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- Maker's Row, an online marketplace for connecting designers with American-based factories (July 2013); and
- Mercaris, a market data service and online trading platform for organic, non-GMO, and certified agricultural commodities (October 2013).

To ensure that both companies' community partners enjoy the full benefit of the transaction, Comcast's community-focused ethos and programs will extend to the TWC markets and will honor and build upon TWC's existing partnerships and programs.²⁹¹

2. The Transaction Will Generate Significant Public Interest Benefits for People with Disabilities.

Both Comcast and TWC have been deeply committed to providing accessible solutions to customers with disabilities. TWC currently supports many accessibility services, including, among other things, closed captioning on its TWC TV apps on a wide range of device platforms,²⁹² voice-to-text features for its phone services,²⁹³ and large-button remote controls.²⁹⁴ And, as discussed below, Comcast has undertaken a host of technology and other initiatives over the past several years that have made it an industry leader in this area. Following the transaction, Comcast will be able to bring its leadership to bear, building upon TWC's strong foundation to deploy new assistive technologies and support to TWC customers. As TWC systems are

²⁹¹ See, e.g., Connect a Million Minds, <http://www.connectamillionminds.com/about> (last visited Apr. 1, 2014).

²⁹² See, e.g., *Is Closed Captioning Enabled on the TWC TV for iPad App?*, Time Warner Cable, <http://www.timewarnercable.com/en/residential-home/support/faqs/faqs-tv/twctvapp/twctvforip/is-closed-captioning-supported.html> (last visited Mar. 30, 2014). The TWC TV apps on the following devices support closed captioning: iPhone, iPad, iPod Touch; Android Smartphones & Tablets; Kindle Fire HD/HDX; Roku Streaming Players (generations 2 & 3); Xbox 360; and Samsung Smart TV (2012 – 2014 models). Captioning also is supported on PCs via TWCTV.com.

²⁹³ See *Voice Zone from TWC*, Time Warner Cable, <http://www.timewarnercable.com/content/twc/en/residential-home/phone/features/voicezone.html> (last visited Mar. 30, 2014).

²⁹⁴ See *Solutions for Everyone*, Time Warner Cable, <http://www.timewarnercable.com/en/residential-home/support/accessibility.html> (last visited Mar. 30, 2014) (detailing accessibility solutions on TWC systems). TWC also has been a strong advocate for expanding broadband access for persons with disabilities. See, e.g., Krishna Jayakar, *Between Markets and Mandates: Approaches to Promoting Broadband Access for Persons with Disabilities* (Fall 2012), available at http://www.twcresearchprogram.com/pdf/TWC_Jayakar.pdf.

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integrated, technically and operationally, into Comcast's network, customers across the newly expanded footprint will be able to enjoy the benefits of Comcast's accessibility innovations.

Comcast has made accessibility an integral part of its businesses. The company's goal is a "Smart Home for Everyone," where accessibility is enabled across products and services, regardless of platform. To that end, Comcast has established an office dedicated full-time to accessibility that is responsible for coordinating accessibility efforts throughout the company and with the disability community.²⁹⁵

A key tool of this dedicated office and team is the Comcast Accessibility Lab. The Lab is used by Comcast's product development teams to incorporate assistive technologies into new products and services. It also is utilized for focus groups and usability testing with consumers and to help educate Comcast's employees about accessibility. Comcast supplements these product development activities with regular outreach to the disability community. These activities are producing a wide range of innovative accessibility solutions. For example, in the cable space, Comcast is leveraging the X1 cloud-based platform to deliver the first "talking guide" in the MVPD industry. Comcast demonstrated this voice-guided navigation feature at the 2013 Cable Show, and the feature will be trialed in several markets later this spring with the goal of broader deployment later in 2014. The talking guide feature assists a blind or visually-impaired customer in navigating around the X1 TV user interface and selecting particular services for use. If the customer navigates to the program guide, she will be provided with an aural version of the guide information for a particular program that is included on the display,

²⁹⁵ These activities cover all phases of product development, deployment, and consumer interaction, from engaging people with disabilities to drive a customer-informed accessibility strategy; to working with Comcast's design and development teams to integrate accessibility into Comcast's products and services; to helping Comcast's business units deliver feature-rich, accessible services into the marketplace; to maximizing customer care services aimed at ensuring that customer questions and concerns related to Comcast's accessibility features are promptly resolved.

