Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Applications of Comcast Corp.,	)	MB Docket No. 14-57
Time Warner Cable Inc., Charter	)	
Communications, Inc., and SpinCo	)	
	)	
For Consent to Assign or Transfer	)	
Control of Licenses and Authorizations	)	
	)	

MOTION FOR FURTHER EXTENSION OF TIME TO FILE REPLIES

Pursuant to Section 1.46(b) of the Commission's Rules,[1] DISH Network Corporation ("DISH"), COMPTEL, Monumental Sports and Entertainment, RCN, Grande Communications, Inc., Choice Cable TV of Puerto Rico, and the Writers Guild of America, West, Inc. (the "Petitioners") respectfully request that the Commission grant a further extension of time to file replies in the above-captioned proceeding.[2]

The Petitioners are aware, and grateful, that the Commission has already granted an extension of time in this proceeding. Regrettably, however, the factors that justified that extension continue to apply unabated. Indeed, they have been further compounded by the

[1] *See* 47 C.F.R. § 1.46(b).

[2] *See* Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, Applications and Public Interest Statement, MB Docket No. 14-57 (filed Apr. 8, 2014). The current deadline for replies to responses and oppositions was October 8, 2014. Public Notice, "Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations," MB Docket No. 14-57, DA 14-986 (rel. July 10, 2014). The Commission granted DISH's Motion for Extension of Time extending the deadline for replies to responses and oppositions to October 29, 2014. Public Notice, "Commission Announces Extension of Time to File Replies to Responses and Oppositions for Its Review of Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations, MB Docket No. 14-57, DA 14-1446 (rel. Oct. 3, 2014).

objections of certain programmers, who are not satisfied with the most extraordinary protections that the Commission has ever given for confidential documents in such proceedings. For these reasons, the Petitioners request that the reply deadline be extended to 30 days after the date on which the parties or their counsel and experts have obtained access to all information and documents responsive to the Commission's Requests for Information,[3] and the Commission has fully resolved the outstanding issues regarding access to the Highly Confidential Information ("HCI") and Video Programming Confidential Information ("VPCI").

The Commission previously extended the filing deadline in this proceeding until October 29, 2014 in part because the Applicants had not yet provided all of the information requested by the Commission. At the same time, the Commission suggested that the new deadline could depend on the Applicants' responsiveness. By letter dated October 3, 2014, the Commission informed the Applicants that it was stopping the informal 180-day transaction clock until the extended deadline for filing Responses "or until Commission staff has determined that your responses to the Commission's information requests are complete."[4]

Despite several supplemental filings by the Applicants,[5] much of the requested information remains outstanding—it still has not been made available to the parties. Some of the

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[3] Letter from William T. Lake, Media Bureau, FCC, to Kathryn A. Zachem, Comcast Corporation, MB Docket No. 14-57 (Aug. 21, 2014).

[4] Letter from William T. Lake, Media Bureau, FCC, to Kathryn A. Zachem, Steven Teplitz and Catherine Bohegian, MB No. Docket 14-57 (Oct. 3, 2014).

[5] *See* Letter from Kathryn A. Zachem, Comcast Corporation, to Marlene Dortch, FCC, MB Docket No. 14-57 (Sep. 19, 2014) (providing supplemental answers and exhibits regarding Comcast's sports distribution rights in the U.S. and regarding Comcast's Internet traffic exchange, interconnection, and capacity and use of Comcast's IP points of presence pre- and post-transaction); Letter from Kathryn A. Zachem, Comcast Corporation, to Marlene Dortch, FCC, MB Docket No. 14-57 (Sep. 24, 2014) (providing revised information regarding Comcast's Internet traffic exchange, interconnection, and capacity and use of IP points of presence); Letter from Kathryn A. Zachem, Comcast Corporation, to Marlene Dortch, FCC, MB Docket No. 14-

information that was still missing may have been produced on October 14, 2014, but the parties have not yet been able to access that material. All of that missing or only recently-submitted-but-still-unavailable information is critical to the Commission's efforts to fully review the proposed transaction. It includes:

- programming and consumer premises equipment-interoperability contract terms;[6]
- the possibility of new entrants for the provision of relevant services or of substitutes for such services;[7]
- Comcast's incentive to harm edge providers;[8]
- advertising strategies for standalone and bundled services;[9]
- Comcast's content delivery network and the terms of the offering of content delivery network services to third parties;[10]
- the new products and services that Comcast claims it will be able to offer as a result of this transaction;[11]
- Comcast's Internet Essentials program;[12]
- the use of, and plans for, data caps;[13]
- network management policies and practices;[14]
- specific instances in which Comcast has used traffic engineering;[15]
- Comcast's processing of trouble reports regarding its Internet access services;[16]

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57 (Sep. 29, 2014) (providing documents and data files supporting the declarations of Dr. Israel and Drs. Rosston and Topper filed with Comcast's Opposition).

[6] *See* Letter from Kathryn Zachem, Comcast Corporation, to Marlene H. Dortch, FCC, MB Docket No. 14-57, at 66, 89, 126 (Sept. 11, 2014).

[7] *Id.* at 31.

[8] *Id.* at 204.

[9] *Id.* at 59.

[10] *Id.* at 180-81.

[11] *Id.* at 227, 232.

[12] *Id.* at 138-39.

[13] *Id.* at 156.

[14] *Id*. at 165.

[15] *Id.* at 169-70.

