

**REDACTED – FOR PUBLIC INSPECTION**

February 20, 2015

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
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***  
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Dear Ms. Dortch:

Comcast Corporation hereby submits a redacted, public version of the enclosed *ex parte* letter. The {{ }} symbols denote where Highly Confidential Information has been redacted. A Highly Confidential version of this filing has been submitted to the Office of the Secretary pursuant to the Second Amended Modified Joint Protective Order in this proceeding, and will be made available for inspection.<sup>1</sup>

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

Respectfully submitted,

/s/ Francis M. Buono  
Francis M. Buono  
*Counsel for Comcast Corporation*

Enclosure

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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*, Second Amended Modified Joint Protective Order, 29 FCC Rcd. 13799 (2014) (“Second Amended Modified Joint Protective Order”).

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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 January 30, 2015, in connection with the above-captioned proceeding, the Commission held an Economic Analysis Workshop (the “Workshop”), moderated by Commission economists and attended by Applicant economists, including Drs. Dennis Carlton and Mark Israel, and third-party economists, including Drs. David Evans and David Sappington. Comcast Corporation (“Comcast”) sets forth the following response to two erroneous claims made by Dr. Sappington (representing Dish Network) and Dr. Evans (representing Netflix) at the Workshop regarding the interconnection agreement between Netflix and Comcast – namely, that the Netflix agreement is {{

}}. Neither claim withstands scrutiny, and together these baseless assertions only evidence opponents’ continued inability to contest the central fact of the Netflix agreement – that, in the words of Netflix’s CEO Reed Hastings, it “worked well for [Netflix and Comcast] for the long term and works great for consumers.”

First, Drs. Sappington and Evans claimed that Comcast and Netflix’s February 19, 2014 interconnection agreement gives Comcast an “easy” opportunity to breach the agreement because {{

Marlene H. Dortch  
February 20, 2015  
Page 2

}}.<sup>1</sup> That claim is incorrect. The agreement clearly states that {{

}}. The reality is that, as Dr. Carlton observed at the Workshop, Netflix is protected by the {{ }} term of the agreement.<sup>4</sup>

Second, Dr. Evans suggested that Comcast and Netflix’s peering agreement harms Netflix because the agreement {{

}}.<sup>5</sup> Though he was eager to offer this “interesting detail” about the contract, Dr. Evans never explained why, exactly, this restriction constitutes a *harm* to Netflix. In fact, there is no harm, and Dr. Evans’ suggestion of such is without merit. Netflix committed to {{

}} in exchange for the benefits of direct, dedicated interconnection, which it obtained from Comcast pursuant to the agreement. As explained below, a {{ }} generates efficiencies, particularly in traffic planning and capacity deployment, and is unrelated to any purported strategy to prevent online video distributors (“OVDs”) from sending their traffic on a cost-efficient or mutually beneficial basis.

Quite the opposite. Netflix agreed to {{ }} in return for receiving {{

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<sup>1</sup> Dr. Sappington stated: “my understanding of the {{

}}.” Tr. at 90:19-91:4; *see also id.* at 207:17-21. Dr. Evans reiterated this claim, stating: “it is absolutely correct that the way the contract is structured that there are {{ }}.” *Id.* at 95:13-16.

<sup>2</sup> {{ }}.

<sup>3</sup> {{ }} (emphasis added).

<sup>4</sup> Tr. at 87:9-19, 207:6-13; *see also* Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments (“Opposition and Response”), MB Docket No. 14-57, Exhibit 3, Declaration of Dr. Dennis W. Carlton ¶ 15 (Sept. 23, 2014); Opposition and Response, Exhibit 1, Reply Declaration of Dr. Mark A. Israel ¶ 119. Also, {{ }}.

<sup>5</sup> Dr. Evans stated: “[C]an I add one interesting detail about the Comcast contract with Netflix? One of the clauses in the contract is let’s suppose there are these {{

}}.” Tr. at 35:22-36:9.

Marlene H. Dortch  
February 20, 2015  
Page 3

}} from Comcast during the term of the agreement.<sup>6</sup> This is hardly unique to Netflix: it is a typical requirement of Comcast’s (and presumably others’) dedicated interconnection agreements.<sup>7</sup> This is because in such agreements, and in the Netflix agreement in particular, Comcast dedicates the port capacity and network resources required {{  
}}. This means that such capacity and resources are not available for all Comcast’s other traffic transport needs. The {{  
}} exists to ensure that the massive capacity that Comcast committed to Netflix over the provisioned route is not wastefully underutilized or even stranded. It also allows Comcast to have some level of predictability with its other peers regarding their traffic levels, which helps in capacity planning (for both parties) on those other routes. If Netflix, which represents one-third of peak Internet traffic, could {{  
}}, this “would require hugely excessive spare capacity on every route and create serially stranded facilities” for Comcast.<sup>8</sup> Moreover, that would undermine one of the benefits of a direct interconnection agreement – to enable the parties to plan, allocate, and manage network resources efficiently to help ensure optimal customer experience both between the interconnecting parties and between the ISP and other peers. Further, leaving aside {{  
}}, as consideration for its commitments, Netflix obtained {{

}}.<sup>9</sup>

Indeed, in light of the above, it came as no surprise that Mr. Hastings would conclude that the interconnection agreement “worked well for both of us for the long term and works great for consumers”<sup>10</sup> and that Comcast “made paid peering affordable for” Netflix.<sup>11</sup> Nowhere in Mr. Hastings’ laudatory emails to Comcast is there any hint of a complaint about the {{  
}} or any concern about a future intentional breach by Comcast. The after-the-fact musings by Netflix’s economist regarding this commercially negotiated, mutually beneficial, and efficient structure should not be credited.

Finally, Netflix is {{  
}}. It has {{

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<sup>6</sup> {{  
}}.

<sup>7</sup> {{  
}}.

<sup>8</sup> Opposition and Response, Exhibit 4, Declaration of Kevin McElearney ¶ 50.

<sup>9</sup> *Id.* ¶ 43.

<sup>10</sup> COMC-SCS-00019696 at 697.

<sup>11</sup> COMC-ROB-00012809.

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch  
February 20, 2015  
Page 4

}}.<sup>12</sup> Thus, if Netflix finds that directly interconnecting with Comcast – rather than paying a middleman like a transit provider to deliver Netflix traffic destined for Comcast’s network – is no longer as commercially beneficial as Netflix found when it chose to enter into this agreement with Comcast, Netflix can {{ }}.

In short, neither of the agreement provisions cited by Drs. Sappington and Evans supports their arguments or concerns about the Comcast-TWC transaction. In fact, they actually demonstrate the opposite, namely that Comcast has entered into a long-term, {{ }} agreement with Netflix for {{ }} that will, as Netflix’s own CEO plainly recognized, benefit the parties and consumers.

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Francis M. Buono  
Francis M. Buono  
Counsel for Comcast Corporation

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