

REDACTED – FOR PUBLIC INSPECTION

February 26, 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*
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

Comcast Corporation (“Comcast”) hereby submits a redacted, public version of the enclosed update titled “Analysis of Broadband Consumer Benefits Arising from the Transaction” prepared by Dr. Mark Israel and Compass Lexecon. This update analyzes Form 477 data recently submitted by Comcast and Time Warner Cable, Inc. in response to the Commission’s January 15, 2015 Second Information and Data Request.¹

The [[]] symbols denote where Confidential Information has been redacted and the {{ }} symbols denote where Highly Confidential Information has been redacted. A Highly Confidential version of this filing, including accompanying Highly Confidential backup data, has been submitted to the Office of the Secretary pursuant to the Second Amended Modified Joint Protective Order in this proceeding² and will be made available for inspection.

¹ See Letter from William T. Lake, Chief, Media Bureau, to Kathryn A. Zachem, Comcast Corporation, MB Docket No. 14-57 (Jan. 15, 2015).

² *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”).

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene H. Dortch
February 26, 2015
Page 2

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

Respectfully submitted,

/s/ Michael D. Hurwitz

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Counsel for Comcast Corporation

Enclosure

cc: Hillary Burchuk
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Shane Greenstein
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William Rogerson

much.”⁶ And in its Reply Comments, Dish spends considerable effort arguing that “TWC’s aggressive broadband upgrades *throw into question* the Applicants’ claim that, on average, TWC subscribers have to make do with lower broadband speeds than those of Comcast.”⁷ Based on Dish’s qualitative survey of TWC Maxx upgrades, Dish concludes, without any factual evidence, that “[t]hese upgrade plans would push the disparity between the two companies’ speeds *even further in the opposite direction* than that claimed by the Applicants.”⁸

The most basic response to Dish’s claims is that, although TWC is surely advancing broadband speeds on its own—as are all wired and wireless ISPs—there is no question that the transaction will generate incremental gains above and beyond what TWC is doing on its own. Specifically, Comcast’s integration plans call for an *incremental* CapEx spending of over {{ }} in 2015-2016, beyond TWC’s planned increase in its CapEx spend for 2015-16, to improve the quality of the TWC broadband network.⁹ More generally, the long-standing gap between the speeds enjoyed by Comcast and TWC customers is not disappearing; instead, even as TWC catches up to where Comcast was *more than a year ago*, Comcast continues to move ahead.

With the submission of Comcast’s and TWC’s Form 477 data as of June 2014 and as of December 2014 in response to the Commission’s Second Information Request, the Commission is now in a position to assess the current situation. As I demonstrate below, the most recent Form 477 data strongly reinforce my prior analyses that Comcast continues to provide average download and upload speeds that substantially exceed those provided by TWC. Hence, these recent data reaffirm my conclusions (i) that the transaction will enable TWC customers to enjoy faster speeds more quickly than they would have otherwise received absent the transaction, even taking into account TWC’s investments in its Maxx program, and (ii) that the substantial consumer benefits associated with the speed upgrades likely to arise from the transaction easily swamp any potential competitive harms from the transaction.

Table 1 provides an update to Table 13 in the *Israel Reply Declaration* using the most recent data from the FCC’s Form 477 and using actual speeds. As of December 2014, the average broadband downstream speed enjoyed by Comcast customers was [[]] Mbps, [[]] Mbps for TWC customers.¹⁰ Table 2 provides an update using the

⁶ Transcript of Economic Analysis Workshop, Federal Communications Commission, Proposed Comcast-Time Warner Cable-Charter Transaction, January 30, 2015 (hereinafter, *FCC Workshop Transcript*), at 314:13-17.

⁷ Reply of Dish Network Corporation, December 22, 2014 (hereinafter, *Dish Reply*) at 106 (emphasis added).

⁸ *Dish Reply* at 108 (emphasis added).

⁹ See Comcast Presentation titled, {{ }} January 5, 2015, at COMC-WHA-00002378.

¹⁰ The data in Table 1 represent weighted average broadband speeds across the Comcast and TWC customer bases. The methodology for calculating such weighted averages differs slightly from the methodology used

exact methodology used in the *Israel Reply Declaration*. Table 3 and Table 4 are analogous to Table 1 and Table 2, using upstream speeds instead of downstream speeds.

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in the *Israel Reply Declaration*. In that report, I only had access to ranges of broadband speeds for each customer and therefore reported the average based on the lower bound of the relevant ranges. (*See Israel Reply Declaration*, ¶ 220 for a description of the calculations.) I was unable to calculate weighted averages for TWC prior to June 2014 due to lack of data. Using the old methodology, as shown in Table 2, the average broadband downstream speed enjoyed by Comcast customers in December 2014 was [[]] Mbps versus [[]] Mbps for TWC customers.

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As demonstrated by the four preceding tables, Comcast’s broadband speeds substantially exceed those of TWC on multiple dimensions, and the difference in both downstream and upstream speeds has *increased* over time. Table 5, below, provides further evidence of the significant speed gap between the Comcast and TWC networks. Notably, using the definition of advanced telecommunications capability endorsed by the FCC in its recent Section 706 report (25 Mbps downstream and 3 Mbps upstream), over five times as many Comcast customers receive such speeds relative to TWC customers.

