WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

REDACTED – FOR PUBLIC INSPECTION

April 8, 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 Highly Confidential Information has been redacted. The Highly 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

---

[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").

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

REDACTED – FOR PUBLIC INSPECTION

April 8, 2015

VIA ELECTRONIC FILING

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

This letter responds to Dish Network Corporation's ("Dish") increasingly outlandish claims regarding Comcast and Netflix's direct interconnection agreement.[1] As a preliminary matter, none of these arguments is even remotely transaction-specific. Dish merely recycles old, inaccurate contentions and then lists a new set of claims that are even more far-fetched. At every turn, Dish's shifting arguments about the Netflix agreement are wholly without merit.

It is useful to review Dish's arguments about the Comcast-Netflix agreement in sequence to assess its current claims in proper context. In its pleadings, Dish adamantly argued that the agreement was an indication of Comcast's market power and was the result of Comcast's throttling of Netflix's traffic.[2] But there was no throttling, as Netflix itself explained to analysts.[3]

---

[1] *See* Letter from Pantelis Michalopoulos, Counsel for Dish, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Mar. 6, 2015) ("Mar. 6, 2015 Dish Letter").

[2] *See* Dish Petition to Deny at 57-58, 95-98.

[3] *See, e.g.*, Peter Kafka, *Netflix Says Verizon Isn't Slowing Down Its Streams*, re/code (Feb. 11, 2014), *available at* http://recode net/2014/02/11/netflix-says-verizon-isnt-slowing-down-its-streams/ (quoting J.P. Morgan research note ("Netflix also indicated that it has no evidence or belief that its service is being throttled.")); Comcast

Faced with Netflix's own CEO's unequivocal statement that Netflix viewed the agreement as a good deal for itself (and for consumers),[4] guaranteeing affordable interconnection for the "long term,"[5] Dish was forced to resort to the dubious claim that Comcast could breach the agreement with relative impunity because of the **{{ }}**.[6] This argument failed as well, for reasons discussed in Comcast's February 20 letter.[7]

With each of these arguments failing to gain traction, Dish has now resorted to an anything-that-sticks approach, conjuring a "cornucopia of evasive techniques" that Comcast allegedly could employ under the Netflix contract.[8] Leaving aside the fact that Netflix is a sophisticated company that is fully capable of negotiating and enforcing its own contracts, each of Dish's new claims is nonsensical or has nothing to do with the Comcast-Netflix agreement, and none of these claims is transaction-specific:[9]

Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57, at 208-11 (Sept. 23, 2014) ("Opposition and Response"); *id.*, Exhibit 4, Declaration of Kevin McElearney ("McElearney Decl."); Letter from Kathryn A. Zachem, Senior Vice President, Regulatory and State Legislative Affairs, Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Nov. 3, 2014).

[4] *See* COMC-SCS-00019696 at 697 (the interconnection agreement "worked for both of us for the long term, and works great for consumers").

[5] *Id.* Dish calls Netflix's payments for Comcast's services under their interconnection agreement "far from trifling." Mar. 6, 2015 Dish Letter at 1. But one does not need to take Comcast's word that the payments are and will be insignificant for Netflix. Netflix itself has called the payments tiny and affordable. *See* Gauthem Nagesh & Shalini Ramachandran, *Comcast, TWC Blast Critics of Merger*, Wall St. J. (Sept. 24, 2014), http://online.wsj.com/articles/comcast-time-warner-cable-say-merger-wouldnt-reduce-choice-1411563601?tesla=y; COMC-ROB-00012809 (Comcast "has made paid peering affordable for" Netflix). And Netflix told its investors and the public that the agreement will change "nothing" about Netflix's margin growth going forward. *See* Remarks of David Wells, CFO, Netflix, Inc. Morgan Stanley Technology, Media & Telecom Conference (Mar. 3, 2014), *available at* http://seekingalpha.com/article/2064743-netflix-management-presents-at-morgan-stanley-technology-media-and-telecom-conference-transcript (emphasizing that the peering agreement did not change Netflix's expectation of "400 basis points year-on-year margin improvement for the U.S. streaming business" and that "you are hearing me confirm that nothing has changed there").

[6] *See* Transcript of Economic Analysis Workshop, Federal Communications Commission, Proposed Comcast-Time Warner Cable-Charter Transaction, January 30, 2015, at 90:19-91:4 ("*FCC Workshop Transcript*").

