Stephanie A. Roy
202 429 6278
sroy@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe
STEPTOE & JOHNSON LLP

REDACTED—FOR PUBLIC INSPECTION

By ECFS

February 10, 2015

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

Re: Notice of *Ex Parte* Letter, 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

Dear Ms. Dortch,

Pursuant to the *Second Amended Modified Joint Protective Order*[1] in the above-captioned proceeding, DISH Network Corporation ("DISH") submits a public, redacted version of the attached ex parte letter dated February 10, 2015. DISH has denoted with "{{ }}" symbols information that it has deemed Highly Confidential Information pursuant to the *Modified JPO*. The version of the letter containing Highly Confidential Information is simultaneously being filed with the Commission and will be made available pursuant to the terms of the *Modified JPO*.

Please contact me with any questions.

---

[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, *Second Amended Modified Joint Protective Order*, DA 14-1639 (Nov. 12, 2014) ("*Modified JPO*").

Steptoe
STEPTOE & JOHNSON LLP

Sincerely,

Stephanie A. Roy
Counsel to DISH Network Corporation

Pantelis Michalopoulos
202 429 6494
pmichalopoulos@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe
STEPTOE & JOHNSON LLP

REDACTED—FOR PUBLIC INSPECTION

By ECFS

February 10, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: 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

Dear Ms. Dortch,

DISH Network Corporation ("DISH") submits this letter to provide substantial new evidence from Comcast Corporation's ("Comcast") own documents that refute claims made by Comcast and Time Warner Cable Inc. ("TWC") in this proceeding. Comcast's Highly Confidential documents directly contradict the facts and assertions made by the Applicants and their experts. Among other things, these documents undermine the following claims made by the Applicants.

First, the Applicants assure us that "Comcast and TWC have never had plans to expand into each other's territory."[1] In fact, Highly Confidential documents reveal that Comcast views out-of-footprint, over-the-top ("OTT") service {{ }}[2] High-level emails reveal that {{ }}[3] Just as

[1] Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57, at 177 (Sept. 23, 2014) ("Opposition").

[2] Comcast Corporation, Responses to the Commission's Information and Data Request, MB Docket No. 14-57 ("Comcast Responses to Commission"), {{ }}

damning, the documents show that the prospect of the proposed merger has {{
}}[4]

These documents have serious implications beyond striking at the heart of the Applicants' assertions to the Commission. They establish unequivocally that this is a horizontal merger in two markets—not only the upstream market where online video distributors ("OVDs") purchase access from Comcast and TWC, *but also* the downstream market where subscribers buy multi-channel video packages from the two cable operators. In the former market, as DISH has demonstrated, OVDs will lose the benefit of an option they currently have in their effort to cobble together access to a sufficiently large number of customers nationwide. In the latter market, subscribers will lose the benefit of either Comcast or TWC's entry as an out-of-footprint OTT provider. In addition, the documents prove that Comcast has an incentive to foreclose even under the theory the Applicants' own economist, Professor Dennis Carlton, expressed at the Commission's Economist Roundtable. Professor Carlton opined that {{

}} Foreclosure of OVDs would help Comcast achieve both of these objectives—{{
}}

Second, Highly Confidential documents, many of them produced by Comcast only recently, provide further proof that Comcast has an incentive to foreclose OVDs that rely on its high-speed broadband Internet services.[5] Essentially, the Applicants argue that the more independent OVDs that operate, the better off Comcast is because OVDs increase demand for broadband Internet services. Thus, any attempt by Comcast to engage in foreclosure would "significantly harm Comcast's broadband business . . . without *any* benefit to Comcast's video business."[6] Just last week, Comcast doubled down on these claims, arguing that "Comcast has no incentive to harm edge providers, especially given how complementary they are to Comcast's higher-growth broadband business."[7] The Applicants also claim that, if anything, Comcast has

---

[3] *See* Comcast Responses to Commission, {{
}}

[4] *See* Comcast Responses to Commission, {{
}}

[5] *See* Comcast Corporation and Time Warner Cable Inc., Reply to Responses, MB Docket No. 14-57, at 7-8 (Dec. 23, 2014) ("Reply to Responses").

[6] *Id.* at 7 (emphasis in original).

[7] Letter from Kathryn Zachem, Comcast, to Marlene Dortch, FCC, MB Docket No. 14-57, at 6 (filed Feb. 6, 2015).

an "additional *disincentive* to harm OVDs – as they are significant purchasers of NBCUniversal content."[8]

These assertions are the polar opposite of reality. In fact, {{ }} documents indicate that Comcast considers OVDs, emerging OTT services, and other disruptive technologies to be {{ }}[9] These documents explain that the growth of OTT {{

}}[10] Comcast's argument that it has no incentive to harm OVDs is inconsistent with its own identification of these services as {{ }}[11] Together, these documents further demonstrate that this merger will not serve the public interest.