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To the extent that the transaction results in closing even a small portion of this observed gap between TWC and Comcast speeds, the benefits to consumers will be enormous and will overwhelm, many times over, any harms that certain commenters have alleged will result from the transaction. To be clear, I do not claim that the transaction will immediately close 100 percent of the speed gap, but there are important reasons to believe it will accelerate the delivery of faster speeds to TWC customers and thus, at minimum, lead to a substantial narrowing of the speed gap:

- Comcast’s large speed advantage relative to TWC reflects not only the technical superiority of the Comcast network, but also Comcast’s commitment to and experience in delivering such speeds to its customers. Post-transaction, TWC customers will benefit from this network strategy and experience, not only in the near term but also over the longer term, as Comcast continues to deploy this strategy and experience.¹¹
- As I noted in the *Israel Reply Declaration*, “Comcast has committed to invest hundreds of millions of dollars to improve TWC’s network and to realize higher broadband speeds.”¹² As noted above, Comcast’s most recent integration plans call for an incremental CapEx spending of over {{ }} in 2015-2016 (beyond even TWC’s

¹¹ See Comcast Presentation titled {{ }} Jan. 22, 2015, at COMC-KEM-00001112 ({{

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¹² *Israel Reply Declaration*, ¶ 220.

planned increase in its CapEx spend for 2015-16). Such investments will lead directly to an increase in network performance at TWC relative to the situation without the transaction.

To quantify the potential value to consumers from such speed upgrades, Table 6 reports the value of increasing download speeds by one Mbps per month at each speed, both per subscriber and across all TWC subscribers combined, accounting for divestitures of TWC subscribers to Charter.¹³ The table shows that even small broadband speed gains from the transaction completely overwhelm any theories of harm that commenters have advanced. *If the transaction were to result in raising the average TWC broadband speeds to the level of Comcast, the resulting consumer benefits would be worth approximately \$1.1 billion annually.*¹⁴ Even closing approximately half the gap, by raising TWC speeds to an average of 35 Mbps would be worth \$747 million per year. And notably, even a single Mbps improvement would be worth \$74 million per year,¹⁵ *substantially* {{

}},¹⁶ which is striking given the amount of attention paid to interconnection payments in this case.

¹³ The marginal utility of speed decreases as speeds increase. In the *Israel Reply Declaration*, I reported the median marginal utility of speed. (See *Israel Reply Declaration*, ¶ 221.) Here I refine the calculation to account for the non-linearity of the utility function, adopting the demand model for residential broadband developed by Prof. Aviv Nevo and co-authors in a recent research paper. In particular, I calculate the marginal utilities using the estimated parameter values of the “most common type” consumer reported in the paper. (See Aviv Nevo, John L. Turner and Jonathan W. Williams (2013), “Usage-Based Pricing and Demand for Residential Broadband,” *Working Paper*, pp 25-26.) For this reason, the numbers presented here do not match precisely the approximation used in the *Israel Reply Declaration*.

¹⁴ Under general conditions, the pass-through to consumers of merger-induced quality improvements is precisely analogous to the pass-through to consumers of merger-induced marginal cost efficiencies. (Robert Willig, “Unilateral Competitive Effects of Mergers: Upward Pricing Pressure, Product Quality, and Other Extensions,” *Review of Industrial Organization*, 39.1, 19-38, at 30.) When a merger enhances quality, the merged firm has an incentive to raise prices, but only so as to capture *a portion* of the surplus from the incremental quality improvements. As long as the pass-through rate is greater than zero, consumers will also benefit from the quality increase, just as both consumers and the firm benefit from reductions in marginal costs when the pass-through rate is between zero and one. As one benchmark, Prof. Farrell suggested at the Workshop that the pass-through rate in this industry may be on the order of 0.5. *FCC Workshop Transcript* at 104:13-18. If such an estimate were used, it would imply annual consumer benefits of up to \$572 million.

¹⁵ Again, this figure does not exactly match the number presented in the *Israel Reply Declaration* because, here, I use the exact non-linear formula, whereas in the *Israel Reply Declaration* I used a linear approximation.

¹⁶ Comcast FCC Exhibit 125.1.

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It is important to stress that all of the consumer benefits in the table are per year. Hence, even if one were to accept (counterfactually) that TWC could catch up on its own with a one year lag, such that the speed gains due to the transaction were limited to a one-year jumpstart, the enormous consumer benefits listed above would be achieved during that year. That is far from trivial, notwithstanding Dish's effort to minimize this impact.¹⁷ More generally, the results show that even highly conservative estimates of the speed gains for TWC—even estimates that amount to only a few Mbps for a few years—yield verifiable, quantifiable consumer benefits worth hundreds of millions of dollars, dwarfing any harms alleged in this case. And none of these calculations account for *any* incremental gains to legacy Comcast customers due to the benefits of additional scale throughout many aspects of Comcast's business—with *any* such benefits further increasing the consumer benefit totals reported here.

¹⁷ Moreover, as I have previously explained, Comcast expects to begin deploying DOCSIS 3.1 (which supports download speeds of up to 10 Gbps and upload speeds of up to 1 Gbps) soon after the specifications are expected to be finalized in 2015, and it will be the first to do so among broadband providers. (See *Israel Declaration*, ¶ 178). Thus, by the time TWC gets to all digital or catches up to where Comcast's broadband speeds are currently, Comcast will have already implemented much higher speeds.