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REDACTED – FOR PUBLIC INSPECTION

March 9, 2015

By ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
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:

Pursuant to the *Second Amended Modified Joint Protective Order*¹ (“*Modified Joint Protective Order*”), DISH Network Corporation (“DISH”) submits the attached redacted version of its Highly Confidential *ex parte* letter. DISH has denoted with “{ }” symbols information that it has deemed Highly Confidential Information pursuant to the *Modified Joint Protective Order*. A Highly Confidential version of the letter has been filed with the Commission and will be made available pursuant to the terms of the *Modified Joint Protective Order*.

Please contact me with any questions.

Respectfully submitted,


Stephanie A. Roy
Counsel for DISH Network Corporation

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 ¶ 14 (Nov. 12, 2014).

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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 respond to the February 26, 2015 submission by Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“TWC”) (collectively, the “Applicants”) of a paper produced by Mark Israel and Compass Lexecon entitled “Analysis of Broadband Consumer Benefits Arising from the Transaction.”¹

In this analysis, Dr. Israel attempts to resurrect the Applicants’ claim that consumers will benefit from the merger because Comcast will upgrade TWC’s systems.² DISH has shown that

¹ Mark Israel, Analysis of Broadband Consumer Benefits Arising from the Transaction, attached to Letter from Michael Hurwitz, Counsel to Comcast Corporation, to Marlene Dortch, FCC, MB Docket 14-57 (Feb. 26, 2015) (“Israel”).

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, at 30 (Apr. 8, 2014) (stating that the transaction will unleash “the combined company’s deployment of advanced broadband services and broadband infrastructure investments.”); *id.* at 33 (“there is no doubt that customers in TWC markets will benefit directly from the substantial upgrades that Comcast intends to make (and has the expertise and resources to make) to the TWC broadband service.”); *id.* at 34 (“Comcast intends to extend its higher speeds and related consumer benefits to the TWC systems on an accelerated and more cost-

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the connection between the proposed merger and any upgrades to TWC's systems is tenuous; TWC already had stand-alone plans to upgrade its systems, has been steadily executing on those plans, and has the resources to fully realize them.³

Dr. Israel's response to DISH's showing is more significant for what he does not say than for what he does say. He does not dispute that TWC has the stand-alone upgrade plans described by DISH. He does not deny that TWC is fulfilling those plans. He does not claim that TWC does not have enough money to complete its upgrades. He even tacitly admits that a large portion of the benefits from TWC upgrades would not be brought about by the merger after all. He does this by artfully lowering the bar for the sufficiency of the showing he offers: according to him, even a small portion of the upgrade would be enough of a benefit. In his words: "To the extent 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."⁴

But even this reduced claim is baseless. The only evidence Dr. Israel proffers is that there once was a gap between TWC and Comcast's speeds (at the end of 2014, or possibly at the end of 2013), and that Comcast plans to increase the "spend" on TWC's systems. But this increase in expenditure is almost meaningless unless TWC has not earmarked enough money to implement its upgrades. On this point, as mentioned, Dr. Israel is silent. The showing of Dr. Israel becomes even less convincing, and indeed more damning for Comcast, if his analysis is placed side-by-side with documents produced by the Applicants. How is the expenditure increase boasted of by Dr. Israel to be funded? {{

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In sum, if the merger goes away, TWC's upgrades will be implemented (there is no evidence to the contrary), and consumers will pay the same that they pay today for dramatically enhanced speeds (TWC is on the record that TWC Maxx speed increases will be passed onto consumers with no rate increase).⁵ If, on the other hand, the merger is consummated,

efficient basis than TWC could accomplish on its own. The goal would be to bring the TWC services up to Comcast levels.").

³ DISH Network Corp., Reply to Opposition, MB Docket No. 14-57, at 100-08 (Dec. 22, 2014) ("DISH Reply").

⁴ Israel at 5.

⁵ Press Release, Time Warner Cable, Time Warner Cable Begins 'TWC Maxx' Transformation in Austin Area to Enhance Customer Experience (July 31, 2014), *available at* <http://www.timewarnercable.com/en/about-us/press/time-warner-cable-begins-twc-maxx-transformation-in-austin-area.html> (noting that TWC's upgraded customers will enjoy the high speeds offered by TWC Maxx—up to six times their current speed, and up to 300 Mbps—for the same price they pay for their current service).

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comparable upgrades will be implemented, they may cost more, and {{
}} The consumers are better off in the first world than in the second.

