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April 13, 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. 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”).



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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 April 9, 2015, the following individuals and the undersigned met with Commission staff copied below:

- Lynn Charytan, David Don, Jordan Goldstein, and Ryan Wallach of Comcast Corporation (“Comcast”); Art Burke and Christopher Lynch of Davis Polk & Wardwell LLP; and Francis Buono, Jonathan Friedman, and Michael Hurwitz of Willkie Farr & Gallagher LLP, counsel to Comcast;
- Matthew Brill of Latham & Watkins LLP, counsel to Time Warner Cable Inc. (“TWC”); and
- John Flynn of Jenner & Block, counsel to Charter Communications (“Charter”).

We reviewed Applicants’ previously submitted record responses to various claims by opponents in the above-captioned proceeding regarding (1) customer devices (including the authentication of programmers, websites, and apps), and (2) usage-based billing (“UBB”). As detailed

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in the attached presentation provided to Commission staff,¹ we explained that these claims are not transaction-specific and, in any event, ignore marketplace realities, are not supported by the evidence, and do not present any reasonable basis for concluding there is any consumer harm from the transaction.

Non-Transaction-Related Nature of Claims

As an initial matter, we explained that opponents' claims about Comcast's policies regarding devices and UBB are not transaction-specific. Rather, their complaints relate to Comcast's *current* conduct independent of the transaction, and opponents make little or no effort to link them to the transaction. Moreover, there is no reasonable basis for arguing that a larger geographic footprint will increase Comcast's incentive or ability to engage in anticompetitive conduct with respect to devices or UBB. This is especially true given that the costs of such conduct (in terms of diminished value to customers) scale in direct proportion to any purported benefits – meaning that they do not change Comcast's incentives post-transaction.

With respect to device issues, we referenced the Commission's decision in 2002 approving Comcast's merger with AT&T Broadband in which many of the same device-related claims were raised by opponents,² and in which the Commission determined, among other things, that (1) none of the opponents' device-related claims were transaction-specific; (2) general claims regarding the development of a retail set-top box market and interactive television ("ITV") services are best addressed by the Commission's navigation device rules and in general industry proceedings; (3) the merger would not create or enhance the merging parties' incentive or ability to impede technological developments in the emerging ITV market; and (4) 30 percent of MVPD subscribers is "too small a share" to enable the merged entity to exercise market power in any ITV market.³ Of course, the Commission was proven correct in its determination in 2002 to reject these claims as non-merger specific and otherwise without merit, since none of these alleged horrors ever came to pass. Moreover, given the significant increase in competition and innovation that has occurred in the video and device marketplace over the last decade, these Commission analyses and conclusions are even more apt today.

¹ See App. A. A copy of this presentation was provided to Commission staff along with a binder containing certain documents cited in the presentation that have been previously submitted into the record in this proceeding.

² See *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd. 23246, ¶¶ 154-165 (2002) (opponents claiming, among other things, that (1) the merger would create "potentially insurmountable obstacles" to the development of a retail market for set-top boxes"; (2) applicants would "be able to shape the evolution of ITV services or deny competitors access to those services through the use of exclusive agreements"; (3) applicants could use exclusive contracts to effectively lock out smaller MVPDs from the market for new ITV technologies; and (4) the combined company could dominate and deter innovation with electronic program guide ("EPG") services).

³ *Id.* ¶¶ 157-158, 165.

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Likewise, we explained that, while certain opponents claim that Comcast will use UBB to discourage customers from viewing over-the-top (“OTT”) content, they make no effort to explain how this is at all transaction-related. Comcast’s and TWC’s respective business decisions regarding UBB are just that – business decisions that are neither prompted by, furthered by, nor made harmful by the proposed transaction. To the extent opponents view UBB as a policymaking concern, it is an industry-wide issue. Indeed, several of these same opponents raise the same concerns in other FCC dockets, such as *Protecting and Promoting the Open Internet Framework for Broadband Internet Service*. (Docket Nos. 14-28 and 10-27). In its March 2015 Open Internet Order, the FCC “decline[d] to make blanket findings about [data caps and UBB] and will address concerns under the no-unreasonable interference/disadvantage [standard] on a case-by-case basis.”⁴ Given that Comcast has not employed UBB throughout its service area (and has no policy or plan to do so), but is instead conducting trials in a handful of markets in order to analyze various possible approaches – a careful, data-driven approach the Commission should, if anything, applaud – there is no basis for a blanket (or indeed any) – negative finding about UBB in this transaction either.

Devices and Authentication

The device arguments in this docket arise in the context of one of the most competitive markets in the communications industry – the video distribution marketplace made up of MVPDs and OTT video distributors. Virtually no one in this proceeding has suggested that the video distribution marketplace is anything short of robust and dynamic, nor could they. This reality moots arguments about whether one prefers one or another MVPD’s commercial practices, because the marketplace has more than enough teeth to correct and discipline MVPD practices that a customer dislikes. A few key statistics highlight this marketplace reality:

- The most recent Video Competition Report found that 99 percent of homes have access to at least three MVPDs, and 35 percent have access to at least four.⁵
- Since 2009 alone, after the D.C. Circuit rejected the Commission’s 30 percent cable horizontal ownership rules for the second time, the two DBS providers have added another 1.7 million subscribers, and the telco MVPDs have added another 6.2 million subscribers, while cable companies have *lost* 7.3 million subscribers.⁶

⁴ See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 153 (Mar. 12, 2015).

⁵ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, FCC 15-41, ¶ 31 Tbl. 2 (Apr. 2, 2015) (“*Sixteenth Annual Video Competition Report*”).

⁶ Comcast Corp.-Time Warner Cable Inc., Applications and Public Interest Statement, MB Docket No. 14-57, at 67 (Apr. 8, 2014).

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- The Commission recently reported that between 2012 and 2013, the number of subscribers to MVPD video service posted its first full-year decline. Cable MVPDs lost nearly 2.0 million video subscribers, DBS MVPDs gained over 100,000 video subscribers, and telephone company MVPDs gained approximately 1.5 million video subscribers.⁷
- The emergence and substantial growth of online video has further enhanced this competition and innovation. Notably, today there are over 700 million Internet-connected devices in U.S. households, and about half of all households have at least one TV connected to the Internet, either directly or indirectly through an Internet-connected device.⁸ In 2013, 53 million U.S. households watched online video, and these households used an average of 4.8 Internet-connected devices.⁹
- Likewise, the Commission recently described the device marketplace as “more dynamic than it has ever been, offering consumers an unprecedented and growing list of choices to access video content.”¹⁰

This context is significant with respect to almost all the device-related arguments opponents make in this proceeding. In this rough and tumble marketplace, providers are experimenting with a variety of measures to capture consumers’ attention and loyalty, including using different device, interface, TV Everywhere (“TVE”) and authentication approaches.

We noted that one way Comcast has strived to do this is through the development of the next-generation X1 video platform. Comcast invested hundreds of millions of dollars in the X1 to improve the search functionality for Comcast’s video services and otherwise enhance the customer experience. The X1 adds a vibrant new approach to the highly dynamic video landscape, and we explained that even if the platform continues to develop in ways that include a variety of new functionalities and services that it does not include today, nothing about the X1 will impede the development of devices or OTT providers, or deter consumers from continuing to use their myriad other device options.¹¹ To the

⁷ *Sixteenth Video Competition Report* ¶ 133.

⁸ 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 Response to Question 4 at 5 n.14 (Nov. 26, 2014).

⁹ *See Sixteenth Video Competition Report* ¶ 290.

¹⁰ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd. 10496, ¶ 354 (2013); *see also Sixteenth Video Competition Report* ¶ 321 (observing that today’s device marketplace “offers consumers more flexibility in content consumption through a growing list of devices that also enable time- and place-shifting”).

¹¹ According to comScore, for example, over 183.8 million Americans watched 48.7 billion online videos in January 2014; notably, however, not a single American needed to use the X1 platform to watch those videos. Press Release, comScore, Inc., comScore Releases January 2014 U.S. Online Video Rankings (Feb. 21, 2014), <http://www.comscore.com/Insights/Press-Releases/2014/2/comScore-Releases-January-2014-US-Online-Video-Rankings>.

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contrary, X1 will provide a *substantial benefit* for millions of TWC customers who currently are without such an advanced cloud-based platform, and will further encourage device makers and OTT providers and app developers to innovate in turn.

