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LATHAM & WATKINS LLP

October 24, 2014

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Supplemental Response of Time Warner Cable Inc. to the Commission's Information and Data Request, *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57

REDACTED FOR PUBLIC INSPECTION

Dear Ms. Dortch,

Time Warner Cable Inc. ("TWC" or the "Company") hereby submits its fifth supplemental response to the Commission's Information and Data Request, dated August 21, 2014 (the "Request"). A separate Highly Confidential version of this filing is being made simultaneously and will be made available for inspection pursuant to the term of the Modified Joint Protective Order.¹ The [[]] symbols denote Confidential Information and the {{ }} symbols denote Highly Confidential Information. TWC's Highly Confidential submission also contains Video Programming Confidential Information within the meaning provided in the Modified Joint Protective Order.

This response provides supplemental information to address those requests identified in the Commission's October 3, 2014, Public Notice in the above-captioned proceeding as requiring

¹ *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 14-1464 (rel. Oct. 7, 2014).



additional information.² Additionally, TWC herein provides supplemental information regarding requests 24 and 35, and submits a modification to request 5(g).

Pursuant to Instruction 10, TWC attaches hereto a glossary of industry and Company terminology.

Pursuant to Instructions 13 and 14, TWC is submitting its privilege log and legend covering those documents that were previously submitted to the Antitrust Division of the Department of Justice (the “DOJ”). The decisions reflected in the privilege log and legend were made by TWC’s antitrust counsel and reflect TWC’s current claims of privilege for all documents submitted to DOJ. In keeping with the previously disclosed modification to Instruction 14, TWC is providing these documents in electronic form only.

TWC has made diligent efforts to ensure that none of the documents it is submitting herewith are privileged under the attorney-client privilege or attorney work product doctrine. To the extent that any privileged documents may have been inadvertently produced, such production does not constitute a waiver of any applicable privilege. TWC requests that any privileged documents inadvertently produced be returned to TWC as soon as such inadvertent production is discovered by any party, and reserves all rights to seek the return of any such documents.

Please contact the undersigned should you have any questions.

Respectfully submitted,

/s/ Matthew A. Brill

Matthew A. Brill
of LATHAM & WATKINS LLP
Counsel for Time Warner Cable Inc.

Attachments

cc: Hillary Burchuk

² *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, Public Notice, DA 14-1446 at 2 n.7 (rel. Oct. 3, 2014).

**FIFTH SUPPLEMENTAL RESPONSE OF TIME WARNER CABLE INC.
TO THE INFORMATION AND DATA REQUEST ISSUED TO
TIME WARNER CABLE INC. ON AUGUST 21, 2014 BY THE
FEDERAL COMMUNICATIONS COMMISSION**

SPECIFICATION 3

For each zip code identified in response to Request 2(e), and from January 1, 2009, to the present, describe each of the Company's bundled services plans and standalone services plans offered through any sales channel, and for each plan, describe the (i) MVPD service, including each service tier or programming package offered and the channels (both standard definition and high definition) on each tier or package; (ii) Internet access service, including each tier or package offered and the upload and download speed associated with each such tier or programming package, explaining how the upload speed is calculated if no advertised speed is available; and (iii) telephone services.

September 11 Response to Specification 3:

See Exhibit 3, which provides information on the Company's bundled and standalone service plans as they have existed nationally since January 1, 2013. Plans were determined at a regional level prior to that time and historic information on those plans is not readily available.

Supplemental Response to Specification 3:

See Response to Specification 71 and Exhibit 71-3, filed in the Supplemental Response of Time Warner Cable Inc. filed on September 25, 2014, which provides information on TWC's MVPD service, Internet access service, and telephone service by ZIP code for each month from June 2013 through June 2014. TWC does not systematically maintain historical pricing records for the period before January 1, 2013. Due to the extremely large number of service plans that TWC maintains for customers receiving service pursuant to legacy promotions, TWC has categorized all customers into the approximately 200 possible service combinations offered by the Company.

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TWC provides rate cards for TWC's franchise areas from 2009-2014 for the PacWest and Northeast regions, from 2011-2014 for the Midwest region, and from 2012-2014 for the Carolinas, Texas, and NYC regions. *See* the documents Bates stamped TWC-DOJ-05010003

through TWC-DOJ-05013416. TWC is not able to produce rate cards for the Company's former East region (which encompassed the Carolinas and NYC regions) prior to 2012. Upon a diligent search of files, TWC has also determined that it is not able to produce rate cards for Texas prior to 2012 and for the Midwest prior to 2011.

TWC also provides channel lineups for TWC's franchise areas from 2009-2014 for the PacWest, 2010-2014 for the Texas, and 2012-2014 for the Carolinas, Midwest, Northeast, and NYC regions. *See* the documents Bates stamped TWC-DOJ-05007005 through TWC-DOJ-05009898.

