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REDACTED – FOR PUBLIC INSPECTION

March 17, 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 hereby submits a redacted, public version of the enclosed *ex parte* letter. The **[[ ]]** symbols denote where Confidential Information has been redacted. A Confidential version of the letter has been submitted to the Office of the Secretary and will be made available for inspection pursuant to the Second Amended Modified Joint Protective Order in this proceeding.[1]

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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[1] *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**
CONFIDENTIAL INFORMATION – SUBJECT TO MODIFIED JOINT PROTECTIVE ORDER IN MB DOCKET NO. 14-57

Dear Ms. Dortch:

Comcast Corporation ("Comcast") submits this letter in response to a recent filing by Liberman Broadcasting, Inc. ("LBI"), the owners of Estrella TV, discussing Comcast's carriage of the network.[1] LBI's filing contains a number of inaccuracies and mischaracterizations of recent events – in particular, alleging that Comcast's decision not to pay LBI the exorbitant fees it demanded for Estrella TV amounts to a "refusal to engage in good faith negotiation" and that it was a "decision[] by Comcast . . . that led to the removal of" Estrella TV in three markets.[2] Not only is there no basis for these claims, but they also are particularly misleading given the significant support Comcast has provided to

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[1] *See* Letter from Lenard Liberman, CEO, President, & Secretary, Liberman Broadcasting, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Mar. 5, 2015) ("LBI Letter").

[2] *Id.* at 1.

Estrella TV. Just as – if not more – important, none of LBI's points raises any transaction-specific competitive concerns; LBI is simply seeking to leverage a better deal for itself than it could fairly obtain at the bargaining table. Moreover, LBI raised these issues long after the formal pleading cycle was concluded, rendering its claims not only meritless but untimely.[3] The Commission should reject such opportunistic advocacy.

Comcast Has Been an Industry-Leading Supporter of Estrella TV and Is Estrella TV's Largest Distributor.

LBI's letter completely mischaracterizes the relationship as well as the negotiations between Estrella TV and Comcast. LBI and Comcast historically have had a productive relationship, and Comcast has distributed Estrella TV to more viewers than any other MVPD. Comcast has been willing to and indeed interested in continuing that relationship as it stood, but not on the new and unjustified terms sought by Estrella TV. And it was LBI, not Comcast, that decided to pull Estrella TV's programming from many Comcast customers rather than find a way forward that would have continued distribution of Estrella TV's programming in the affected markets.

Before the current negotiations, Comcast delivered Estrella TV to nearly 7.4 million Comcast customers in 16 markets. Approximately a **[[ ]]** of those customers represented "mandatory carriage" (via current must-carry status) with respect to the full-power stations owned by LBI in Denver, Salt Lake City, and Houston. (Comcast also retransmits a third-party Estrella TV affiliate via must-carry to approximately **[[ ]]** million subscribers.) The remaining approximately **[[ ]]** million Comcast customers who received Estrella TV did so as the result of Comcast's wholly *voluntary* carriage of Estrella TV's low power stations and a number of third-party Estrella TV multicast channels in key Hispanic television markets, including New York and Chicago.

Comcast's distribution of Estrella TV far exceeds that of any other MVPD. AT&T, Estrella TV's second largest distributor, reportedly delivers the network to approximately 5.9 million customers, and TWC distributes Estrella TV to **[[ ]]** as many subscribers (approximately **[[ ]]** million) as Comcast. Distribution of the network by other MVPDs is likewise limited.[4]

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[3] *See Commission Seeks Comment on Applications of Comcast Corp., Time Warner Cable Inc., Charter Commcn's, Inc. and SpinCo To Assign and Transfer Control of FCC Licenses and Authorizations*, Public Notice, 29 FCC Rcd. 8272 (2014).

[4] Based on SNL Kagan data, Estrella TV is reportedly distributed by the following MVPDs to the listed number of subscribers: Charter Communications (approximately 2.9 million subscribers); Mediacom (approximately 460,000 subscribers); Cox Communications (approximately 320,000 subscribers); and Bright House Networks (approximately 170,000 subscribers).