We also discussed Comcast's robust authentication practices for third-party programmers and websites, and for Comcast's own TVE app – Xfinity TV Go. Comcast's primary focus has been on providing a secure, convenient, unified app for its customers to access all of Comcast's TVE programming over the Internet, on any PC, and on a variety of tablets and mobile devices. Comcast has devoted significant resources to its user interface in order to maintain the customer experience across device platforms, and its TVE service provides access to tens of thousands of on-demand assets and more than 80 live streaming channels.¹² Further, by using Comcast's Xfinity TV Go app, a customer can access scores of programming services that do not have their own websites or apps and are not otherwise available online.¹³ Consumer response has been very positive: Comcast's Xfinity TV Go app is highly rated and has been downloaded more than 11 million times to iOS and Android devices.¹⁴ That said, as noted, Comcast has recognized that there is consumer demand for authentication on individual programmer sites and apps, and Comcast has responded – by authenticating more than 90 different programming networks on up to 18 device platforms; and those figures have been steadily increasing.¹⁵ In fact – and notably – Comcast and Time Warner Cable

Note that Appendix A at slide 10, which was distributed at the meeting, inadvertently refers to this data as current-year data when the correct reference is to the 2014 data cited herein.

¹² Matt Strauss, *Bringing More Video on Demand Choices to More Customers Through the Comcast-TWC Transaction*, Comcast Voices (Apr. 6, 2015), <http://corporate.comcast.com/comcast-voices/bringing-more-video-on-demand-choices-to-more-customers-through-the-comcast-twc-transaction>.

¹³ For example, the Xfinity TV website and Xfinity TV Go app provide a path for online authentication for smaller and independent programmers that may not otherwise have the resources to create a website and/or app that can support video streaming and pay for back-office support for authentication and other services. See Responses of Comcast Corp. to the Commission's Information and Data Request, MB Docket No. 14-57, at 116 n.90 (Sept. 11, 2014) ("RFI Response").

¹⁴ Press Release, Comcast Corp., Comcast Adds More Live Streaming Networks to Xfinity TV Go (Feb. 17, 2015), <http://corporate.comcast.com/news-information/news-feed/comcast-adds-more-live-streaming-networks-to-xfinity-tv-go-as-tv-everywhere-usage-soars>.

¹⁵ See 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 4 (Oct. 27, 2014) ("Oct. 27 Ex Parte"). We also noted that the third-party programmers' websites and apps on which Comcast authenticates its customers include sites that aggregate a variety of programming within the same programmer's family. For example, Comcast authenticates its subscribers on Fox's Fox Sports Go website and app, which provides live streaming sports content from both the Fox broadcast network and Fox Sports cable networks. Staff also inquired whether Comcast authenticates its customers on Hulu.com. On Hulu.com –Hulu's ad-supported, "free" site –authentication is available for the limited purpose of enabling next-day viewing for certain content provided by Fox, FX, NBCUniversal, and ABC (as opposed to eight days after air). A handful of MVPDs (e.g., AT&T, Cablevision, Cox, Dish, and Verizon) authenticate this programming on Hulu's site; Comcast and many other MVPDs (e.g., DirecTV, TWC, and Charter, among others) do not authenticate on Hulu's site but (at least in Comcast's case) still authenticate this same programming for next-day viewing directly on the websites and apps of each of the identified programmers; Comcast also offers this programming on its own TVE app.

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authenticate {{ }} number of programming networks on {{ }} devices, which makes the contention that authentication presents a legitimate transaction-related issue especially curious – and indefensible.

At the same time, however, Comcast cannot automatically authenticate every programmer that makes such a request. Comcast tends to prioritize authentication efforts in large part based on consumer demand, and must work through various contractual issues (including, for example, programming rights, value, protection of Comcast customer data, ad integration, and the like), as well as “back office” technical measures. We noted that complaints from parties like beIN SPORTS – whose TVE programming Comcast delivers through the Xfinity TV Go app and the XfinityTV.com website but who nonetheless has now demanded that Comcast also authenticate beIN SPORTS’ programming platform – are simply an effort to elevate a relatively discrete dispute (that is currently being negotiated by the parties) to a transactional issue – even though Comcast has informed beIN SPORTS it is open to negotiating this issue directly as part of the parties’ ongoing discussions about adjusting their existing arrangement.¹⁶

We also discussed the fact that, while in some cases Comcast has authenticated programmer apps that provide users with access to additional “overflow” content that Comcast does not provide as part of its cable service,¹⁷ programmers are also generally free to offer that content directly to consumers, without the need for Comcast authentication. In fact, some programmers have created businesses of content “channels” offered solely or primarily online, which is an increasingly practical and successful approach in today’s competitive market. Finally, there are various reasons that different MVPDs may take different approaches to authenticating programmer apps and websites. For example, some MVPDs may not have their own TVE apps and offerings at all, or may have apps and offerings that are less robust than Comcast’s, and, as a result, are more reliant on programmers themselves to offer an online experience to the customer. But in Comcast’s view, this results in a more diffuse customer experience, where the customer has to jump from one programmer app to another, and also may deprive customers of access to online content that is not available through a separate programmer app – in contrast to the more integrated and comprehensive Xfinity TV Go app. In all event, these

¹⁶ beIN SPORTS’ complaints in this proceeding are particularly perplexing given Comcast’s steadfast support for the network since its inception. Comcast was one of beIN SPORTS’s initial launch partners – and was the first cable company to carry it – in August 2012, and has actively marketed and promoted beIN SPORTS since then. Comcast provides both beIN SPORTS and beIN SPORTS en Español content in its linear and on-demand services (with more on-demand beIN SPORTS content than other providers, including roughly 40 hours in both Spanish and English).

¹⁷ Comcast has moved to do this most quickly on sites and apps with more customer demand. For example, Comcast authenticates its subscribers on ESPN’s WatchESPN website and app. With that authentication, a subscriber can watch not only the same ESPN linear content that is available on the ESPN family of networks, but also additional live “overflow” content, such as college basketball games and professional soccer and tennis matches that do not air on ESPN’s cable networks. Similarly, Comcast authenticates subscribers on Fox’s Fox Sports Go site and app, which includes both content airing on Fox linear networks and overflow content.

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various TVE approaches reflect the very dynamic and competitive marketplace and underline the lack of any need for the Commission to intervene with respect to any one MVPD's decisions.

We also discussed comments filed by other opponents who have focused most recently on Comcast's alleged "failure" to authenticate HBO Go on PlayStation 4. We explained that earlier claims about HBO Go on Roku, and, before that, HBO Go on Apple TV were eventually resolved in the evolving marketplace and that neither those nor the latest claims are transaction-related. Further, device-makers have been enormously successful without Comcast authenticating on their platforms, and that will continue to be the case post-transaction. In short, as with authentication of programmer apps and sites discussed above, in this competitive market, Comcast does what it thinks will best respond to consumer demand while at the same time continuing to focus on promoting its robust, unified TVE experience. As noted, Comcast's TVE experience exceeds the experience (for customers) of other apps and is more comprehensive because it brings together as many programming sources as possible online under one app, even small and independent ones that lack apps of their own (and likely would not be found otherwise on a third-party device).

Comcast increasingly has engaged third-party device makers about authenticating programmer apps on their platforms, and, as noted above, authenticates on 18 different device platforms to date. Comcast also has been seeking the rights to put its own Xfinity TV Go app (and/or the Xfinity TV app)¹⁸ on such devices as well, in light of its desire to offer customers that broader viewing experience. We explained that this is typically negotiated concurrently with negotiating authentication for programmer apps, and can lead to more protracted discussions given the need to resolve issues such as search parity and app placement between the device-maker – itself essentially an aggregator of much of the content on its platform – and Comcast, which offers an aggregated TVE experience.

We noted that all of this should be viewed against another interesting development in this competitive marketplace: increasingly, OTT apps (whether aggregator apps or the app of a particular programmer) are being linked to a particular device and not being made available to any other device platform.¹⁹ Ironically, that strategy is the polar opposite of the practices opponents seem to insist Comcast must follow: i.e., authenticate every third-party app on every device and include every app on every Comcast X1 device. The Commission should not intervene in this differentiated and rapidly

¹⁸ As we explained, the Xfinity TV app provides access to in-home, IP-based cable service; the Xfinity TV Go app provides access to Comcast's TVE service over the Internet.

