs, we explained that {{

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In response to questions about how MFNs are enforced and if enforcement was more like an “honor system,” we noted that MFNs are usually self-policing provisions. While we do sometimes raise questions with a programmer about our MFN rights when we see a highly visible marketplace development that may trigger the MFN in question (e.g., making available a broader set of VOD programming to another distributor), we generally rely on programmers to honor their obligations under the MFN terms and present to us an “MFN offer” when programmers believe an MFN has been triggered. We stressed that we have long-term

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relationships with the many programmers we carry, and our priority it to maintain amicable and collaborative relationships where both parties honor their obligations.

We also discussed ADM provisions and explained that, consistent with the NBCUniversal Conditions, we typically do not prohibit networks from licensing live linear content to any OVD for a fee even to the degree we are permitted to do so (i.e., for 14 days), and we only prohibit *free* online distribution for (at most) the first 30 days after programming is initially aired. We noted that, while we understand the concern about ADM provisions, it does not seem like whatever ADM provisions there are in the industry – much less those in Comcast’s contracts – have seriously hampered OVDs from licensing valuable content. New deals with OVDs are announced almost every day, including for live linear content that previously was available only to MVPDs. (And content is also being licensed for online display by MVPDs of different types, including the DBS providers.) In all events, we understand that the source of prohibitive ADMs is not Comcast, since restrictive ADM provisions was not our priority even before the NBCUniversal transaction, and we have since been subject to strict limitations on the types of ADM provisions we can seek in new agreements or enforce in older agreements and we have complied with those *NBCUniversal Order* limitations. Our prevailing goal in negotiations is to unlock the rights to more content in more windows on more platforms, not to restrict content from being made available on alternative platforms.<sup>13</sup> Finally, we noted that we have no deals that would prohibit a programmer from licensing content on an exclusive basis to *another* distributor (online or traditional).

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President,  
Regulatory and State Legislative Affairs  
Comcast Corporation

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<sup>13</sup> *Id.* at 170-72.

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cc: Jim Bird  
Ty Bream  
Tim Brennan  
Hillary Burchuk  
Adam Copeland  
Hillary DeNigro  
Bill Dever  
Jamilla Ferris  
Lisa Gelb  
Marcia Glauberman  
Paul LaFontaine  
Jonathan Levy  
Katherine LoPicallo  
Bill Lake  
Betsy McIntyre  
Wayne McKee  
Brendan Murray  
Jeffrey Neumann  
Eric Ralph  
Jake Riehm  
William Rogerson (via telephone)  
Jonathan Sallet  
Susan Singer  
Julie Saulnier (via telephone)  
Philip Verveer  
Matt Warner  
Sarah Whitesell  
Andrew Wise