Out-of-Footprint OTT Service

The proposed merger would eliminate the potential for future OVD competition between Comcast and TWC in each other's territories. Comcast and TWC assert that this prospective out-of-footprint competition is "entirely speculative."[12] But once again, Comcast's own documents contradict this claim. As a Comcast executive asserts in a Highly Confidential document, Comcast views launching an out-of-footprint OTT service as having {{ }}[13] The document explains that {{ }}[14] In other words, a Comcast OVD product offered outside Comcast's footprint {{

}} This document impeaches the Applicants' protestations that Comcast had no intention of developing or launching an out-of-footprint OVD product. {{

---

[8] Reply to Responses at 7-8.

[9] Comcast Responses to Commission, {{ }}

[10] {{ }}

[11] {{ }}

[12] Opposition at 177.

[13] Comcast Responses to Commission, {{ }}

[14] {{ }}

}} It turns out that Comcast {{
}}

Comcast documents reveal that {{

}}[18] The evidence thus provides further support for DISH's view that Comcast was considering an out of footprint OVD service, as launching such a service would entail modest marginal cost.[19]

It is no surprise then, that Comcast has {{

}}[20] These documents make clear that Comcast's consideration of an out-of-footprint strategy goes far beyond mere "speculation." In fact, the documents recommend that Comcast {{

}}[21]

---

[15] Comcast Responses to Commission, {{
}}

[16] {{ }}

[17] Declaration of Roger J. Lynch, MB Docket No. 14-57, ¶ 31 (Dec. 22, 2014) ("Lynch Reply Declaration") (attached to DISH Network Corp., Reply, MB Docket No. 14-57, at 81-86 (Dec. 22, 2014) ("DISH Reply") as Exhibit A).

[18] Comcast Responses to Commission, {{
}}

[19] *See* DISH Network Corp., Petition to Deny, MB Docket No. 14-57, at 78-79 (Aug. 25, 2014).

[20] Comcast Responses to Commission, {{

}}

[21] Comcast Responses to Commission, {{
}}

Just as troubling is the revelation that {{ }}[22] In that scenario, the document suggests that {{ }}[23] {{ }} absent the merger, Comcast is more likely to provide an out-of-footprint service. Such a service would benefit consumers in TWC territories and in areas served by other cable operators. Conversely, however, if the merger is consummated, the competitive benefits of Comcast's potential entry will be lost, not only for customers in the current TWC footprint, but for customers nationwide. The Commission must prevent the consumer harms caused by the horizontal element of this merger.

Incentive to Foreclose OVDs

DISH has argued that Comcast's ongoing reliance on its video distribution business provides a powerful incentive for Comcast/TWC to harm OVDs, and that Comcast's interest in selling NBCUniversal ("NBCU") content to competing OVDs does not have a significant countervailing effect.[24] Comcast's own documents corroborate these arguments.

In the ordinary course of business, Comcast has prepared {{ }} For at least the last three years, {{ }}[25] That document stresses that access to {{ }}[26] The report suggests that disruption to its core business could make it difficult for Comcast {{

---

[22] Comcast Responses to Commission, {{ }}

[23] {{ }}

[24] DISH Reply at 81-86.

[25] {{ }}

[26] {{ }}

}}[28]

A separate internal document presents a {{ }} Specifically, Comcast's {{ }} determined that some {{ }} of its subscribers, including {{ }} of its most valuable customers, could be at {{ }} risk from {{ }}.[29] As a result, for every {{ }}, Comcast would expect to see as much as a {{ }}[30] That loss is offset, {{ }}[31] In other words, at least {{ }} suggests that OTT could cost the company {{ }}[32]

Notably, the documents also show that, far from creating a disincentive from foreclosure, NBCU programming in fact creates a further incentive towards it. Comcast is specifically worried that {{ }}[33] In the more candid setting of {{ }}, the supposed desire of NBCU to profit from selling its content to OVDs, much ballyhooed by the Applicants, is viewed as {{

---

[27] {{ }}

[28] {{ }}

[29] Comcast Responses to Commission, {{ }}

[30] {{ }}

[31] {{ }}

[32] {{ }}

[33] {{ }}

}}[34] Comcast further concludes that,

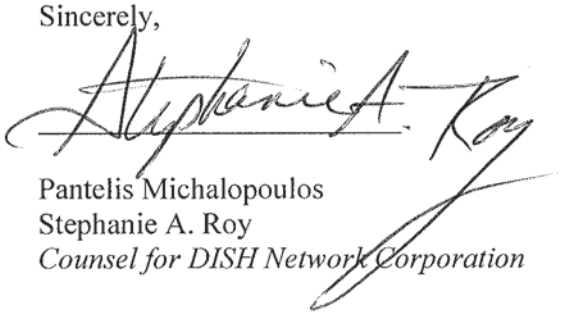
{{

}[35]
}}[35]

* * *

This additional evidence reinforces the already compelling case that the public interest will not be served by the proposed merger of the nation's largest and second-largest cable companies. For these reasons, among many others, the proposed merger should be rejected.

Sincerely,



Pantelis Michalopoulos
Stephanie A. Roy
Counsel for DISH Network Corporation

---

[34] {{ }}

[35] {{ }}