¹⁹ For example, Sony's Playstation Vue streaming video service initially will be available only on PlayStation 3 and PlayStation 4 consoles. *See* Shalini Ramachandran, *Sony Unveils Pricing, Availability of Vue Online TV Service*, Wall St. J., Mar. 18, 2015, <http://blogs.wsj.com/cmo/2015/03/18/sony-unveils-pricing-availability-of-vue-online-tv-service/>. Likewise, Apple's online video service will reportedly be available only on Apple devices, such as the Apple TV. *See* Keach Hagey et al., *Apple Plans Web TV Service in Fall*, Wall St. J., Mar. 17, 2015, <http://www.wsj.com/articles/apple-in-talks-to-launch-online-tv-service-1426555611?tesla=y>. And Apple has a three-month exclusive agreement to be the digital provider of the HBO Now video streaming service on mobile and set-top devices. *See* Richard Lawler, *HBO Now is cutting the cord, but there are still a few strings*, Engadget, Mar. 9, 2015, <http://www.engadget.com/2015/03/09/hbo-now-strings/>.

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evolving marketplace to pick winners and losers or put its thumb on the scale for any particular approach.

We also addressed questions about the advertising revenue generated from programming authenticated through Comcast’s TVE service as compared to advertising revenue generated from authenticating the same programming on a programmer’s own app and website. As an initial matter, Comcast’s TVE-related ad revenue is {{

}}.

As such, Comcast does not have a financial incentive based on ad sales to have customers use its TVE app as opposed to a programmer’s.²⁰

We also described other efforts Comcast is taking to expand customers’ device options. For example, Comcast is working on a “cardless” downloadable security solution that will be made available to TiVo and other device makers. The solution will allow retailers to build devices designed to access the full suite of Comcast services.²¹ Moreover, Comcast has committed to continue to provide and support CableCARDS in retail devices, notwithstanding the D.C. Circuit’s decision in *EchoStar* vacating certain CableCARD rules, and has exceeded the CableCARD requirements by giving TiVo customers access to Comcast’s VOD services on TiVo devices (which are otherwise not accessible via CableCARD). Either solution will allow device makers to build a device that can offer OTT apps *and* receive Comcast cable service. In addition, Comcast has been instrumental in driving innovations that are benefitting smaller MVPDs and others. For example, Comcast designed the digital transport adapter (“DTA”) to facilitate its systems’ conversion to all-digital service, and the device is providing the same benefit for other MVPDs. Likewise, Comcast has been a leader in the development of the Reference Design Kit (“RDK”), a software bundle that provides a common framework for powering IP set-top boxes and other customer premises equipment. The RDK platform can help accelerate innovation by reducing the costs of software development, reducing development cycles, and easing the adoption of new technologies.²² RDK is licensed on a royalty-free basis and has now been licensed to over 200 entities.

²⁰ {{

}}

²¹ See Oct. 27 Ex Parte; RFI Response at 128.

²² See Oct. 27 Ex Parte at 6; Comcast Corp.-Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57, at 183 (Sept. 23, 2014); RFI Response at 106, 109.

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Commission staff asked about the licensing agreements for RDK, and in particular, Comcast’s obligations with respect to intellectual property as compared to the obligations of other RDK licensees. {{

}}²⁴

In response to a question from staff, we explained that Comcast is {{

}}.

Comcast will bring this same level of investment and innovation to the acquired systems, which will translate into substantial public interest benefits for millions of Americans. As TiVo has described it in its comment supporting the transaction, “Comcast has been the most supportive of enabling innovation in retail set-top boxes, thereby allowing consumers to have a robust retail alternative to an operator-leased set-top box” and that the transaction “should benefit consumers that wish to use retail devices to access their pay-TV programming as we would expect Comcast’s leadership and supportive policies to continue and expand.”²⁵

UBB

In response to various vague allegations about UBB in this proceeding, we explained that UBB could not be an effective foreclosure tool in part because it does not distinguish among any types of

²³ {{

}}

²⁴ See, e.g., U.S. Dep’t of Justice Business Review Letter from Thomas O. Barnett to William F. Dolan & Geoffrey Oliver (Oct. 21, 2008) (declining to challenge proposed patent pool because, inter alia, the pool was limited to complementary or “essential” patents), available at <http://www.justice.gov/atr/public/busreview/238429.htm>.

²⁵ See Comments of TiVo Inc., MB Docket No. 14-57, at 1-2 (Aug. 25, 2014).

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data use. Consequently, attempting to use UBB to disadvantage a specific type of alleged competitor would diminish the overall value of Comcast's Internet service to consumers. Because the resulting harm scales along with the alleged benefit, Comcast has no enhanced incentive to pursue such a strategy post-transaction as a result of serving a larger footprint. This is especially true given that, as Applicants have previously demonstrated, OTT providers are complementary to Comcast's profitable broadband service and so Comcast's incentive is to preserve and enhance these OTT services which will further improve Comcast's broadband service. In this regard, it is also notable that many smaller ISPs have adopted UBB or more restrictive usage caps. There is plainly no correlation between ISP size and the adoption of UBB or usage caps.

We also noted that use of OTT video services has exploded in the past several years since Comcast and other ISPs have implemented UBB, started trialing UBB, or implemented data allowances or limits. There is no evidence whatsoever that UBB has in any way impacted OTT providers' entry into, or success in, the marketplace. In fact, new OTT providers are being announced almost monthly and are widely used by consumers.²⁶

We also provided updated information regarding various findings of Internet usage in the UBB trial markets as compared to the non-trial markets. In particular, we noted the following statistics, all of which reinforce the point that the UBB trials Comcast has been conducting have not had a negative impact on customers' use of the Internet generally or access to online video in particular:

- Internet usage is growing in both trial and non-trial markets: Across Comcast's footprint, median Internet use grew by {{ }} in the year ending January 2015 from {{ }}. Likewise, median usage in two of Comcast's larger trial markets, Atlanta and Nashville, continued to grow:
 - In Atlanta, median usage grew by {{ }} in the year ending January 2015 from {{ }}.
 - In Nashville, median usage grew by {{ }} in the year ending January 2015 from {{ }}.²⁷

²⁶ See Emily Steel, *Netflix, Amazon and Hulu No Longer Find Themselves Upstarts in Online Streaming*, N.Y. Times, Mar. 24, 2015, <http://www.nytimes.com/2015/03/25/business/media/netflix-amazon-and-hulu-no-longer-find-themselves-tvs-upstarts.html? r=0>.

²⁷ In response to a staff question regarding the {{ }} in Nashville compared to Atlanta, we noted one theory that we think may explain this difference: Nashville is Comcast's oldest trial market (initiated in August 2012), and while the initial Internet usage in Nashville was lower, it has substantially grown over time perhaps because the customers in this market have become accustomed to and comfortable with the UBB policy and better understand that they can continue to use the Internet in the ways they always have done and more despite the ongoing trials.

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- Despite this increased Internet usage, in January 2015 only approximately {{ }} of those customers in trial markets have used 300 GB per month for more than three months in the year ending January 2015. Those {{ }} of customers are the only customers who would be paying more for their increased usage under Comcast’s most widely deployed usage trial (which affords customers in trial markets three courtesy months over each 12-month period in which they may exceed the 300 GB threshold before incurring a charge).
- {{ }} of customers in the trial markets do not exceed 300 GB per month or even come close to that level of usage, which indicates that 300 GB per month remains an enormous amount of data usage for the typical customer.
- And even many of those relatively few customers who were charged for additional data continued to consume more than 300 GB per month despite having to pay for the overage, and {{ }}.
- Internet usage per subscriber in the trial markets aligns with Internet usage in the non-trial markets for the vast majority of users. Only for those very heavy Internet users in the {{ }} of all Comcast Internet customers (i.e., with a weighted average Internet usage of about {{ }} per month or more), do we see a {{ }} weighted average Internet usage in trial markets as compared to non-trial markets (about {{ }}).
- In response to a question from staff, we note that there is no noticeable effect on customer churn in the trial markets versus the non-trial markets.

* * *

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President,
Regulatory and State Legislative Affairs
Comcast Corporation

cc: Ty Bream

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Hillary Burchuk
Amanda Burkett
Jessica Campbell (by phone)
Bob Cannon (by phone)
Octavian Carare
Randy Clarke
Adam Copeland (by phone)
Elizabeth Cuttner
Hillary DeNigro
Bill Dever
Jaimie Douglas
William Freedman
Marcia Glauberman
Jamila Bess Johnson
Scott Jordan (by phone)
Bill Lake
Betsy McIntyre
Daniel Meyerson (by phone)
Bakari Middleton
Alison Neplokh
Jeffrey Neumann
Eric Ralph
William Reed
Jake Riehm
William Rogerson
Jonathan Sallet
Julie Saulnier
Susan Singer
Philip Verveer
Sarah Whitesell

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APPENDIX A



COMCAST

**Comcast – Time Warner Cable
Presentation to the
Federal Communications Commission**

April 9, 2015



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Agenda

- Introduction
- Device Claims
 - Response to Claims About the X1 Platform
 - Response to Claims About Access to TVE on Retail Devices
 - Response to Claims About Access to Xfinity TV on Retail Devices
 - Response to Claims About Buyer Power
- Usage-Based Billing Claims
 - Response to Claims About the Impact of Usage-Based Billing on OTT Services
 - Comcast's Data Usage Trials

Introduction

Opponents' claims about Comcast's policies regarding devices and Comcast's usage-based billing ("UBB") trials are not transaction-related.