Comcast's expanded carriage of Estrella TV, particularly as compared to other MVPDs, has been especially notable given that, among Hispanic households, Estrella TV's viewership historically has fallen significantly below the top three Hispanic broadcast networks – Univision, Telemundo, and UniMás – based on ratings both on a local and a nationwide basis. According to national Nielsen data as of January 25, 2015, Estrella TV drew an average of 273,000 viewers in primetime to date this season – less than one-tenth of Univision's viewers (2.9 million), less than one-fourth of Telemundo's (1.3 million), and less than one-half of those of UniMás (580,000).[5] Indeed, in New York and Chicago, where Comcast continues to voluntarily carry Estrella TV's low power stations, they are delivering virtually no measureable audience. And beyond weak ratings performance, Estrella TV simply has low brand awareness and limited programming appeal, even in these two important Hispanic television markets.

Notwithstanding this background, in the fall of 2014, LBI proposed for the first time that Comcast pay cash retransmission consent fees for three of the markets in which Comcast carries Estrella TV (Denver, Salt Lake City, and Houston),[6] insisting that it deserved so-called economic "parity" with the "Big 3" Hispanic broadcasting networks (Univision, Telemundo, and UniMás). The fees proposed by LBI would total millions of dollars in increased fees to Comcast customers. LBI also demanded launch of broader, national distribution of the network (in multiple formats, on multiple channel positions, and inclusive of carriage of non-owned, third-party Estrella TV affiliates), which would similarly entail tens of millions of dollars in additional fees to Comcast customers. While Comcast made clear at all times that it was willing to continue its carriage of Estrella TV uninterrupted, to all the markets to which it was then delivered, Comcast was unwilling to accept those proposed new and exorbitant terms. Like other MVPDs, Comcast has no business interest in paying significant sums for programming with low brand awareness and limited audience, and being forced to pass those unjustified costs onto its customers.[7]

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[5] Christopher Palmeri & Gerry Smith, *Estrella TV Goes 'Mano a Mano' with Comcast Over Cable Fees*, Bloomberg Bus., Feb. 9, 2015, http://www.bloomberg.com/news/articles/2015-02-10/estrella-tv-goes-mano-a-mano-with-comcast-in-cable-fee-fight.

[6] Estrella TV's actions do not affect the 80 percent of Comcast's Estrella TV customers who continue to receive Estrella TV in other markets like Miami, Chicago, New York, and Fresno.

[7] Estrella TV's claim that Comcast demanded that Estrella TV "relinquish digital rights to all of its programming at no charge," *see* LBI Letter at 2, simply distorts the parties' discussion of TV Everywhere ("TVE") rights. TVE rights are a staple of virtually all Comcast retransmission consent agreements, and nothing in Comcast's proposal limited or restricted LBI's rights to license TVE rights to other distributors, or to exploit the rights itself as it saw fit.

Comcast's Refusal To Agree to LBI's Demands Is Neither Discriminatory Nor Transaction Related.

Much of LBI's position rests on its assertion that it garners "impressive ratings" and is thus owed greater distribution and retransmission consent fees. Importantly, ratings alone do not drive Comcast's programming decisions; at best, they are one of several relevant factors Comcast considers in assessing the overall value of a network to its customers versus the costs of carriage.

Moreover, LBI's claims about Estrella TV's ratings are not reliable. Specifically, LBI bases much of its ratings conclusions on the following limited time frames and limited markets: (a) performance primarily in Los Angeles (a market that Comcast does not currently serve), (b) a *single* sweeps period (November 2014), and (c) a period Estrella TV defines as "primetime" – i.e., 8-11 pm Monday-Friday rather than actual primetime of 7-11 pm Monday-Sunday. When Estrella TV's performance is evaluated beyond just the narrow, non-standard daypart and the single November sweeps period on which LBI relies, Estrella TV's full-power stations in all markets consistently underperform the "Big 3" Hispanic broadcasters.[8] As noted above, Estrella's national primetime ratings for the current season do not even come close to those of Univision, Telemundo, and UniMás.[9] And with respect to the three markets at issue, for the cumulative sweeps period in 2014 (inclusive of February, May, July, and November), Estrella TV's ratings lag Telemundo's in every metric on both a full-day and primetime basis. For example, on a full-day basis, Estrella TV garnered approximately one-third the ratings that Telemundo did in Houston (**[[ ]]**) and half the ratings in Denver (**[[ ]]**) and Salt Lake City (**[[ ]]**).[10] In addition, both Univision and UniMás generally outperformed Estrella TV in these markets – often by a wide margin.