SPECIFICATION 5

Separately for (i) every zip code identified in 2(e), and (ii) every DMA for where the Company provides MVPD service, and separately for every subscription VOD service offered by the Company, for every month from January, 2009, to the present, state:

- (a) the number of subscribers to the service at the end of the month;**
- (b) the number of subscribers that added the service;**
- (c) the number of subscribers that added the service at the same time that they added MVPD service from the Company;**
- (d) the number of subscribers that cancelled the service;**
- (e) the number of subscribers that cancelled the service at the same time that they cancelled MVPD service from the Company;**
- (f) the total subscription revenues;**
- (g) the total cost of video programming distribution rights;**
- (h) the total number of hours viewed; and**
- (i) the price of the service and a description of all discounts or promotions that were in effect.**

September 11 Response to Specification 5(g):

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Supplemental Response to Specification 5(g):

On September 11, TWC provided the Commission with Exhibit 5-4. On October 7, the Commission released a Modified Joint Protective Order establishing a new classification of information called “Video Programming Confidential Information” (“VPCI”).¹ Exhibit 5-4 contains information which TWC believes to include VPCI. TWC has retracted Exhibit 5-4 and its response can now be found in its VPCI document production at Bates stamps TWC-DOJ-05013832 through TWC-DOJ-05015958.

¹ *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 14-1464 (rel. Oct. 7, 2014).

SPECIFICATION 12

State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of each relevant service, from January 1, 2009, to the present. For each such person, identify the services it provides or provided; the area in which it provided the services, including whether the person has sold or distributed the relevant service in the United States; and the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

September 11 Response to Specification 12:

TWC refers to, and incorporates by reference as if fully set forth herein, the September 11, 2014, written response and accompanying exhibits of Comcast to Specification 12 of the Commission’s Information and Data Request Issued to Comcast on August 21, 2014.

In addition, TWC provides the following additional entries to, and exits from, the provision of the following relevant services from 2004 to the present:

MVPD:

Entity	Address	Entry Date
{{ }}	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}

Video Programming

See Exhibit 12, which provides a list of additional persons who have entered into, and exited from, the provision of video programming.

Internet access services:

Entity	Address	Entry Date
{{ }}	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}

Internet backbone services:

Entity	Address	Entry Date
{{ }}	{{ }}	{{ }}

Supplemental Response to Specification 12:

TWC does not systematically track entry and exit into the provision of the relevant services, nor does it systematically monitor the facilities used by entrants. The information previously provided by TWC in response to this Specification was the result of a reasonable investigation by the Company, including inquiries to relevant employees and a review of public sources. No additional information is available to TWC with regard to entry or exit into the provision of the relevant services.

SPECIFICATION 13

Provide a list of possible new entrants into the provision of, or a substitute for, each relevant service, stating why the Company believes each person is a possible entrant or could provide a substitute service, including but not limited to, mobile wireless broadband service, and what steps it has taken toward entry. Submit a list of all requirements for entry into the provision of, or a substitute for, a relevant service and an estimate of the time required to meet each requirement, and provide all documents relating to research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals for entry in to the provision of each relevant service.

September 11 Response to Specification 13:

TWC refers to, and incorporates by reference as if fully set forth herein, the September 11, 2014, written response of Comcast to Specification 13 of the Commission's Information and Data Request Issued to Comcast on August 21, 2014.

In addition, all non-privileged documents requested in the Commission's Request for Information will be submitted shortly following adjustments to reflect ongoing clarification discussions with Commission staff.

Supplemental Response to Specification 13:**Video Programming Distribution**

Video programming is distributed by MVPDs and OVDs. In neither instance is it feasible to list the multitude of requirements necessary for entry or the timeline necessary for fulfilling those requirements. Most fundamentally, video programming distribution requires access to programming and the capability to deliver it to consumers. Programming can be created, licensed, or acquired from limitless sources and the technology for delivering that programming is rapidly evolving and highly dependent on business models.

MVPD Services. MVPD services are provided by cable companies, telephone companies, and direct broadcast satellite companies, among others. In each instance, entry requires the development and construction of significant infrastructure, including backend support services and mechanisms for content delivery. Despite these costs, MVPD service continues to attract new entrants. In recent years Google and CenturyLink (both of which serve areas of TWC's footprint) have begun offering MVPD services. Both companies have expressed their intention to expand their services to new areas, and other large, well-financed technology companies may follow their lead. Similarly, many telephone companies have developed MVPD services following on the success of Verizon FiOS and AT&T U-verse, and others likely will enter the MVPD marketplace. Where they have not done so already, telephone companies—which own widespread physical infrastructure and have established customer relationships—seem well-suited to expand their offerings within TWC's service areas.