- The objections relate to Comcast's *current* conduct independent of the merger – they are simply not merger specific, and opponents make little or no effort to link them to the merger.
 - There is no reason to think that a larger geographic footprint will increase Comcast's incentive or ability to engage in anticompetitive conduct with respect to devices or UBB.
 - The costs of such conduct (in terms of diminished value to customers) scale in direct proportion to any purported benefits – meaning that Comcast has no different incentives post-transaction.
 - It is implausible that Comcast could deny device manufacturers or app developers sufficient scale to justify investment.
 - Device manufacturers and app developers can access Comcast's customers, as well as the hundreds of millions of other potential customers in the U.S. and across the globe.

Introduction

Objections that have been raised about devices and UBB are premised upon inaccurate descriptions of Comcast's current polices and practices and have no merit.

Device Market

- The Transaction will have a *pro-competitive* impact on the device marketplace.
 - X1 adds a vibrant new competitor to the device marketplace.
 - If X1 develops to be the broader platform some hypothesize, that will simply add a new option to the very competitive device marketplace and cause other device makers to innovate in turn.
 - The FCC should champion that innovation cycle.
- There are over 700 million connected devices in U.S. households today. X1 does not impede access to these devices or to OTT apps on these devices.
- Comcast enables customers to access robust TV Everywhere (“TVE,” i.e., “authenticated”) offerings and the X1 Xfinity TV experience on tablets and other widely-used customer-owned devices, and is developing a downloadable security solution that would be broadly available for CE manufacturers.
- The device marketplace is global in scope and includes non-MVPD video providers as well. Comcast cannot foreclose options for device makers or device choices for other MVPDs. In fact, Comcast is leading device innovations that benefit other MVPDs.

Introduction

Usage-Based Billing

- The policy implications of UBB are an industry-wide matter, and opponents' efforts to link them to the transaction are opportunistic and inappropriate.
- Comcast treats *all* online video, including its own, the same.
- The FCC has recognized that UBB can promote efficiency and greater consumer choice; Comcast's careful trial approach is precisely the type of analysis the FCC should want to see.
- There is no evidence that UBB inhibits consumer use of OTT services.

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X1 Platform Claims

- **Proposition:** The X1 platform will harm the device marketplace.
- **Response:** X1, however it evolves, is a benefit to consumers and the device ecosystem.
 - X1 is an advanced STB platform that provides a clear consumer benefit. (See Pub. Interest Stmt. at 79-81; 10/27/14 Ex Parte at 2)
 - The X1 platform provides a pro-competitive, innovative alternative for consumers in a rapidly evolving video ecosystem. (See *id.*)
 - X1 is a cloud-based platform, which will allow Comcast to innovate at the pace of consumer demand and to deliver innovations rapidly and seamlessly to customers. (See *id.*)
 - X1 already provides exciting new possibilities for the customer experience, such as the new “talking guide” and enhanced parental controls, and Comcast continues to explore and develop new uses for the platform. (Pub. Interest Stmt. at 121-22; 10/27/14 Ex Parte at 2)
 - The X1 platform also enables in-home streaming of cable service to tablets, smartphones, and PCs without the need for more STBs. (Pub. Interest Stmt. at 79-81; 10/27/14 Ex Parte at 2)
 - The transaction will bring more of these advanced video services to more customers.
 - Comcast will make the X1 platform available throughout the acquired systems, which otherwise would not occur (and TWC has no alternative that is even remotely comparable). (*Id.*)

X1 Platform Claims

- **Response, continued:** X1, however it evolves, is a benefit to consumers and the device ecosystem.
 - Today, X1 does not include OTT video, and Comcast's focus has been perfecting the platform for its core mission – delivering a more advanced, exciting cable TV experience.
 - But if X1 evolves in the ways that have been hypothesized – i.e., including third-party OTT video and other apps – that would *benefit* consumers by providing a new alternative in an already vibrant market.
 - Competitors may see this transaction as an opportunity to try to squelch that competition, but the proper response is that competitors should innovate to try to compete and serve customers better. That is the kind of competition cycle that the FCC should applaud.
 - The FCC should thus reject calls to intervene and dictate the manner in which X1 develops.
 - And, as discussed below, nothing about X1 will preclude customers from using other devices in any way they choose.

X1 Platform Claims

- **Proposition:** The X1 platform will deter consumer use of Internet-connected TV devices.
- **Response:** Nothing about the X1 precludes customers from using the hundreds of millions of Internet-connected devices that are already in broad circulation. (See Opp. at 189-91; RFI Resp. at 124-25)
- There are over 700 million Internet-connected devices in U.S. households today, and about half of households have at least one TV connected to the Internet, either directly or indirectly through an Internet-connected device. (11/26/14 Ltr. Q#4 at 5 n.14)
 - 53 million U.S. households watched online video in 2013, and these households used an average of 4.8 Internet-connected devices. (16th Video Competition Report ¶ 290)
- X1 is not going to somehow force those well-entrenched devices out of the market; even if it someday offers a full alternative, nothing will stop consumers who want to use a third-party device from doing so. (11/26/14 Ltr. Q#4 at 5; Opp. at 189-91; RFI Resp. at 124-25)
- An X1-enabled STB – like any other cable STB – can be used in conjunction with Smart TVs and other Internet-connected devices. (*Id.*)
 - To access an OTT app, an X1 customer can simply use the app provided on the Smart TV or change inputs on the TV to a connected device that includes the app. (*Id.*) Slide 9 illustrates an app menu on a Samsung Smart TV.

X1 Platform Claims

Samsung Smart TV App Menu

NEW SMART HUB MULTI-LINK SMART INTERACTION SMART FEATURES APPS EVOLUTIONARY TV SHOP

SAMSUNG APPS
App-Happy Entertainment
Explore a wide variety of apps, from videos, sports, games, lifestyle, education, news and more, built specifically for your Smart TV. Enjoy popular pre-loaded apps or browse our app library to discover and download something new.



New Smart Hub On TV Movies & TV Shows Apps Multimedia Games

Source: <http://www.samsung.com/us/experience/smart-tv/>

X1 Platform Claims

- **Proposition:** The X1 platform is a “gatekeeper” for OTT video.
- **Response:** This claim makes no sense. Customers do not rely on their STBs today to access OTT video, and there is nothing about the X1 platform that would force them to do so or that would deter them from continuing to use their myriad other options. (See Opp. at 190)
- Comcast could not prevent OTT providers from gaining sufficient scale by declining to incorporate them into the X1 platform (and certainly has not done so to date).
 - The potential addressable market for OTT providers is enormous and continually growing.
 - According to comScore, over 183.8 million Americans watched 48.7 billion online videos in January of this year; not a single American needed to use the X1 platform to watch those videos.
- OTT providers (like Netflix, with its 40 million domestic subscribers) are thriving without having apps on the vast majority of the hundreds of millions of MVPD STBs across the country. (See 11/26/14 Ltr. Q#4 at 5; Opp. at 190-91)
- Content that is not available on the X1 can today be accessed by consumers through many other device options, and that will not change in the future.
 - Whether an OTT app is on the X1 does not change that reality. X1 is just another option in a very crowded marketplace, and the FCC should not restrict or dictate the development of this platform.