TWC's Upgrade Plans, Record, and Financial Capability

TWC is in the middle of a system-wide upgrade pursuant to its TWC Maxx initiative that will make speeds of up to 300 Mbps available to all TWC subscribers by the {{
}}.⁶ These speeds are faster, and offered at better prices, than Comcast currently offers its own customers.⁷ Critically, these upgrades are completely independent of the proposed transaction with Comcast. TWC has already rolled them out to about 25 percent of its subscriber base; by the end of 2015, TWC Maxx will have been implemented in {{
}} of TWC's footprint.⁸

There is every indication that TWC will be able to complete these upgrades {{
}} as planned. The TWC Maxx buildout has taken place on schedule and even been accelerated for some markets.⁹ The company ranks revitalizing residential services, including upgrading residential broadband speeds, at the top of its key investment areas through 2016.¹⁰ And TWC has ample capability to fund this plan. In the five years since the completion of its separation from Time Warner Inc., TWC revenues have grown by 24 percent, and the company has made over \$15 billion in capital expenditures.¹¹ And this strong performance is continuing. TWC reported 67,000 net customer additions for the fourth quarter of 2014, record subscribership to its triple play offering, and more than \$4.1 billion in capital expenditures in 2014, "reflecting greater investment in TWC Maxx, improved customer experience and network expansion."¹² In the words of TWC Chairman and CEO Rob Marcus: "Our fourth quarter marked a strong finish to a really positive year for Time Warner Cable. As a result of record Q4 subscriber net adds and the investments we made all year in our plant, products and customer care, we enter 2015 with tremendous operating momentum."¹³

⁶ DISH Reply at 106.

⁷ *Id.*

⁸ *Id.* at 107.

⁹ *Id.*

¹⁰ Time Warner Cable, TWC Operational and Financial Plan, at 11 (Jan. 30, 2014), *available at* http://ir.timewarnercable.com/files/4Q13/TWC_Operational%20and_Financial%20Plan_vFINA.L.pdf.

¹¹ DISH Reply at 105.

¹² TWC, Press Release, Time Warner Cable Reports 2014 Fourth-Quarter and Full-Year Results (Jan. 29, 2015), *available at* <http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Time-Warner-Cable-Reports-2014-Fourth-Quarter-and-Full-Year-Results/default.aspx>.

¹³ *Id.*

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Dr. Israel's Inapposite Rebuttals

Dr. Israel does not dispute either the existence of TWC's upgrade plans or TWC's ability to execute on them. Nor does Dr. Israel contend that TWC lacks the financial resources to execute on its aggressive plans. Instead, Dr. Israel makes two points.

First, he cites the current gap between the average Internet connection speed for Comcast customers and that of TWC customers as of the end of 2014. From that observation he leaps to the conclusion that only with Comcast's involvement could TWC close this gap.¹⁴ Of course, simply saying Comcast enjoys a speed advantage over TWC does not mean the transaction is necessary to close it.

Second, Dr. Israel claims that "Comcast's most recent integration plans call for incremental CapEx spending of over {{ }} in 2015-16 (beyond even TWC's planned increase in 2015-16) ... [and that this] will lead directly to an increase in network performance relative to the situation without the transaction."¹⁵ But Dr. Israel fails to connect the dots. His point would be relevant only if either TWC's plans are, in fact, more expensive than TWC believes, or if TWC does not have enough resources to carry them out. Neither proposition is supported by Dr. Israel or by the Applicants. A more expensive upgrade does not mean a better one, especially since the increased CapEx spending to which Dr. Israel refers must also accommodate the cost of the two systems' integration, not just upgrades.¹⁶

{{ }}

Finally, the source of the increased expenditure shows even more graphically that it should not count as a benefit. {{

}}¹⁷ Any supposed increases to overall consumer welfare are likely to be more than offset by these plans.

¹⁴ Israel at 2-5.

¹⁵ *Id.* at 5-6.

¹⁶ While Dr. Israel refers to certain upgrades beyond what TWC currently has planned, such as moving to DOCSIS 3.1, *see id.* at 7 n.17, it is not clear that those are separately cognizable benefits; the Applicants' submissions do not detail the timing of these purported upgrades to TWC's systems, show how they will translate into consumer speed enhancements, or demonstrate that TWC would not be in a position to pursue them on its own.

¹⁷ Letter from Pantelis Michalopoulos and Stephanie Roy, Counsel for DISH Network Corporation, to Marlene Dortch, FCC, MB Docket No. 14-57, at 2 (Feb. 23, 2015); {{

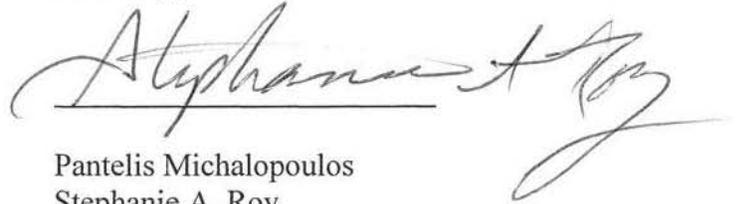
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In sum, Dr. Israel's analysis, when combined with the documents submitted by the Applicants, leads to this troubling conclusion: the merger would merely cause consumers to
{ { } }

Sincerely,



Pantelis Michalopoulos
Stephanie A. Roy
Counsel for DISH Network Corporation

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