OVD Services. The marketplace for OVD services is growing rapidly and evolving constantly. The technology for delivering programming on-demand to any location around the world did not exist even a decade ago, while today customers are eager to adopt services with these options. Companies have attempted to meet this demand by operating OVDs in a wide variety of forms. Some, such as Netflix, YouTube, and Vimeo, deliver online video streaming as the core of their business. While they must procure or create content, there are many relatively low-cost options available, and these businesses face the relatively low startup costs associated with other online businesses. TWC expects significant further growth among these businesses, along with the additional entry of many new start-ups.

Other OVD services are provided by companies such as Apple, Microsoft, and Sony, which are otherwise known for their consumer electronics products and software. These companies have expanded from device manufacturers to entertainment empires, delivering a wide variety of content to their own and other manufacturers' Internet-enabled devices. Customers who purchase these devices can access video programming, some of it exclusive, directly from within the device ecosystem. Many additional consumer electronics companies, ranging from the manufacturers of televisions to smartphones, may make similar advances into video programming. Similarly, technology companies like Google (which owns YouTube), Yahoo!, and Facebook, and online retail companies like Amazon and Walmart, have all used their size, popularity, and financial resources to create OVD services using a variety of streaming and rental models. These companies have created new content, negotiated for programming and video rights, and developed new ways for consumers to watch and pay for content. Moreover, these platforms have supported the development and growth of technology companies, such as MakerStudios, that produce and aggregate on-line video content. Other technology companies and retailers may launch similar OVD services, taking advantage of their business relationships and the social aspects of video programming.

MVPDs also have explored, and in some instances created, OVD services of their own. Many MVPDs offer TV Everywhere platforms that allow subscribers to watch programming online and on mobile devices, while others have experimented with additional content and services beyond their live linear feeds that can be streamed over the Internet. .

Finally, video programmers themselves have also developed their own OVD services. Professional sports leagues, production companies, broadcast networks, and others have used their rights as the owners of content to create free-standing OVD services. This business model is likely to become more prevalent, as evidenced by recent announcements from HBO² and CBS³ to begin offering stand-alone streaming services

² Emily Steel, *HBO Plans New Streaming Service, With Eye on Cord Cutters*, N.Y. TIMES, Oct. 15, 2014, available at <http://www.nytimes.com/2014/10/16/business/media/time-warner-chief-to-brief-investors-on-plans-for-growth.html>

Video Programming

The number of video programming networks has expanded rapidly in recent years. New models of distributing that programming, such as OVD services, have only increased the demand for content and the ability to distribute it to consumers.

Much of this new content has come through the expansion of existing video programming networks. In recent years, among many other new additions, News Corp. has launched Fox Sports 1 and FXX, Discovery Communications has launched OWN, and Disney debuted Disney XD and Disney Junior. These companies have also launched new online-only sources of video content. TWC expects existing video programmers to continue to leverage new technologies and increasing consumer demand into the creation of new programming options.

The low cost of entry for delivering online programming has enabled individuals (such as Sarah Palin) to develop their own online networks, while other individuals (such as Glenn Beck and Sean “Diddy” Combs) have created entertainment empires that include linear channels. The trend of creating content for niche audiences is likely to continue.

Internet Access Service

Much like MVPD services, Internet access services require substantial upfront investments in infrastructure. This infrastructure can take many forms, including fiber-to-the-premises or fiber-to-the-node, traditional hybrid fiber/coax networks, and terrestrial wireless and satellite networks. In all its forms, high-speed broadband has rapidly expanded in recent years, with new competitors; faster, more reliable services; and access in more parts of the country.

Despite the required infrastructure, new entrants are emerging in the provision of Internet access services: telephone companies that have long provided DSL services are expanding fiber-to-the-premises services and capabilities; wholly new entrants like Google Fiber are overbuilding in communities across the country; satellite broadband companies are building and launching new, higher capacity broadband satellites; and municipal governments are developing their own Internet services, including wide-area WiFi networks. Perhaps even more importantly, mobile broadband services have rapidly expanded and are now offering LTE services with download speeds that are comparable to many wireline services. As the Commission takes action in proceedings to expand the availability of spectrum for broadband wireless services, the speed and capability of wireless Internet access service will only continue to increase.

³ Emily Steel, *Cord-Cutters Rejoice: CBS Joins Web Stream*, N.Y. TIMES, Oct. 16, 2014, available at <http://www.nytimes.com/2014/10/17/business/cbs-to-offer-web-subscription-service.html>.

Internet Backbone Service

Internet backbone services are provided by a diverse and dynamic segment of the industry. Large Tier 1 ISPs interconnect with peering, transit, and content delivery network (“CDN”) services to move traffic across the Internet. The growing web of interconnection points has reduced the dependency on large backbone providers, as Internet companies now select among multiple routes for delivering their content. The largest Internet companies have even built their own parallel backbone services, building fiber networks that move vast quantities of traffic around the world and connecting directly with consumer-facing ISPs. As these changes continue to take shape, new methods for delivering traffic will likely emerge.