[7] *See* Letter from Francis M. Buono, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57, at 2 (Feb. 20, 2015) (explaining that **{{ }}**, yet such an intentional breach is precisely the scenario posited by Dish). While Dish's latest retreat and response goes so far as to take issue with the **{{ }}**).

[8] Mar. 6, 2015 Dish Letter at 4.

[9] Dish's claim that "Comcast could apply restrictive data caps" to evade the Comcast-Netflix agreement is incoherent. *See id.* Any usage-based billing of Internet subscribers is wholly unrelated to Netflix's protections

- "Interconnection Congestions" – Dish's claim that Comcast can "lag" augmentation of capacity at interconnection points with Netflix in order to shirk the contract is incorrect. **{{** **}}**. And notably, it was Comcast's very speed in provisioning capacity under the agreement that led Netflix's CEO to praise Comcast for its technical agility "like nothing we've ever seen anywhere in the world" and to predict that "the great performance will be the major story over the coming months."[10]

- "Middle-Mile Congestion" – Dish vaguely claims that "Comcast's augmentation of its middle-mile capacity between its interconnection points with Netflix and its last-mile facilities could lag behind" traffic flow increases and thus "limit[ ] broadband consumers' ability to watch Netflix content[.]"[11] But Comcast would have no incentive to engage in such an absurd and counter-productive strategy. There are no unique "middle-mile" facilities that serve only Netflix traffic, so it would not be possible to target such a strategy to Netflix. Netflix and Comcast interconnect at **{{** **}}**. The "middle-mile" network capacity between those interconnection facilities and Comcast's last-mile facilities pools all in-bound traffic from those facilities and thus carries enormous amounts of data other than Netflix traffic. Congesting those links would therefore seriously disrupt and degrade Comcast's entire ISP service. This, of course, makes no sense, especially given Comcast's historical record of investing tens of billions of dollars in its overall network to ensure delivery of the best Internet experience for its customers.[12]

- **{{** **}}** – Per the **{{** **}}**.[13] Dish speculates that Comcast could use **{{** **}}** to void the contract because Netflix's previous traffic delivery tactics congested Comcast's links and thus interfered with other traffic

---

under the Comcast-Netflix direct interconnection agreement, and Dish's attempt to suggest any relationship is a desperate fabrication out of whole cloth.

[10] *See* COMC-ANM-00023709; *see also* McElearney Decl. ¶ 44.

[11] Mar. 6, 2015 Dish Letter at 3.

[12] *See, e.g.*, Letter from Kathryn A. Zachem, Senior Vice President, Regulatory and State Legislative Affairs, Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57, at 3 (Apr. 3, 2015).

[13] COMC-COM-00010090 at 97-99.

coming over those links.[14] Once again, Dish's argument is pure invention. As a preliminary matter, Comcast's **{{**

}}. The notion, then, that there is something nefarious about the provision is absurd. But more importantly, the entire issue is simply beside the point. As Comcast's February 20 letter explained, there is no concern about Netflix traffic congesting interconnection links used by third parties, because Netflix **{{**

}}.[15] So the mutually efficient contractual arrangement between Netflix and Comcast is that **{{**

}}. Thus, the entire basis for Dish's claim here was already rendered moot.

In short, notwithstanding Dish's desperate attempts to conceive ever-new complaints about the Comcast-Netflix agreement, there is no "efficient breach" for Comcast of the agreement as Dish claims. Again, one need not take Comcast's word for how the contract protects the biggest OVD, Netflix, in the long term. Nowhere in Netflix's own positive statements about this contract to Comcast, to investors, and to the public appears any understanding that Comcast could "deprive Netflix of the benefit of its bargain under the Comcast-Netflix agreement."[16] Rather, as set forth in Comcast's original response to Dish, Comcast and Netflix entered into a long-term agreement at **{{**

}} that Netflix itself stated worked well for the parties and consumers.[18]

---

[14] Mar. 6, 2015 Dish Letter at 4.

[15] *See* Letter from Francis M. Buono, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57 (Feb. 20, 2015).

[16] Mar. 6, 2015 Dish Letter at 3-4.

[17] *FCC Workshop Transcript* at 90:19-91:4 (quoting Dr. Sappington).

[18] COMC-SCS-00019696 at 697.

Please direct any questions to the undersigned.

Respectfully submitted,

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

cc: Hillary Burchuk