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such as the network name, the channel number, the title of the program, and any rating information.²⁹⁶

The X1 platform will also simplify the process for activating accessibility features. For example, the remote control for the X1 platform – known as the XR2 – includes “soft keys” that a customer with a disability will be able to configure to enable quick access to the talking guide and other accessibility features, such as closed captioning and video description.²⁹⁷ The X1 user interface also provides for simple navigation to accessibility features, including allowing the customer to activate closed captioning and video description services via the main Settings menu on the user interface and configure enhanced caption features, such as font and color, via the Closed Captioning Settings menu.²⁹⁸ Comcast also is enabling a similar user experience on Xfinity applications used to access Comcast’s IP cable and TV Everywhere services on third-party consumer electronic devices, including tablets, smartphones, and desktops. Comcast will be able to extend the benefits of these accessibility features to customers in the TWC systems as those systems are upgraded to support the X1 platform.

Comcast is providing innovative accessible solutions across other service areas as well. For example, as noted above, Comcast has deployed a Readable Voicemail service that converts voicemail audio into text and aids deaf and hard-of-hearing customers in accessing their voicemail. And, with respect to online services, the Xfinity Connect Mobile App, which enables

²⁹⁶ Comments of Comcast Corp., MB Docket No. 12-108, at 4 (July 15, 2013); Letter from James R. Coltharp, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 1 (Aug. 1, 2013) (“*Talking Guide Letter*”).

²⁹⁷ See *Talking Guide Letter*, at 1.

²⁹⁸ See *Setting up Closed Captioning with the XFINITY TV on the X1 Platform Guide*, Comcast Corp., <http://customer.comcast.com/help-and-support/cable-tv/turning-closed-captioning-on-or-off/#Sett> (last visited Mar. 30, 2014).

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access to email, text, and other online services on tablets and smartphones, is screen reader-enabled for blind and low-vision users.²⁹⁹

Comcast also is focused on ensuring a high-quality experience for its interactions with customers with disabilities. The company has established a dedicated customer support team of 22 agents in the new Comcast Accessibility Center of Excellence.³⁰⁰

In addition, Comcast is deploying a number of innovative solutions to ensure that its accessibility features work properly. For example, the caption compliance testing program that Comcast adopted for its set-top boxes has shortened quality control testing cycles for new box models from several weeks to a matter of days. Comcast also has started deploying a first-of-its-kind network monitoring tool that enables it to detect remotely when cable program streams are non-compliant with industry standards for closed captioning and video description. Comcast engineers are alerted when these monitoring “probes” detect a problem, thereby giving the company the ability to proactively troubleshoot these issues and quickly mitigate customer-impacting closed captioning and video description impairments and service interruptions. These equipment testing and monitoring activities can be expanded to TWC systems as those systems are integrated into Comcast’s network.

²⁹⁹ It also bears noting that NBCUniversal is an industry leader in providing closed captioning for online content. NBCUniversal captioned online video well before the Commission required such captioning, and also voluntarily captions an unprecedented amount of online content not subject to the Commission’s rules, such as news clips on the NBC News and Today Show websites and Internet-only video feeds for the 2014 Sochi Olympics. See Tom Wlodkowski, *Bringing the Olympic Experience to More People in More Ways Than Ever Before*, Comcast Voices (Feb. 10, 2014), <http://corporate.comcast.com/comcast-voices/bringing-the-olympic-experience-to-more-people-in-more-ways-than-ever-before> (also noting that NBCUniversal will broadcast over 50 hours of the Sochi Paralympics and that the full NBC Sports Network Paralympics primetime show will be available on Xfinity On Demand, Xfinity.com/TV, and the Xfinity TV Go app the next day).

³⁰⁰ *Accessibility Services for Customers with Disabilities*, Comcast Corp., <http://customer.comcast.com/help-and-support/account/accessibility-services> (last visited Mar. 30, 2014).

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As the foregoing demonstrates, Comcast is strongly committed to providing accessible services and products to its customers. The transaction thus presents a singular – and unparalleled – opportunity to accelerate the deployment of accessible technology, customer care, and disability inclusion to tens of millions of consumers in the TWC footprint.

3. The Transaction Will Enhance Cybersecurity for the Combined Entity’s Network and Customers, as Well as the Overall Broadband Ecosystem.

The transaction will enable the combined company to invest additional resources in cybersecurity efforts and extend the reach of Comcast’s industry-leading approach to cybersecurity and its use of advanced cybersecurity technologies. Comcast has increased its investment in security assets and resources by over 300 percent in the last four years. Comcast was the first large ISP in North America to fully implement Domain Name System Security Extensions (“DNSSEC”), which provides an enhanced level of Internet security.³⁰¹ Comcast also is the largest ISP to deploy native IPv6 support, the next generation of IP addressing with improved security elements, to 100 percent of its network.³⁰² This transaction will extend the reach of DNSSEC and IPv6 to all the TWC systems, thereby enhancing cybersecurity protections to more networks and to many more American consumers and businesses.