Content Delivery Networks

CDNs are responsible for an increasing amount of Internet traffic and are part of the rapidly-evolving array of traffic delivery alternatives. Many providers of CDN services also provide other Internet traffic exchange solutions, with a decreasing number of distinctions between the technologies and services offered. New entrants providing CDNs are likely to overlap with new entrants providing Internet backbone services. For example, some of the large Internet companies which have created CDNs to distribute their own content may decide to offer a similar solution to third parties.

SPECIFICATION 15:

Separately for each relevant service (i) describe the minimum viable scale necessary for entry, including but not limited to, hurdle rates, the capital required for entry, construction of new facilities, spectrum and/or licensing requirements, whether carriage on any particular MVPD or OVD is necessary and if so, the identity of each such provider, and the number of subscribers and advertisers needed to break-even, and to the extent not already produced, (ii) produce all documents relating to the Company's entry into each of the above services since January 1, 2009. Indicate in your response whether your response would vary based upon the type of video programming (e.g., movies, sports, Spanish-language).

September 11 Response to Specification 15:

(i) TWC refers to, and incorporates by reference as if fully set forth herein, the September 11, 2014, written response of Comcast to Specification 15 of the Commission's Information and Data Request Issued to Comcast on August 21, 2014.

Many factors contribute to a firm's decision to enter into the provision of a relevant service, some of which do not depend upon the satisfaction of a break-even analysis involving numbers of subscribers or advertisers. For example, a firm may decide to enter into the provision of Internet access services to support the firm's other products that would benefit from the firm providing such service. Additionally, with respect to the requirements for distribution of video programming, with increasing adaptation of OVD, the availability of international distribution (and competition from such distribution) makes any particular United States-based distributor even less important to the distribution of such programming.

(ii) All non-privileged documents requested in the Commission's Request for Information will be submitted shortly following adjustments to reflect ongoing clarification discussions with Commission staff.

Supplemental Response to Specification 15:

Video Programming Distribution

TWC is unable to provide an estimate for the minimum viable scale to enter as a new MVPD. MVPDs must build substantial infrastructure for delivering programming to consumers, acquire or develop programming, and satisfy numerous regulatory mandates. The infrastructure behind an MVPD can vary from coaxial, fiber-optic, or telephone cable to terrestrial or satellite wireless spectrum. This infrastructure can be purchased or built from scratch, with requirements and costs varying based on technology, geography, and population. Programming costs will depend on what programming is sought, how much programming the new MVPD wants to offer, and the scope of the distribution rights that are negotiated. Alternatively, programming can be developed by the MVPD, which requires creative and production capabilities. MVPDs may need to obtain FCC licenses and local franchising agreements, in addition to complying with other

federal, state, and local rules and regulations. Additionally, MVPDs will face standard business costs, such as marketing, establishing call centers, and employing or contracting service and installation professionals. All of these factors make it impossible to identify any definitive number of subscribers and advertisers necessary to break even. MVPDs come in all sizes and shapes, deliver a variety of ancillary services which contribute costs and revenues, and face variable market factors which impact the bottom-line for the business.

TWC is unable to provide an estimate for the minimum viable scale to entry by an OVD. As described in the supplemental response to Specification 13 above, OVDs operate using a variety of business models that make them difficult to compare and contrast. For example, certain OVDs are operated by large content owners, leaving them with no direct programming costs, while other OVDs operate huge networks that serve a variety of purposes, making it difficult to attribute marginal distribution costs to the OVD service. In general, OVDs require the development and construction of less infrastructure than MVPDs, with much (if not all) of the backend technological needs available for purchase from third parties. The costs of programming will vary widely depending on the source, quantity, and quality of the programming sought, with some content being available for little or no cost. Because the costs are difficult to determine, TWC cannot estimate the number of subscribers and advertisers necessary to break even. Some OVDs charge customers by the program while others charge flat monthly or annual rates. Some OVDs attribute the bulk of their revenue to advertising, while others are wholly subscription-based.

Video Programming

TWC is unable to provide an estimate for the minimum viable scale to create video programming. Video programmers exist on scales ranging from multinational entertainment companies to, increasingly, individual creators who leverage new technology to produce and distribute their content. Launching a new linear network seeking carriage on MVPDs is a different proposition from creating programming for distribution on any of a multitude of OVDs. Linear channels require the creation of a programming concept, the creation or acquisition of programming, distribution capabilities, distribution agreements, marketing, advertising sales, and other essential services. Depending on a variety of factors, these steps will vary in cost and difficulty to such a degree that it is impossible to generalize. Similarly, smaller programming creators may use innovative production techniques and seek to distribute their content on a variety of OVDs such that the costs of creating and distributing content cannot be estimated. In general, the costs will be lower, and therefore the minimum viable scale smaller, for content aimed at OVDs rather than MVPDs.