X1 Platform Claims

- **Response, continued:** This claim makes no sense. Customers do not rely on their STBs today to access OTT video, and there is nothing about the X1 platform that would force them to do so or that would deter them from continuing to use their myriad other options.
- This is especially so when so many other device makers and OTT providers are partnering to provide services that are *exclusively* available on specific device platforms.
 - Sony's Playstation Vue streaming video service initially will be available only on PlayStation 3 and PlayStation 4 consoles. (Wall Street Journal, *Sony Unveils Pricing, Availability of Vue Online TV Service* (3/18/15), available at <http://blogs.wsj.com/cmo/2015/03/18/sony-unveils-pricing-availability-of-vue-online-tv-service/>)
 - Apple's online video service will be available only on Apple devices, such as the Apple TV. (Wall Street Journal, *Apple Plans Web TV Service in Fall* (3/17/15), available at <http://www.wsj.com/articles/apple-in-talks-to-launch-online-tv-service-1426555611>)
 - And Apple has a three-month exclusive agreement to be the digital provider of the HBO Now video streaming service on mobile and set-top devices. (Engadget, *HBO Now is cutting the cord, but there are still a few strings* (3/9/15), available at <http://www.engadget.com/2015/03/09/hbo-now-strings/>)

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Access to TVE on Retail Devices

- **Proposition:** Comcast has not authenticated certain programmer TVE websites or apps on third-party devices, hindering the device marketplace and limiting consumer choice.
- **Response #1:** Comcast provides authentication services for a wide variety of programming on a host of devices, and has *expanded* customer choice of content and devices. (11/26/14 Ltr. Q#4 at 1-2)
 - MVPDs pursue different strategies for differentiating their TVE services, i.e., online authenticated content. The FCC should not dictate a particular approach. (3/11/15 Ex Parte at 9)
 - While Comcast authenticates many programmer apps, its primary focus has been on providing a secure, convenient, unified app for its customers to access all of Comcast's TVE service both in and out of the home. (3/11/15 Ex Parte at 9; Opp. at 184)
 - Comcast's TVE service provides access to tens of thousands of on-demand assets and more than 80 live streaming channels. (Comcast Voices 4/6/15 Blog Post, *available at* <http://corporate.comcast.com/comcast-voices/bringing-more-video-on-demand-choices-to-more-customers-through-the-comcast-tvc-transaction>)
 - Comcast's TVE app is highly rated and has been downloaded more than 11 million times to iOS and Android devices. (Comcast Corp. 2/17/15 Press Release, *available at* <http://corporate.comcast.com/news-information/news-feed/comcast-adds-more-live-streaming-networks-to-xfinity-tv-go-as-tv-everywhere-usage-soars>)

Access to TVE on Retail Devices

- **Response #1, continued:** Comcast provides authentication services for a wide variety of programming on a host of devices, and has expanded customer choice of content and devices.
 - Comcast has devoted significant resources to its user interface in order to maintain the customer experience across device platforms. This approach is no different than, for example, Apple's iTunes service: users can play their iTunes music on certain non-Apple devices, but only within the Apple app.
 - Comcast has focused initially on making its TVE app (Xfinity TV Go) available on mobile devices because it is designed for out-of-home, on-the-go usage. In-home, customers already have access to their full cable service on a STB or a retail CableCARD device. (See 11/26/14 Ltr. Q#4 at 4; 10/27/14 Ex Parte at 5)
 - The Xfinity TV Go app is available on tablets and smartphones, and Xfinitytv.com is available through various browsers. (11/26/14 Ltr. Q#4 at 2)
 - Comcast is exploring integrating the Xfinity TV Go app with other retail device platforms as the marketplace and consumer preferences continue to evolve, and is increasingly seeking rights to put the app on additional platforms. (11/26/14 Ltr. Q#4 at 3-4; 10/27/14 Ex Parte at 5)

Access to TVE on Retail Devices

- **Response #1, continued:** Comcast provides authentication services for a wide variety of programming on a host of devices and has expanded customer choice of content and devices.
 - Comcast supports TVE authentication for more than 90 different programming networks on up to 18 device platforms. (3/11/15 Ex Parte at 9; see also 11/26/14 Ltr. Q#4 at 2; 10/27/14 Ex Parte at 4; RFI Resp. at 111)
 - These platforms include: Amazon Fire TV; Android Smartphone; Android Tablet; Apple TV; Chromecast; Firestick; iPhone; iPad; Kindle Fire; Nabi Tablet; Roku Box; Roku TV; Samsung TV; Web; Win8 Phone; Win8 Tablet; Xbox 360; and Xbox One. (See 11/26/14 Ltr. Q#4 at 2; 10/27/14 Ex Parte at 4)
 - Programmer apps include HBO Go, Showtime Anytime, and ESPN Go, among many others.
 - HBO Go, for example, is authenticated on the HBO website, iOS and Android devices, Apple TV, Chromecast, Xbox 360, Xbox One, Kindle Fire, Roku, and Samsung TVs. (See 11/26/14 Ltr. Q#4 at 2; 10/27/14 Ex Parte at 4; RFI Resp. at 121)

Access to TVE on Retail Devices

- **Response #2:** Comcast is actively negotiating to provide more authentication services.
 - Programmers hold the rights to enable Comcast customers to access authenticated TVE content via Comcast's and/or the programmer's website and app. Comcast typically requests such rights from programmers, and often negotiates TVE rights as part of a broader affiliation that will also address other aspects of the relationship. (11/26/14 Ltr. Q#4 at 3; RFI Resp. at 116)
 - TVE rights can involve substantial negotiation regarding, among other things:
 - (i) what rights Comcast can obtain from programmers or content owners; (ii) how customers are authenticated; (iii) which platforms customers may be authenticated on (which is often driven by rights issues); and (iv) whether the programmer has an acceptable privacy policy in place when it authenticates Comcast customers on its site. (11/26/14 Ltr. Q#4 at 3; 10/27/14 Ex Parte at 5; RFI Resp. at 119-20)
 - Once an agreement is reached, app development and integration work must occur.
 - Programmers, not Comcast, are responsible for developing their own apps for different device platforms. To ensure that the authentication process goes smoothly, Comcast and the programmer (or its vendor, such as Adobe or Akamai) will engage in some integration work, which typically takes 2-3 months. (11/26/14 Ltr. Q#4 at 3-4; 10/27/14 Ex Parte at 5)

Access to TVE on Retail Devices

- **Response #2, continued:** Comcast is actively negotiating to provide more authentication services.
 - Comcast does not have to interact with a device maker to support authentication of programmer apps on the device, but generally prefers to work with the device maker since authentication can raise privacy and marketing issues regarding the device maker's access to customers' viewing data. (11/26/14 Ltr. Q#4 at 4)
 - Comcast typically enters into an agreement directly with the device platform provider where Comcast is seeking the right to include its own app on the device. (11/26/14 Ltr. Q#4 at 3-4; 10/27/14 Ex Parte at 5; RFI Resp. at 120)

Access to TVE on Retail Devices

- **Response #3:** The same complaints about authentication preceded this transaction and have nothing to do with this transaction.
 - Critics have focused most recently on Comcast’s alleged “failure” to authenticate HBO Go on PlayStation 4.
 - But earlier claims about HBO Go on Roku, and, before that, HBO Go on Apple TV were eventually resolved in the evolving marketplace; neither was transaction-related. (3/11/15 Ex Parte at 9)
 - Device makers have been enormously successful without Comcast authenticating on their platforms, and that will continue to be the case post-transaction. Sony’s PS4 is not losing sales because Comcast is not authenticating HBO Go on the platform, and myriad Internet-connected devices have likewise proliferated, and succeeded, without regard to Comcast’s authentication practices. Authentication is a customer convenience, not a competitive necessity. (See *id.*)

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Access to Xfinity TV on Retail Devices

- **Proposition:** Comcast is harming the retail device marketplace by restricting customers' access to cable services on retail devices.
- **Response #1:** This concern is not transaction-related. Access to the new generation of IP cable service and other MVPD services on third-party devices is an industry-wide matter.
 - The FCC has adopted navigation device rules that apply broadly to all MVPDs, and has invited comment in the *MVPD Definition NPRM* on whether those rules should be extended to OVDs.
 - Congress directed the FCC to establish an advisory committee to report on downloadable security, and that committee (known as DSTAC) is in the midst of studying the issue.
 - The FCC concluded previously that a cable merger review should not be used to address broader device issues. (See *Comcast-AT&T Broadband Order* ¶ 157)