Given the minimal demand for Estrella TV by Comcast's customers, Comcast concluded and continues to believe that LBI's request for carriage fees is not warranted, particularly in connection with LBI's demand to be launched throughout Comcast's footprint. There is simply no business case that would justify paying cash retransmission consent fees for these stations. Again, however, while

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[8] LBI also states that Comcast "question[s] Nielsen ratings in general, claiming that its set-top box data is more reliable." LBI Letter at 3. In fact, Comcast has stated that the Nielsen metrics are *reinforced* by Comcast's internal set-top-box data, which indicate that Estrella TV is even farther behind the major Hispanic broadcasters, in terms of reach, frequency, and appeal among Comcast customers.

[9] *See* discussion *supra* at 3.

[10] In primetime, Estrella TV also lagged Telemundo in Houston (**[[ ]]**), Denver (**[[ ]]**), and Salt Lake City (**[[ ]]**). These ratings are based on Hispanic Households from Nielsen's National Hispanic Station Index.

Comcast did not agree with LBI's position, Comcast offered to continue to carry the stations under the existing arrangements.[11]

It bears emphasis that Comcast did *not* drop Estrella TV in these markets. It was LBI that decided to pull Estrella TV's signal from Comcast customers instead of continuing negotiations while maintaining the status quo. Comcast would welcome an opportunity to continue to carry Estrella TV in these markets and to move forward with productive carriage negotiations.

Nor is there any substance to LBIs's vague assertion that the decision was in some way based on discrimination by Comcast in order to favor Telemundo. LBI has simply not shown that carrying Estrella TV for the fees it has demanded would benefit Comcast or its customers. Comcast *does* want to carry Estrella TV and, in fact, continues to do so for the majority of customers who were previously receiving the service; Comcast would have preferred to do so for all such customers. But the terms on which Estrella TV insisted would have undermined any business benefit from such carriage, particularly in light of Estrella TV's ratings performance, low brand awareness, and low customer appeal noted above. As the courts have made clear, business decisions made on that basis simply do not amount to "discrimination." In all events, LBI has essentially acknowledged that its claims have little to do with Telemundo in particular, but instead its complaint is that it does not enjoy the same carriage terms as other networks like Univision, Galavisión, and UniMás – all networks in which Comcast has no ownership interest.[12] In the end, even LBI seems to recognize that there is no basis to assert a claim that Comcast somehow disadvantages other Hispanic networks for the benefit of Telemundo: in fact, Telemundo's primary competitor, Univision, has *more carriage* than Telemundo on Comcast's cable systems.

***Comcast Is a Strong Supporter of Independent and Diverse Programmers*.**

LBI also contends that Comcast's decision not to acquiesce to LBI's unreasonable carriage demands is contrary to the public interest and denies consumers access to diverse programming.[13] The record in this proceeding, however, belies these claims. With regard to Hispanic programming specifically, the record includes enthusiastic backing from multiple Hispanic programmers, organizations, and government officials,[14] and for good reason – Comcast strongly supports Hispanic

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[12] *See id*. at 2-3.

[13] *See id.* at 5.

[14] *See, e.g.*, Comcast Corp., and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, at 8-12 (Sept. 23, 2014); *see also* Letter from Amy L. Hinojosa, President and CEO, MANA, A National Latina

programming and programmers. For example, since 2011, Comcast has extended distribution of nine Hispanic programming services by more than 17 million subscribers, exceeding by more than 70 percent the commitment to expand carriage of three Hispanic networks by 10 million subscribers.[15] Comcast also maintains a package of 40-60 Spanish language channels in all major Hispanic markets, and has created an unprecedented ecosystem of support for all of its Hispanic-focused independent channels to promote their programming and to drive viewers to the content.[16] As of September 2014, Comcast was carrying more unaffiliated Spanish language networks (30) than any other cable MVPD, including Hispanic broadcasters Azteca America, LATV, MundoFox, Univision, UniMás, VME, and other local stations; since then, Comcast has entered into an agreement with Univision to carry four more.[17] As three Hispanic business leaders recently attested, "Comcast has arguably done more than any other cable or satellite company to increase the amount and the reach of Latino-focused content."[18]