Programmers have the potential to distribute their content via a variety of MVPDs and OVDs and are not reliant on any one programming distributor. Many programmers, in fact, choose to sign exclusive distribution arrangements with an OVD or MVPD, indicating that programmers often find purposefully limited distribution to be a successful business strategy. MVPDs and

OVDs are themselves scouting for new talent, developing new programming, and competing for the best content to distribute. While programmers can distribute content online with little cost and no third-party agreements, distribution on MVPD platforms requires mutual agreements on licensing fees, marketing costs, advertising revenue, channel placement, and any number of other factors.

Because programming costs are varied and consumer preferences hard to predict, TWC cannot estimate the number of subscribers and advertisers necessary to break even. Niche programming aimed a small demographic group may be successful with smaller viewership and more targeted ad revenue, while more popular content may require larger viewership and more generalized advertising. Advertisers select where to run their ads and how much to pay based on popularity, demographics, the content of programming, and any number of other factors which cannot be generalized.

Moreover, the costs of programming, and thus the minimum viable scale for entry, would vary depending on the type of programming involved. Certain content, such as live sports or new-release movies, may cost more to license than other content.

Internet Access Service

TWC is unable to provide an estimate for the minimum viable scale to provide Internet access services. Internet access service providers must build substantial infrastructure to connect with consumers and provide advanced services in competition with other broadband providers. The infrastructure that supports this service can vary from coaxial, fiber-optic, or telephone cable to terrestrial or satellite wireless spectrum. This infrastructure can be purchased or built from scratch, with requirements and costs varying based on technology, geography, and population. Additionally, Internet access service providers must connect to the Internet backbone in order to connect their subscribers to the broader Internet. Such connections are made by interconnecting with other service providers and directly with large content providers, with costs varying based on volume, technology, location, and other market forces. Internet access service providers may need to obtain FCC licenses and comply with other FCC regulations, in addition to complying with state and local rules and regulations. Additionally, Internet access service providers will face standard business costs, such as marketing, establishing call centers, and employing or contracting service and installation professionals. All of these factors make it impossible to state any definitive number of subscribers necessary to break even. Internet access service providers vary widely in size and technology, deliver a variety of ancillary services which contribute costs and revenues, and face variable market factors which impact the bottom-line for the business.

Internet Backbone Service

TWC is unable to provide an estimate for the minimum viable scale to provide Internet backbone services. As with Internet access service providers, backbone service providers may require substantial investments in infrastructure, maintenance, and upgrade costs, along with the varied

costs of interconnecting with other network providers. Internet backbone service providers need to acquire or build fiber-optic backbone networks, host interconnection meet points and collocate at third-party meet points, pay for electricity and facilities costs, and pay for interconnection costs. With Internet traffic constantly shifting directions and increasing in volume, Internet backbone service providers must monitor networks 24 hours a day and plan continual upgrades in capacity and capability. Internet backbone service providers work together closely with other backbone providers and must reach market-driven interconnection agreements. Paid and settlement-free interconnection agreements carry different costs for backbone service providers and these agreements may shift over time as supply and demand require. These factors make it impossible for TWC to estimate the capital required to provide backbone services.

Content Delivery Networks

TWC is unable to provide an estimate for the minimum viable scale to provide CDN services. CDN providers face infrastructure costs, maintenance and upgrade costs, and interconnection costs, which may vary depending on the services the CDN provides and what customers it serves. CDNs will face many of the same factors as Internet backbone services, though the one-way nature of traffic more often requires paid transit rather than settlement-free peering. Because of the variables involved, TWC is unable to estimate the capital required to provide CDN services.

SPECIFICATION 24

Identify each agreement the Company has entered with another person through which the Company licenses another person to distribute the Company's broadcast or non-broadcast video programming , that contains any of the following provisions: (i) any economic or non-economic Most-Favored-Nation clause; (ii) any exclusive rights to distribute the programming; (iii) any limits on the further distribution of the programming that is the subject of the agreement either temporally, such as through the use of "windows," or by another person or class of similar persons; (iv) any limits on the further distribution of the programming on another platform; and (v) any rights to obtain, or limits on distribution of, additional programming whether or not such programming was in existence at the time the agreement was entered; and (vi) any other provision that impacts the way that the programming is distributed or made available to other distributors, and for each such agreement state:

- a. the parties to the agreement;**
- b. the date of the agreement;**
- c. the term of the agreement;**
- d. a description of the provision;**
- e. the date that any party to the agreement exercised any rights or received any benefits from any of the provisions set forth in parts (i) through (vi) of this Request; and**
- f. a description of any actions taken or benefits received as a result of any of the provisions set forth in parts (i) through (vi) of this Request.**

September 11 Response to Specification 24:

See Exhibit 24.