Access to Xfinity TV on Retail Devices

- **Response #2:** Comcast is meeting consumer demand for more device choices to access cable services, and has been at the forefront of these efforts in the MVPD industry. (Opp. at 186-88)
 - Comcast’s transition to IP cable service is vastly expanding device options for customers. Customers today can get the X1 experience via the Xfinity TV app on tablets, smartphones, and PCs in nearly 90% of X1 markets, and Comcast is expanding that capability to all markets. (See 10/27/14 Ex Parte at 3; Opp. at 188; RFI Resp. at 127-28)
 - The Xfinity TV app allows access within the home to Comcast’s IP cable service on these third-party devices without the need for a Comcast STB. It delivers essentially the entire channel lineup, including PEG and local broadcast channels. (*Id.*)
 - In fact, Comcast’s current advertising campaign specifically stresses the ease of accessing the Xfinity TV experience on third-party devices.
 - A TV spot asks: “Did you know that you had more TVs in your home than you thought? With Xfinity you can stream all your live shows, Xfinity On Demand and your DVR, right there on all your devices.” And it encourages consumers to “make every screen in [their] home[s] a TV screen.”
 - Comcast is increasingly seeking rights to put its Xfinity TV app on additional retail device platforms. (See 10/27/14 Ex Parte at 3; RFI Resp. at 127)

Access to Xfinity TV on Retail Devices

- **Response #2, continued:** Comcast is meeting consumer demand for more device choices to access cable services, and has been at the forefront of these efforts in the MVPD industry.
 - Comcast is also working on a “cardless” downloadable security solution that will be made available to TiVo and other device companies. The solution will allow retailers to build devices designed to access the full suite of Comcast services. (10/27/14 Ex Parte at 3-4; RFI Resp. at 128)
 - Comcast will support DLNA CVP-2 home networking capability on X1 gateway devices. This will enable Comcast customers with compatible DLNA-certified TVs and other devices to access cable services via the home network. (Opp. at 187 n.583; RFI Resp. at 127 n.103)
 - Comcast has exceeded the CableCARD requirements by giving TiVo customers access to Comcast’s VOD services on TiVo devices (which are otherwise not accessible via CableCARD). Comcast has committed to continue to provide and support CableCARDs in retail devices, notwithstanding the D.C. Circuit’s decision in *EchoStar* vacating certain CableCARD rules. (10/27/14 Ex Parte at 3; Opp. at 187; RFI Resp. at 127)
 - TiVo has said that “Comcast has been the most supportive of enabling innovation in retail set-top boxes, thereby allowing consumers to have a robust retail alternative to an operator-leased set-top box” and that the transaction “should benefit consumers that wish to use retail devices to access their pay-TV programming as we would expect Comcast’s leadership and supportive policies to continue and expand.” (TiVo Comments at 1-2)

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No Enhanced Buyer Power

- **Proposition:** Comcast will dominate the equipment market.
- **Response #1:** Comcast cannot exercise buyer power in the global device marketplace. (Economists' Workshop Transcript at 161:16-162:4, 164:6-13; Opp. at 179-81)
 - The transaction will not give Comcast the ability to deny the scale that device manufacturers need to compete. (See *id.*)
 - The market for devices is global, and device manufacturers compete globally. (See *id.*)
 - U.S. manufacturers, like ARRIS, Cisco, TiVo, and Roku, sell their products overseas, and non-U.S. manufacturers, like Pace, Technicolor, and Samsung, sell in the U.S. market.
 - This marketplace is not limited to traditional cable STBs. Manufacturers can partner with non-cable MVPDs and OVDs, or sell devices directly to consumers. The marketplace includes the myriad IP-based devices that can be used to access MVPD and non-MVPD services.
 - The transaction will not affect the ability of device manufacturers to succeed in this marketplace. Just focusing on the cable sector, Comcast's global share of cable subscribers will increase from less than 4% to approximately 5% post-transaction. (Economists' Workshop Transcript at 161:16-162:4, 164:6-13; Opp. at 179-80 & n.560)
 - COMPTTEL's Fan TV arguments fail to account for these realities – and show nothing other than the fact that, even in a competitive market, some individual competitors may do better than others.
 - In fact, Fan TV's business model was questioned well before the transaction was announced. One industry observer described it as a "moonshot," and Cox dropped the device after a trial two years ago.

No Enhanced Buyer Power

- **Response #2:** The competitive manufacturing marketplace means this transaction will have no impact on the interest and willingness of device manufacturers to design devices for smaller players.
 - The device marketplace is highly competitive, so customers of all sizes can and do get the attention of manufacturers. (Opp. at 180)
 - Larger vendors, such as ARRIS, Cisco, and Pace, serve smaller MVPDs, as do vendors that are particularly focused on the smaller operator segment, such as TiVo, ADB, and Evolution Digital. (*Id.*)
 - There is no basis to conclude that the transaction changes this in any way. (*Id.*)

No Enhanced Buyer Power

- **Response #3:** Comcast has helped accelerate the introduction of new and innovative technologies to small MVPDs. (Opp. at 182-83)
 - Comcast’s current scale has permitted it to make investments that have had collateral benefits for the rest of the MVPD industry. (*Id.*)
 - For example, Comcast designed the digital transport adapter (“DTA”) to facilitate its systems’ conversion to all-digital service. (Opp. at 182)
 - Today, smaller operators are using DTAs as a low-cost solution for their digital conversions, piggy-backing on Comcast’s investment and innovation in order to reclaim analog bandwidth for faster Internet and other services. (*Id.*)
 - More than 5.5 million DTAs have been sold to small and mid-sized cable operators. (*Id.*)
 - Comcast was instrumental in the development of Reference Design Kit (“RDK”), a pre-integrated software bundle that provides a common framework for powering IP STBs and other customer premises equipment. (10/27/14 Ex Parte at 6; Opp. at 183; RFI Resp. at 106, 109)
 - The RDK platform can help accelerate innovation by reducing the costs of software development, reducing development cycles, and easing the adoption of new technologies. (10/27/14 Ex Parte at 6; Opp. at 183)
 - RDK is licensed on a royalty-free basis and has now been licensed to over 200 entities. RDK community member companies can contribute software changes and enhancements to the RDK stack. (10/27/14 Ex Parte at 6; see also Opp. at 183; RFI Resp. at 106, 109)

No Enhanced Buyer Power

- **Response #4:** Opponents raised these same issues 12 years ago in the AT&T Broadband-Comcast merger proceeding. The FCC rightly rejected them. These claims are equally, if not more, invalid today.
 - The combined company’s share of the U.S. MVPD market will be about the same as it was after the AT&T Broadband-Comcast and Adelphia transactions, so it is hard to see any basis for concern in this area.
 - This is especially true given the fact that, as the courts have repeatedly recognized, the MVPD marketplace is much more competitive and dynamic than it was at the time of these earlier transactions.
 - The device marketplace has become vastly more competitive and dynamic in the last 10 years.
 - In fact, the FCC recently described the device marketplace as “more dynamic than it has ever been, offering consumers an unprecedented and growing list of choices to access video content.” (15th Video Competition Report ¶ 354)
 - This month, the FCC observed that today’s device marketplace “offers consumers more flexibility in content consumption through a growing list of devices that also enable time- and place-shifting.” (16th Video Competition Report ¶ 321)

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Overview of UBB/Data Cap Claims

Claims about UBB and data caps are not transaction-specific, and opponents' efforts to link these claims to the transaction are opportunistic and inappropriate.

- The usual opponents rehash claims that Comcast will use UBB or data caps to discourage customers from viewing OTT content, thereby inhibiting the ability of OTT providers to compete with Comcast's MVPD services. To the extent opponents view UBB as a policymaking concern, it is an industry-wide issue.
- Comcast's and TWC's respective business decisions regarding UBB are just that – business decisions that are neither prompted by, furthered by, nor made harmful by the proposed transaction.
- Several of these same opponents (e.g., Public Knowledge, Consumers Union, Roku) raise the same concerns in other FCC dockets, such as *Protecting and Promoting the Open Internet Framework for Broadband Internet Service*. (Docket Nos. 14-28 and 10-27)
- In its March 2015 Open Internet Order, the FCC “decline[d] to make blanket findings about [data caps and UBB] and will address concerns under the no-unreasonable interference/disadvantage [standard] on a case-by-case basis.” (2015 Open Internet Order ¶ 153)
 - There is no basis for a blanket finding here either.

UBB/Data Cap Claims

- **Proposition:** Comcast could use UBB or data caps to discourage customers from viewing OTT content.
- **Response #1:** There is no merit to this speculation because the increased scale resulting from the transaction does nothing to make this alleged strategy more successful or profitable.
 - UBB is not an effective foreclosure tool because it doesn't distinguish among any types of data use.
 - Attempting to use UBB to disadvantage a specific type of alleged competitor would therefore diminish the overall value of Comcast's Internet service to consumers. Because the resulting harm scales along with the alleged benefit, Comcast has no incentive to pursue such a strategy.
 - Nor will the increase in Comcast's footprint enable Comcast to deny OTT providers sufficient scale to invest in programming, because even without Comcast and TWC, OVDs still have an enormous potential addressable market in the U.S. and internationally.