More generally, with respect to independent programmers, Comcast carries over 160 independent networks. Since 2011, Comcast has launched 20 independent networks and has expanded carriage of 141 independent networks by more than 217 million customers, collectively. Post-

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Organization, to Chairman Wheeler and Commissioners, FCC, at 2 (Aug. 22, 2014) ("[T]his merger will enhance the multi-tiered approach Comcast has already taken with regards to facilitating access for and educating Hispanic communities."); Letter from Dr. Juan Andrade, Jr., President, United States Hispanic Leadership Institute, to Chairman Wheeler, FCC, at 1 (Aug. 25, 2014) ("We support approval of the proposed Comcast and Time Warner Cable transaction, which will help expand this community-minded company's commitment to all Americans."); Letter from Jose Antonio Espinal, SomosTV LLC, to Chairman Wheeler, FCC, at 1 (Sept. 23, 2014) ("[T]he combination of Comcast and TWC does not appear to do anything but offer [Hispanic programmers] like SomosTV opportunities to grow as Comcast's partners."); Letter from Luis Torres-Bohl, Castalia Communications, to Chairman Wheeler, FCC, at 1 (Sept. 24, 2014) ("Comcast continues to play an instrumental role in increasing access to content owned by and targeted toward Hispanics. The company has had, and continues to refine, an industry-leading plan to reach the Hispanic audience."); Letter from Eligio Cedeno, CEO, V-me Media, Inc., to Marlene H. Dortch, FCC, at 2 (Dec. 15, 2014) ("Comcast understands the importance of independent programmers in the Hispanic media sector and has been a vital partner in enabling V-me to grow its position in providing independent, quality Spanish-language programming for our Hispanic viewers.").

[15] Specifically, Comcast has extended distribution of Azteca America, Galavisión, HITN, LATV, mun2, nuvoTV, UniMás (f/k/a Telefutura), Telemundo, and Univision.

[16] Comcast has invested heavily to develop and deploy an exclusive interactive "barker" channel that promotes curated, Hispanic-relevant content; promotes independent content through Facebook pages and Twitter handles and through a specialized microsite, Xfinity.com/Latino; has added editors and bloggers to create, share, and discuss relevant content; and offers promotional, free previews to help drive more viewers to its Hispanic content.

[17] Transcript of Economic Analysis Workshop, Federal Communications Commission, Proposed Comcast-Time Warner Cable-Charter Transaction, January 30, 2015 (hereinafter, "*FCC Workshop Transcript*") at 270:18-271:6.

[18] Javier Palomarez, Alice Perez & Dora Westerlund, Op. Ed., *Why the Comcast-Time Warner Cable Merger Is a Good Deal for Latinos*, San Gabriel Valley Trib., Mar. 15, 2015, *available at* http://www.sgvtribune.com/opinion/20150305/why-the-comcast-time-warner-cable-merger-is-a-good-deal-for-latinos-guest-commentary (describing multiple benefits in various dimensions for Latino communities in California).

transaction, six out of every seven networks that Comcast carries will continue to be unaffiliated. Comcast will bring this same commitment to independent and diverse programming to the acquired systems, and this commitment is firmly in the public interest.

***LBI's Demands Are Unrelated to the Transaction*.**

Whatever the outcome of this commercial dispute with LBI, it is clearly not related to any transaction-specific issue, and LBI's assertions should be given no weight. Comcast has every business incentive to carry services that will attract and are valued by subscribers, regardless of whether those services are affiliated.[19] A business decision not to carry a particular programmer, after weighing benefits and costs, made prior to and entirely separate from the transaction, is not indicative of a transaction-specific program carriage concern.

For these reasons, LBI's inaccurate efforts to transform its parochial and self-created commercial dispute regarding Estrella TV into a larger public interest or competitive concern should be disregarded.

Please direct any questions to the undersigned.

Respectfully submitted,

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

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[19] As explained by Comcast's economic expert, Dr. Michael Topper, if the programming at issue is "attractive programming that [a distributor is] not carrying, there is a cost and risk associated with not carrying it, in its ability to compete in the MVPD marketplace." *FCC Workshop Transcript* at 262:6-9.