- the effects of congestion on Comcast's Internet access service;[17]
- Comcast's interconnection policies and practices, including information related to the Netflix-congestion incident, congestion management practices, and Comcast's settlement-free peering policies;[18]
- the effects of geographic rationalization or clustering;[19]
- competition in the provision of each relevant service;[20]
- pricing forecasts and strategies;[21]
- analysis of the profitability of bundles and their impact on customer retention;[22]
- Comcast's compliance with the conditions and commitments in the *Comcast-NBCU* proceeding;[23] and
- pre-transaction and post-transaction strategic planning, including plans to roll out DOCSIS 3.1, a converged cable access platform, converged regional area networks, IP Cable, WiFi, mobile wireless services, and online video distribution service outside of the company's footprint.[24]

Moreover, access to a significant subset of the critical information in question—the programming agreements—has been further complicated by the objections of certain third-party programmers.[25] Even though the Commission has adopted extraordinary procedures to provide additional protection for agreements between the Applicants and these programmers, the programmers do not want any of the interested parties' outside counsel or experts to view these documents, no matter how important they are to the evaluation of the transaction. They have

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[16] *Id.* at 172-73.

[17] *Id.* at 174.

[18] *Id.* at 175, 179, 182-83, 192.

[19] *Id.* at 25.

[20] *Id.* at 28.

[21] *Id.* at 29.

[22] *Id.* at 59.

[23] *Id.* at 148-50, 155.

[24] *Id.* at 46.

[25] Discovery Communications, CBS Corporation, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc..

therefore set out to nullify the Commission's October 7 *Order*[26] by filing multiple Objections to requests for access to HCI and VPCI,[27] as well as an Application for Review[28] and a Motion for Emergency Stay.[29]

As DISH has previously indicated, review of all of the still-unavailable information "is essential to the submission of well-considered replies."[30] The FCC and a number of parties to this proceeding have also made clear the particular importance of reviewing the programming information in evaluating the proposed merger between the Applicants. For example, one or more of the Petitioners have argued that the Applicants' combined strength in the market would squeeze programmers' margins, forcing programmers to recoup these same margins through

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[26] Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, *Modified Joint Protective Order*, MB Docket Nos. 14-57, DA 14-1463 (Oct. 7, 2014).

[27] Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket No. 14-57 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of CBS Corp., Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc. and Viacom Inc., MB Docket No. 14-57 (Oct. 16, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57 (Oct. 15, 2014); Objection to Request for Access to Highly Confidential Information and Video Programming Confidential Information of Discovery Communications LLC, MB Docket No. 14-57 (Oct. 16, 2014).

[28] Application for Review of CBS Corporation, Discovery Communications, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket Nos. 14-57, 14-90 (Oct. 15, 2014).

[29] Emergency Request for Stay of Media Bureau Order of CBS Corporation, Discovery Communications, Scripps Networks Interactive, Inc., The Walt Disney Company, Time Warner Inc., TV One, LLC, Twenty First Century Fox, Inc., Univision Communications Inc., and Viacom Inc., MB Docket Nos. 14-57, 14-90 (Oct. 15, 2015) ("Request for Stay").

[30] DISH Network Corp., Motion for Extension of Time to File, MB Docket No. 14-57 (filed Sept. 22, 2014).

higher prices extracted from smaller distributors.[31] In return, the Applicants have countered that "there can be no question of Comcast dominating the market for buying programming," and that the merger is "unlikely to affect the relative bargaining position of Comcast and content companies."[32]

As the FCC recognized when it approved the *Modified Joint Protective Order*, "review of [the transaction] requires analysis of issues directly implicated by the information contained in these materials, including competition in the video distribution market."[33] These issues cannot be joined, and that analysis cannot be conducted, without reasonable access by both the FCC and outside counsel and experts not involved in competitive decision-making.

In sum, the original failure of the Applicants to produce the information necessary to fully develop the record in this proceeding has already created unnecessary delay in this proceeding. That failure has been exacerbated by the Programmers' attempt to foreclose scrutiny of their programming contracts with the Applicants. Good cause for an extension exists because of the importance of the still unavailable materials. The delay should still not cause significant prejudice to the Applicants especially in light of the Commission's prior advice that the informal 180-day transaction clock would not start ticking again until Commission staff had determined that their responses to the Commission's information requests is complete. In any event, any

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[31] DISH Network Corp., Petition to Deny, MB Docket No. 14-57, at 85 (filed Aug. 25, 2014); COMPTEL, Petition to Deny, MB Docket No. 14-57, at 29 (filed Aug. 25, 2014); Writers Guild of America, West, Petition to Deny, MB Docket No. 14-57, at 21 (filed Aug. 25, 2014). *Cf.* Monumental Sports and Entertainment, Comments, MB Docket No. 14-57, at 6 (filed Aug. 25, 2014) (arguing, among other things, that "the 'back end rights' in Comcast agreements will likely prevent MSE teams from carrying out competitive negotiations with other RSN operators and finding alternatives to Comcast distribution in time to prevent lengthy absences from the public airwaves").

[32] Opposition at 152, 156.

[33] *Modified Joint Protective Order* ¶ 13.

such prejudice would not be a function of the extension, but of delays for which the Petitioners bear no responsibility, and it would be offset by the prejudice that the Petitioners are experiencing.

For these reasons, the Petitioners request an extension of 30 days from the date on which all responsive information becomes available to the parties or their counsel and experts, and all outstanding disputes are resolved.

Respectfully submitted,

/s/

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October 20, 2014

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2014, I caused true and correct copies of the foregoing Motion for Further Extension of Time to File Replies by DISH Network Corporation, COMPTEL, Monumental Sports and Entertainment, RCN, Grande Communications, Inc., Choice Cable TV of Puerto Rico, and the Writers Guild of America, West, Inc. to be served by electronic mail upon the following counsel:

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