UBB/Data Cap Claims

- **Response #2:** These claims are contrary to marketplace facts and record evidence.
 - Comcast employs UBB in only a small number of trial markets, and it continues to analyze trial results and test new trial features. {{
}} (Opp. at 237; RFI Resp. at 161)
 - The FCC should applaud this approach, which proceeds with care and provides a range of alternatives.
 - Any concerns that data caps or UBB could be used to disfavor unaffiliated OTT providers are addressed by the FCC in the NBCUniversal conditions, which provide: “[A]ny Comcast or Comcast-NBCU[niversal] broadband Internet access service offering that involves caps, tiers, metering, or other usage-based pricing shall not treat affiliated network traffic differently from unaffiliated network traffic,” a condition with which Comcast is in full compliance. (*Comcast-NBCUniversal Order* ¶ 94; Opp. at 236)
 - These concerns are further allayed by Comcast’s legally binding commitment to comply with the no-blocking and non-discrimination requirements in the original Open Internet rules (Opp. at 236) and the new Open Internet rules.

UBB/Data Cap Claims

- **Response #3:** Comcast treats all online video, including its own, the same.
 - Comcast’s UBB policies do not differentiate between affiliated and unaffiliated programming or traffic from affiliated or unaffiliated websites; all Internet traffic – affiliated or not – is subject to UBB in markets where Comcast is trialing such programs. (Opp. at 236)
 - UBB applies only to a customer’s broadband Internet access service; it is not applied to Comcast’s cable service. Cable services – whether delivered using QAM or IP – are not delivered over a customer’s Internet access service. Thus, they are not, and have never been, subject to the terms of service applicable to Xfinity Internet service. (Opp. at 236-37)
 - The FCC has recognized that cable remains cable – subject to a Congressionally-mandated regulatory regime separate and apart from the Internet – even when transcoded into IP.
 - The “definition of ‘cable service’ includes linear IP video service.” (*MVPD Definition NPRM* ¶ 72; see also *Cable Television Technical and Operational Requirements NPRM* ¶ 5 (referring to “IP delivery of cable service”).
 - Courts agree. (See *Office of Consumer Counsel v. S. New Eng. Tel. Co.*, 515 F. Supp. 2d 269, 276 (D. Conn. 2007) (“The statutory language itself appears to require the conclusion that [IP-based] video programming service does constitute a ‘cable service,’ as defined by the Cable Act.”), vacated *on other grounds*, 368 F. App’x 244 (2d Cir. 2010); 3/9/15 Ex Parte at 3 & nn.6-7).
 - The FCC has stated that “merely using IP to deliver cable service does not alter the classification of a facility as a cable system or of an entity as a cable operator.” (*MVPD Definition NPRM* ¶ 71; 3/9/15 Ex Parte at 3 & nn.6-7)

UBB/Data Cap Claims

- **Response #3, continued:** Comcast treats all online video, including its own, the same.
 - The March 2015 Open Internet Order confirms that IP-based Title VI cable service is not a broadband Internet access service. (2015 Open Internet Order ¶ 212 n.546)
 - In any event, both large and small MVPDs do not consider Title VI IP cable service to be “Internet” traffic for the purpose of any applicable Internet usage threshold.

UBB/Data Cap Claims

- **Response #4:** UBB promotes efficiency and greater consumer choice.
 - Connecting usage level to price can help mitigate subsidization of the tiny fraction of subscribers representing the heaviest data users by the average data user. (See, e.g., *Time Warner Steps Up to the Plate on Bandwidth Usage: UPDATED Public Knowledge* (Jan. 17, 2008), <https://www.publicknowledge.org/news-blog/blogs/lime-warner-steps-plate-bandwidth-usage-updat> (supporting TWC’s UBB trials as heavy data users “will now be directly responsible for bearing the cost of their heavy bandwidth usage”); see also *Robin S. Lee & Tim Wu, Subsidizing Creativity through Network Design: Zero-Pricing and Net Neutrality*, 23 J. Econ. Perspectives 61, 72 (2009) (“[N]othing in the current net neutrality regime prevents charging higher prices to consumers who utilize more bandwidth or demand faster service.”); *Opp.* at 238-39)
 - The FCC has also previously recognized that “prohibiting tiered or usage-based pricing and requiring all subscribers to pay the same amount for broadband service, regardless of the performance or usage of the service, would force lighter end users of the network to subsidize heavier end users.” (*2010 Open Internet Order* ¶ 72; *Opp.* at 239)
 - The 2015 Open Internet Order recognized that “[u]sage allowances may benefit consumers by offering them more choices over a greater range of service options.” (*2015 Open Internet Order* ¶ 153)

UBB/Data Cap Claims

- **Response #5:** There is no evidence that UBB inhibits consumer use of OTT services.
 - Use of OTT video services has exploded in the past several years since Comcast and other ISPs have implemented UBB, started trialing UBB, or implemented data allowances or limits.
 - There is no evidence whatsoever that UBB has in any way impacted OTT providers' entry into, or success in, the marketplace.
 - In fact, new OTT providers are being announced almost monthly and are widely used by consumers. (See New York Times, *Netflix, Amazon and Hulu No Longer Find Themselves Upstarts in Online Streaming* (3/24/15), available at http://www.nytimes.com/2015/03/25/business/media/netflix-amazon-and-hulu-no-longer-find-themselves-tvs-upstarts.html?_r=0)
 - Even when Comcast had a 250 GB data cap, Netflix's CEO pointed out to shareholders that "Comcast has had 250 gigabyte caps for years without overage charges and that hasn't been a problem for Comcast customers or for us." (4/25/11 Netflix Shareholder Ltr. at 8, available at <http://files.shareholder.com/downloads/NFLX/49333509x0x461760/11046BA9-7EA4-4B77-B1BD-A3035FC913D5/Q1%2011%20Letter%20to%20shareholders.pdf>)
 - The Internet is an ecosystem in which technological innovation breaks down what some parties perceive as impediments – the same almost certainly will be true for UBB.
 - For example, new compression technologies, such as High Efficiency Video Coding (HEVC), that are expected to deliver as much as a 50% reduction in the required bit rate for a given video quality, are being tested today. (Deborah D. McAdams, *SMPTE 2014: HEVC Bitrate Savings Verified* (Oct. 22, 2014), <http://www.tvtechnology.com/news/0086/smppte--hevc-bitrate-savings-verified/272970>)

UBB/Data Cap Claims

- **Response #5, continued:** There is no evidence that UBB inhibits consumer use of OTT services.
 - And providers are exploring the use of even more creative technologies to reduce the required bit rate while maintaining video quality. (*Perceptual Pre-filtering*, InterDigital, <http://www.interdigital.com/wp-content/uploads/2012/07/InterDigital-Solutions-Perceptual-Pre-Filtering.pdf>)
 - These technologies will make it even more efficient to deliver OTT video to consumers, enabling consumers to watch more OTT video with less Internet usage.
- Comcast's UBB trials have not diminished customers' use of the Internet. Usage is growing in both trial and non-trial markets, and usage patterns in trial markets align with those in non-trial markets. (Opp. at 237-38; RFI Resp. at 160-61) (Note: The data presented below are updated as of January 2015.)
 - Thus, *hypothetical* claims that UBB is inherently harmful to OTT providers are refuted by Comcast's *actual experience* in its UBB trials. Across Comcast's footprint, median Internet use grew by {{ }}% in the year ending January 2015 from {{ }}. Likewise, median usage in two of Comcast's larger trial markets, Atlanta and Nashville, continued to grow:
 - In Atlanta, median usage grew by {{ }}% in the year ending January 2015 from {{ }}.
 - In Nashville, median usage grew by {{ }}% in the year ending January 2015 from {{ }}.