Supplemental Response to Specification 24:

TWC has confirmed that it has no additional information to provide in response to this Specification.

SPECIFICATION 35

Identify each agreement the Company has entered with another person through which the Company acquires video programming from another person that contains any of the following provisions: (i) any economic or non-economic Most-Favored-Nation clause; (ii) any exclusive rights to distribute the programming; (iii) any limits on the further distribution of the programming that is the subject of the agreement either temporally, such as through the use of “windows,” or by another person or class of similar persons; (iv) any limits on the further distribution of the programming on another platform; and (v) any rights to obtain, or limits on distribution of, additional programming whether or not such programming was in existence at the time the agreement was entered; (vi) any provision relating to the authentication of users, including any limits on video programming distributors that impact their ability to authenticate the identity of a user for the purpose of delivering additional data to advertisers, and any provision that concerns the extent to which access to the set-top box impacts the ability of any person to authenticate users, for example through the operations of apps; and (vii) any other provision that impacts the way that the programming is distributed or made available to other distributors or providers differential treatment of a service provided by the Company or any affiliate, and for each such agreement state:

- (a) the parties to the agreement;
- (b) the date of the agreement;
- (c) the term of the agreement;
- (d) a description of the provision;
- (e) the date that any party to the agreement exercised any rights or received any benefits from any of the provisions set forth in parts (i) through (vi) of this Request; and
- (f) a description of any actions taken or benefits received as a result of any of the provisions set forth in parts (i) through (vii) of this Request.

September 11 Response to Specification 35:

As TWC discussed with Commission staff, TWC is providing in Exhibit 35 a list of its programming agreements and is deferring any further response pending further direction from the Commission.

Supplemental Response to Specification 35:

See, Exhibit 35-1 for TWC’s response to subparts (a) through (d).

See, Exhibit 35-2 for TWC’s response to subparts (e) and (f).

SPECIFICATION 36:

For each instance that the Company, in negotiations with another person that did not result in an agreement for the Company to either acquire broadcast or non-broadcast video programming from another person, or license another person to distribute the Company’s broadcast or non-broadcast video programming, such negotiations proposed any of the following provisions: (i) any economic or non-economic Most-Favored-Nation clause; (ii) any exclusive rights to distribute the programming; (iii) any limits on the further distribution of the programming that is the subject of the agreement either temporally, such as through “windows,” or by another person or class of similar persons; (iv) any limits on the further distribution of the programming on another platform; and (v) any rights to obtain, or limits on distribution of, additional programming whether or not such programming was in existence at the time the agreement was entered; (vi) any provision relating to the authentication of users, including any limits on video programming distributors that impact their ability to authenticate the identity of a user for the purpose of delivering additional data to advertisers, and any provision that concerns the extent to which access to the set-top box impacts the ability of any person to authenticate users, for example through the operations of apps; and (vii) any other provision that impacts the way that the programming is distributed or made available to other distributors or providers differential treatment of a service provided by the Company or any affiliate, and for each such agreement state:

- (a) the person to whom the term was proposed;
- (b) the broadcast or non-broadcast video programming that would have been the subject of the provision;
- (c) the date the proposal was made; and
- (d) the reasons why an agreement was not reached.

September 11 Response to Specification 36:

TWC has provided the complete agreements to the Department of Justice, where they are available for the Commission to review (*see*, response to specification 34). The agreements are too numerous and complex to provide this analysis.

Supplemental Response to Specification 36

TWC does not maintain records that track negotiations and proposed substantive terms where no agreement was ultimately reached. TWC’s document production likely contains materials reflecting various instances in which programming negotiations ended without agreement, but TWC has no systematic approach for recording these discussions or the reasons why an agreement was not reached, and therefore is unable to provide the detailed information requested by this specification.

SPECIFICATION 38:

Describe each instance since January 1, 2009 when the Company obtained a lower per-subscriber fee than the rate the Company was previously paying for any video programming (including through the acquisition or sale of or affiliation with any MVPD or video programming channel), and for each such instance: (i) state the date, circumstances and the reduction received; (ii) whether the Company passed through the programming cost saving to its residential subscribers in the form of lower monthly subscription fees, moving the relevant channel to a less costly service tier, or in any other way; and (vi) produce all documents discussing any savings, including how the savings were allocated or passed through to subscribers. Produce all documents that would allow a comparison between the per subscriber fee the Company pays for video programming and the per subscriber fee paid by other persons for the same video programming.