Comcast operates a centralized security organization that oversees the full array of the company’s cybersecurity resources and policies, including risk management, security architecture and engineering, security operations and tools, vulnerability assessment and penetration testing, forensics and intelligence gathering, and identity management and access

³⁰¹ See Jason Livingood, *Comcast Completes DNSSEC Deployment*, Comcast Voices (Jan. 10, 2012), <http://corporate.comcast.com/comcast-voices/comcast-completes-dnssec-deployment>.

³⁰² See John Brzozowski, *Comcast Launches IPv6 for Business Customers*, Comcast Voices (Apr. 29, 2013) <http://corporate.comcast.com/comcast-voices/comcast-launches-ipv6-for-business-customers>.

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controls. An internal 24x7 security response and operations center enforces the company's policies governing the use of network infrastructure, employing a defense-in-depth strategy that provides layered redundancies that operate as security fail-safes. Comcast also has invested heavily in network sensors, threat intelligence-gathering capabilities, and internal cybersecurity forensics, enabling the company to engage in pattern-based detection and other threat-monitoring measures that strengthen its defenses in the constantly changing cyber threat landscape. These capabilities help repel sophisticated cyber incursions. This proven security organization would be expanded and extended across the combined company's footprint.³⁰³

In addition to providing advanced security for the protection of broadband network assets, the transaction will benefit TWC's broadband consumers by providing them with new, more robust tools and capabilities to protect against cyber threats. Offered free to all customers, Comcast's Constant Guard security suite is the nation's most advanced and comprehensive consumer-facing cybersecurity product. Constant Guard offers a multi-layered, holistic approach to Internet security that combines extensive technological resources, including anti-phishing and anti-spyware technology, secure data backup, identity protection, anti-botnet tools, DNS security, and privacy protection tools, with an extensive educational program, and strategic partnerships with industry experts.³⁰⁴ In addition, Comcast's Customer Security Assurance

³⁰³ Customers of the merged entity will benefit from Comcast's commitment to utilize the Cybersecurity Framework, which was recently published by the National Institute of Standards and Technology ("NIST"). *See* Press Release, Nat'l Inst. of Standards & Tech., NIST Releases Cybersecurity Framework Version 1.0 (Feb. 12, 2014), <http://www.nist.gov/itl/csd/launch-cybersecurity-framework-021214.cfm>. The NIST Framework is an excellent resource and a comprehensive compendium of sound and effective cyber defense processes, practices, and protocols available today. In conjunction with developing the appropriate cyber defense components of the integration plan for the Comcast and TWC networks, Comcast anticipates using the Framework Core as one of the reference tools to help manage the cybersecurity risks and threats it faces going forward.

³⁰⁴ *About Constant Guard*, Comcast Corp., <http://customer.comcast.com/help-and-support/internet/constant-guard/> (last updated Jan. 28, 2014, 9:17 PM).

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organization assists customers with potential cybersecurity issues to ensure a safe and secure online experience.

Comcast also provides separate botnet notifications to potentially infected customers, irrespective of whether they obtain Constant Guard.³⁰⁵ Further, Comcast has made additional investments in network technologies that protect consumers, deploying advanced inline malware detection that protects the network from infection by detecting and containing malicious network traffic before it traverses network components or reaches end user devices. Making these services and capabilities available to TWC's customers and networks will strengthen their protection against cyber threats and malicious activity, thereby boosting the overall security of the broadband ecosystem.

Even setting aside the specific cybersecurity practices that will be extended by this transaction, customers will benefit from the economies of scale and combined expertise associated with harmonizing the approaches and personnel of Comcast and TWC. By fostering stronger threat intelligence and deeper analytical resources, faster dissemination of threat information and remediation strategies, and common metrics across a broader scale of potentially affected networks and users, the integration and scaling of Comcast and TWC's existing cybersecurity resources will improve the overall cyber defense posture of the combined entity.

V. THE TRANSACTION WILL RESULT IN NO PUBLIC INTEREST HARMS.

As shown below, concerns about potential harms arising from the transaction are not credible in light of the robust state of competition in which the combined company will operate.

³⁰⁵ *Constant Guard – Our Safe Network*, Comcast Corp., <http://constantguard.comcast.net/our-safe-network> (last visited Mar. 30, 2014).