UBB/Data Cap Claims

- **Response #5, continued:** There is no evidence that UBB inhibits consumer use of OTT services.
 - Despite this increased Internet use, in January 2015 only approximately {{ }}% of those customers in trial markets have used 300 GB per month for more than three months in the year ending January 2015.
 - Those {{ }}% of customers are the only customers who would be paying more for their increased usage under Comcast's trial-market UBB policy.
 - {{ }} of customers in these markets do not exceed 300 GB per month or even come close to that level of usage, which indicates that 300 GB per month therefore remains an enormous amount of data usage for the typical customer.
 - And even those relatively few customers who were charged for additional data continued to consume more than 300 GB per month despite having to pay for the overage, and {{ }}

Agenda

- Introduction
- Device Claims
 - Response to Claims About the X1 Platform
 - Response to Claims About Access to TVE on Retail Devices
 - Response to Claims About Access to Xfinity TV on Retail Devices
 - Response to Claims About Buyer Power
- **Usage-Based Billing Claims**
 - Response to Claims About the Impact of Usage-Based Billing on OTT Services
 - **Comcast's Data Usage Trials**

UBB/Data Cap Claims

Comcast's Data Usage Trials – Overview

In May 2012, Comcast suspended enforcement of its prior 250 GB cap nationally. (Opp. at 237; RFI Resp. at 157)

- Comcast sought to respond to an evolving marketplace in which other providers were trialing new approaches, and technology, data usage patterns, and consumer online activities had changed significantly over time. (RFI Resp. at 157)

Comcast determined that it made sense to experiment with a flexible approach that provided consumers with more options and control and to test customer reactions to these plans and impacts on data usage. (Id.)

- Comcast concluded it would be pro-consumer and pro-innovation to trial an approach that eliminated the notion of a hard cap on broadband usage and replaced it with a UBB approach that allows customers that want to use more of their broadband Internet access service to pay to use however much they want. (Id.)

Currently, Comcast is trialing four different data usage plans in various markets representing approximately {{ }}% of its footprint. (Id.)

UBB/Data Cap Claims

Comcast's Data Usage Trials – Overview

First trial launched in the Nashville, TN market in August 2012. (RFI Resp. at 157)

- Customers are provided a 300 GB usage allotment per month for all Internet tiers. (*Id.*)
- The 300 GB threshold is not a “cap”; there is no limit on the amount of data a customer may consume. (*Id.* at 157-58)
- Comcast has amended its Acceptable Use Policy to make clear that “excessive” data use is no longer grounds for termination. A customer who uses more data than the “threshold” amount can purchase 50 GB increments for \$10 each. (*Id.* at 158)
- Customers are actively notified via e-mail and in-browser notifications at 90% and 100% of the usage threshold and can request additional notifications at usage points between 50% and 125%. (*Id.*)

UBB/Data Cap Claims

Comcast's Data Usage Trials – Overview

Second trial launched in Comcast's Tucson, AZ market in October 2012. (RFI Resp. at 158)

- Customers receive at least a 300 GB per month initial allotment at every speed tier. (*Id.*)
- At higher speed tiers, customers receive larger initial allotments. Thus, customers start with a 300 GB usage allotment for Economy Plus through Performance tiers and receive higher Internet allotments at each successive tier of high-speed data service (350 GB for Blast tiers, 450 GB for Extreme 50 tiers, and 600 GB for Extreme 105 tiers). (*Id.*)
- As in Nashville, customers may use as much data as they like but are subject to billing for any overage in additional 50 GB increments for \$10. (*Id.*)
- As in Nashville, customers are actively notified via e-mail and in-browser notifications at 90% and 100% of the usage threshold, and can request additional notifications at usage points between 50% and 125%. (*Id.*)

UBB/Data Cap Claims

Comcast's Data Usage Trials - Overview

Third trial launched in Comcast's Fresno, CA market in August 2013. (RFI Resp. at 158)

- Designed to provide customers with the opportunity to pay less if they use less. (*Id.*)
- Customers who subscribe to Comcast's Economy Plus tier are offered a voluntary, flexible data option that allows them to adopt a 5 GB threshold. Usage at 5 GB per month or below results in a \$5 credit; usage above 5 GB results in a \$1 overage fee for every 1 GB above 5 GB. (*Id.*)
- Customers are notified at 50%, 60%, 70%, 80%, 90%, 100%, 110%, and 125% of this threshold. (*Id.*)

Remaining trials combine the Nashville trial approach – 300 GB per-month usage allotment for all service tiers with option of purchasing more usage – with the voluntary, flexible data option for Economy Plus customers. (RFI Resp. at 158)

- Rolled out in several Comcast markets near the end of 2013, including:
 - Savannah, GA, Central Kentucky, and Jackson, MS in September 2013
 - Mobile, AL and Knoxville, TN in October 2013;
 - Memphis, TN, Augusta, GA, Huntsville, AL, and Charleston, SC in November 2013; and
 - Atlanta, GA and Maine in December 2013. (*Id.*)
- As in Nashville and Tucson, customers can buy additional gigabytes over the usage allotment in incremental blocks of 50 GB for \$10 each. (*Id.*)



UBB/Data Cap Claims

Comcast's Data Usage Trials – Current Trial Markets and Policies

Market	Policy	Launched	Add'l Usage
Nashville	300 GB for all Tiers	Aug '12	\$10 / 50 GB
Tucson	<ul style="list-style-type: none"> • 300 GB for Economy Plus through Performance Tiers • 350 GB for Blast Tiers • 450 GB for Ex 50 Tier • 600 GB for Ex 105 Tier 	Oct '12	\$10 / 50 GB
Fresno	Flexible Data Option (5 GB) for Economy Plus Customers	Aug '13	\$ 1 / 1 GB
Savannah, Central Kentucky, Jackson	300 GB for all Tiers	Sept '13	300 GB –
Mobile, Knoxville	Flexible Data Option (5 GB) for Economy Plus customers	Oct '13	\$10 / 50 GB
Memphis, Augusta, Huntsville, Charleston		Nov '13	FDO – \$1/1 GB
Atlanta, Maine		Dec '13	

(RFI Resp. at 159)

UBB/Data Cap Claims

Comcast's Data Usage Trials – Courtesy Months

Customers in trial markets are given three courtesy months in which they may exceed the data usage threshold before incurring a charge. (RFI Resp. at 159)

- The first month a customer exceeds the threshold, the customer is not billed. The second and third months the customer exceeds the threshold, the customer is billed but provided a matching credit and thus not actually charged. These courtesy months enable a customer to understand how UBB works before actually being charged. If all three courtesy months are not used in a 12-month period, the policy resets. (*Id.*)
- If a customer uses all three courtesy months in a 12-month period and the customer's usage exceeds the initial 300 GB threshold in an additional month, the customer is charged \$10 per each 50 GB of data used above 300 GB. Comcast has added to its customers' "My Current Data Usage" web pages each customer's courtesy pass count, indicating how many times the customer has exceeded her usage threshold in the prior 12 months. (*Id.*)
- Economy Plus customers who choose the Flexible Data Option do not receive courtesy months. (*Id.*)

UBB/Data Cap Claims

Comcast's Data Usage Trials – Data Usage Tracking Tools

Comcast also provides its customers with tools to predict and manage their data usage. (RFI Resp. at 159-60)

- Customers have access to a usage meter and information about their historical usage. (*Id.* at 159)
- A Comcast-developed calculator allows customers to estimate usage. (*Id.* at 160)
- Comcast has also launched a usage meter app to track and display usage on an ongoing basis (i.e., without requiring a customer to log into her Comcast account to access her usage meter details). (*Id.*)

UBB/Data Cap Claims

Comcast's Data Usage Trials – Data Usage Tracking Tools

Comcast consistently improves the transparency and accessibility of usage information.

- Customers are provided via email and in-browser notifications, and, at their option, text messages, a plain language statement of the amount of their data plan they have used.
- If a customer's usage exceeds the data plan for that billing period, a plain language text statement informs the customer that additional data access has already been provided, and informs the customer of:
 - whether the fact that they exceeded the data plan threshold will result in an additional charge for that month (and, if so, the amount of the additional charge), or
 - whether that month will constitute one of the three "courtesy" months where the customer may exceed the data plan threshold without incurring an additional charge, and, if so how many grace months (if any) remain.
- Comcast has enhanced the accessibility of data usage tools for the visually impaired.

UBB/Data Cap Claims

Comcast's Data Usage Trials – In-Browser Usage Notification



Dear Xfinity Customer,

You have reached **80%** of your **300 GB** monthly data plan for your **XFINITY** Internet Service. As of **03-28-2015**, you have **60 GB** remaining for this calendar month.

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[PRIVACY STATEMENT](#) | [USAGE METER](#)



UBB/Data Cap Claims

Comcast's Data Usage Trials – Final Thoughts

- {{
- }} (RFI Resp. at 161)
- Comcast has a state-of-the-art broadband business, and Comcast does not want to do anything that would deter customers from thoroughly enjoying their broadband experience. Therefore, Comcast will continue to experiment in these areas to ensure that, if and when it is implemented broadly, UBB will only enhance the customer experience and not impair broadband usage.