September 11 Response to Specification 38:

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Supplemental Response to Specification 38

When determining the pricing of its services TWC considers the costs of all of its varied inputs, along with market conditions and other business factors. When, as in the extremely limited circumstances noted in response to this specification, an input cost decreases, the reduction is factored into the overall costs of delivering TWC's cable service and the particular tier(s) purchased by a customer. While in the limited instances noted here TWC was able to negotiate lower programming costs, these reductions were offset by the skyrocketing costs of the numerous other programming options offered as part of TWC's cable services. Just as TWC is unable to pass through all cost increases for programming, a reduction in the cost of a single input does not have a linear impact on the price charged to consumers for a tier with many different programming services. As noted in the Public Interest Statement in support of the Comcast-TWC transaction, since 2009 TWC, Comcast, and Charter have witnessed a 54% increase in programming costs (a rate far higher than the increase in average cable retail pricing).⁶ While those overall increases have been passed through to consumers to some degree, TWC cannot identify the precise impact that the increase or decrease in the cost of a particular programming service has on subscribers where that service was part of a relatively large tier, as was the case with the services identified above.

⁶ 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, at 149 (filed Apr. 8, 2014).

SPECIFICATION 49:

Describe and produce all documents relating to data caps, including but not limited to: (i) any data caps imposed by the Company for each tier of Internet access service identified in response to Request 3 in any relevant area and the criteria used for imposing them and selecting the limit; (ii) the size of the data cap and the price of the Company's Internet access service both with and without the data cap; (iii) the Company's usage-based pricing (UBP) trials, rationale for them, and the findings or results of each such trial; (iv) video programming and other services subject to, and not subject to, the cap; (v) the cost, detriments and benefits to the Company and to the Company's subscribers of offering Internet access service with data caps, including the effect of the data caps on the Company's network; (vi) the effect of the data cap on the Company's customer's behavior (e.g., downloading of OVD content, purchase of the Company's PPV and VOD services); (vii) the effect of the data cap on competition for any relevant service and persons who provide video programming; and (viii) whether different UBP trials are planned, and if so, a description and timetable for each.

September 11 Response to Specification 49:

All non-privileged documents requested in the Commission's Request for Information will be submitted shortly following adjustments to reflect ongoing clarification discussions with Commission staff. In addition, TWC responds as follows:

On February 27, 2012, the Company launched a program, called *Essentials Internet*, which allows subscribers who use less data to opt for a less expensive Internet plan. *Essentials Internet* is currently available throughout the TWC footprint.

Essentials Internet is an opt-in program that gives customers on three of TWC's low cost, broadband plans—the Everyday Low Price (retail price of \$14.99 per month), Basic (retail price of \$47.99 per month), and Standard (retail price of \$57.99 per month) plans—the option to choose an Internet plan with a lower data allotment and price point. Customers on these plans who opt-in to *Essentials Internet* can choose from two options: (1) *Essentials Plan 1*, which has a 5 gigabyte monthly data allotment, and is available at an \$8 discount off of the customer's regular Internet price; and (2) *Essentials Plan 2*, which has a 30 gigabyte monthly data allotment, and is available at a \$5 discount off of the customer's regular Internet price. *Essentials Internet* is not available to subscribers on higher cost, higher speed Internet plans, including TWC's Turbo (retail price of \$67.99 per month), Extreme (retail price of \$77.99 per month), and Ultimate (retail price of \$87.99-\$107.99 per month) plans.

Once a customer chooses an *Essentials* plan, the customer has a grace period of two billing cycles to determine if the plan is appropriate. If the customer goes over the limit during the grace period, the customer is not charged an overage fee. After the two-month grace period, customers who exceed the data allotment can continue to use the service at a rate of \$1.00 per gigabyte over the allotment. While TWC caps the overage fee at \$25 per billing cycle, it does not cap or throttle usage. The *Essentials* plan is flexible, allowing customers the ability to switch

off the plan and avoid overages if they see they are going to go over their usage allotment in a given month.

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Supplemental Response to Specification 49

TWC has not undertaken an exhaustive review or marketing study of the costs, detriments, and benefits of usage-based pricing (“UBP”) to the Company or to the Company’s subscribers.

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SPECIFICATION 59:

Describe, and produce all documents relating to:

- a. the Company's policies with respect to upgrading, declining to upgrade, or downgrading interconnections between the Company and any person;**
- b. the Company's policies, processes and procedures for addressing congestion at interconnection links, including but not limited to: (1) how far in advance the Company plans for upgrades of interconnection links; (2) the criteria used to determine whether to upgrade capacity when requested, whether requests from settlement-free peers, paid peers, transit service providers, and transit service customers are evaluated using different criteria, and how requests for and installation of upgrades of interconnection links are prioritized; (3) whether the Company automatically seeks to add additional capacity when interconnection links reach a certain level of traffic (and if so, where that level is set); and (4) the costs, processes, and length of time involved in provisioning additional capacity, including a description of, and how the Company determines, which party should bear which costs;**
- c. any metrics that the Company uses in order to determine whether to upgrade or downgrade an interconnection (e.g., maximum acceptable network utilization or congestion, maximum acceptable packet loss, port availability, bandwidth capacity at particular points, latency, etc.), including what metrics are gathered and what measurement intervals are used;**
- d. requests, from January 1, 2010 to the present, by settlement-free peers to upgrade capacity that were not implemented within 90 days; and**
- e. any criteria by which the Company chooses a particular type of upgrade or downgrade (e.g., addition or subtraction of an interconnection site, or addition or subtraction of capacity at an existing site).**

September 11 Response to Specification 59:

All non-privileged documents requested in the Commission's Request for Information will be submitted shortly following adjustments to reflect ongoing clarification discussions with Commission staff.

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Supplemental Response to Specification 59

(a) TWC refers to its response provided on September 11 and provides additional detail in the supplemental responses to this specification below.

(b)(1) TWC monitors its network capacity and utilization 24 hours a day, 365 days a year, taking note of ports where utilization may be materially increasing or decreasing. [[

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(b)(2) When a settlement-free peer requests a capacity upgrade, TWC reviews capacity trends and traffic history to determine whether an upgrade is necessary. [[

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(b)(3) [[

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(b)(4) The costs, processes, and timeline for upgrading capacity vary based on the port and TWC's relationship with the counterparty. [[

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(c) TWC monitors its network and determines whether to upgrade or downgrade capacity based on the utilization of a port. [[

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(d) [[

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(e) [[

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SPECIFICATION 60:

List, for any upgrades or downgrades to interconnection links from January 1, 2011, to the present, for the 25 largest networks that interconnect with the Company measured by maximum capacity usage measured using the industry standard 95th percentile method: (i) the dates of the upgrades or downgrades; (ii) the amount of capacity added or removed; (iii) the type of upgrade or downgrade; (iv) whether the upgraded was initiated by a request from the network operator, or undertaken by the Company on its own initiative; and (v) the reason for the upgrade or downgrade.

September 11 Response to Specification 60:

For upgrades or downgrades to interconnection links, TWC does not maintain records of the dates, amount of capacity added or removed, the type of upgrade/downgrade, reason for the upgrade or how the upgrade decision was initiated. However, the information that will be provided the Interconnection Spreadsheet responsive to Specification 71, which includes monthly capacity and utilization figures, illustrates the changes in capacity and utilization over time.

Supplemental Response to Specification 60

See Exhibit 71-1, filed in the Supplemental Response of Time Warner Cable Inc. filed on September 19, 2014, which provides a monthly accounting of the capacity and utilization of ports used by paid peers, free peers, and transit partners since approximately May 2011. While TWC does not track changes in capacity or how those changes are initiated, it is possible to estimate from the records presented in response to specification 71 capacity increases or decreases based on the levels of utilization were present before and after such modifications in capacity.

The average utilization provided in Exhibit 71-1 is in Mbps (Megabits per second). To calculate the estimated Total Traffic in Gigabits, the average utilization can be multiplied for the time duration of the aggregation period, in this case a month, in seconds and then divided by 1,000 to convert from Megabits to Gigabits using a Base10 approach. The seconds in a month varies depending on the number of days. Since each row of data contains a report date, most databases and Excel have formulas that allow the calculation of the number of seconds based on the days of a particular month. Using this approach, the formula is:

$$\text{Node_Total_Traffic_In} = (\text{Node_Utilization_In_Avg} * \text{ConvertReportMonthToSeconds}(\text{Report_Date}))/1000/8$$

SPECIFICATION 62:

Identify and describe each type of customer class that the Company serves, or desires to serve, outside its service areas, and describe how it markets business services or monitors the sales of such services to each customer class identified. In your description of each identified customer class (including small, medium, enterprise and cellular backhaul customers as defined on page 85 of the Public Interest Statement), include specific characteristics that distinguish each class (e.g., revenue size, geographic scope) and describe how the Company markets and monitors the sale of business services. Produce all documents relating to competition to provide services to each customer class defined on page 85 of the Public Interest Statement.

September 11 Response to Specification 62:

All non-privileged documents requested in the Commission's Request for Information will be submitted shortly following adjustments to reflect ongoing clarification discussions with Commission staff. In addition, TWC response to this specification as follows:

In general, TWC serves the following customer classes for its service offerings that may have business locations outside of its service areas:

- *Medium-sized business:* [[

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- *Enterprise business:* [[

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Supplemental Response to Specification 62

TWC has no additional information to provide in response to this Specification. As stated in the September 11 response, [[

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Exhibit 35-1

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Exhibit 35-2

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Glossary

GLOSSARY OF INDUSTRY AND COMPANY TERMINOLOGY

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