A. Overview of Competitive Analysis

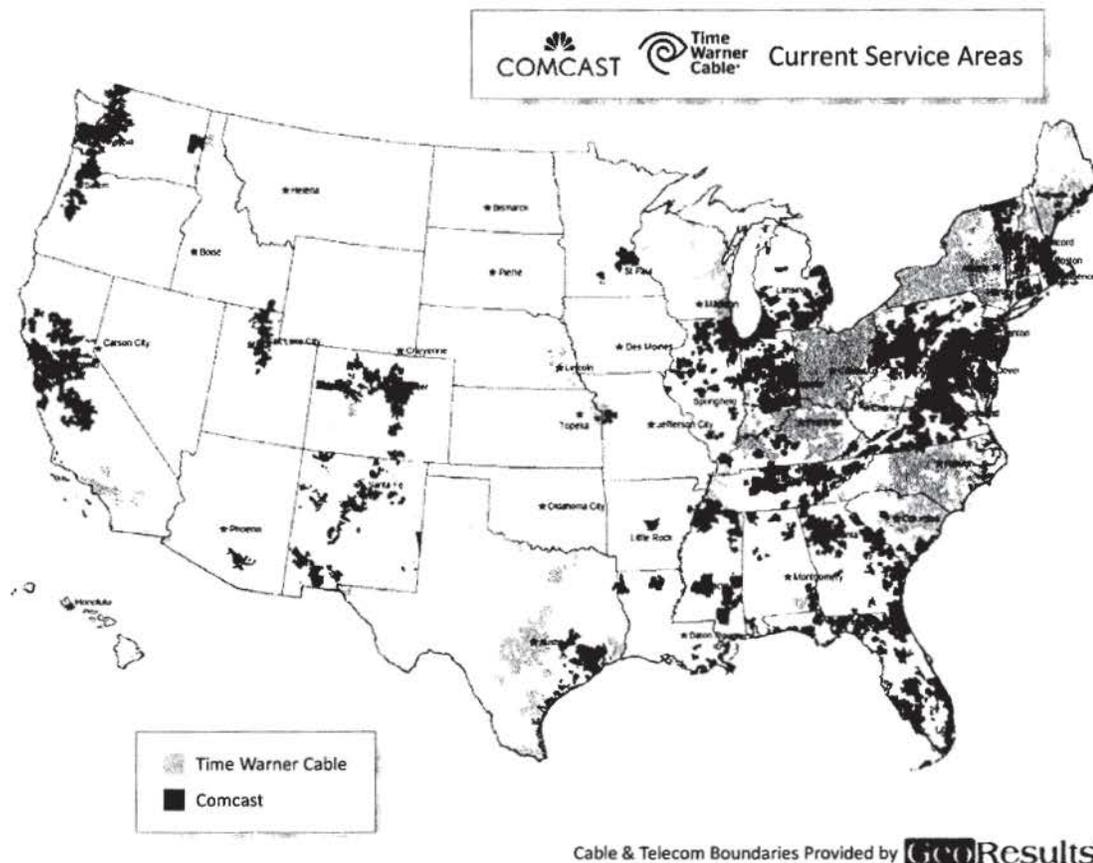
The Commission has previously observed that transactions in which one firm acquires an interest in another may potentially “give rise to concerns regarding increases in vertical integration and/or horizontal concentration, depending on the lines of business in which the firms are engaged.”³⁰⁶

As discussed below, the transaction presents no “horizontal” competitive concerns because, as illustrated in the following map, Comcast’s and TWC’s service areas are distinct and the companies do not compete in any relevant market.³⁰⁷

³⁰⁶ *Comcast-NBCUniversal Order* ¶ 27; see also *News Corp.-Hughes Order* ¶ 69. In this analysis, Applicants apply the framework developed by the Commission in prior merger transactions.

³⁰⁷ *News Corp.-Hughes Order* ¶ 69 (explaining that transactions may present “horizontal” concerns where “they eliminate competition between . . . firms and increase concentration in the relevant markets”); see also *AT&T-Centennial Order* ¶ 34 (“We next determine whether there is a significant increase in horizontal market concentration as a result of the proposed transaction. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis of their horizontal impact.”); *AT&T-BellSouth Order* ¶ 113 (“Specifically, we conclude that the merger is not likely to cause horizontal anticompetitive effects [in the markets for mass market high-speed Internet access services] because neither AT&T nor BellSouth provides any significant level of mass market Internet access service outside of its respective region.”); *Sprint-Nextel Order* ¶ 31 (“A horizontal transaction is unlikely to create or enhance market power or facilitate its exercise unless it significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or result in a concentrated market ordinarily require no further competitive analysis.”).

Among the two companies’ more than 33 million subscribers, approximately 2,800 Comcast residential or small- or medium-business customers are located in zip+4 areas where TWC services residential or small-business customers (and the number of TWC customers is similar). These customers are sprinkled across various zip+4 areas, none of which has more than 500 Comcast customers, and it is quite possible that Comcast and TWC are not even providing overlapping services in some of these fringe areas but rather just have facilities that fall within the same zip +4 area. Applicants also analyzed all business services as well (Ethernet, backhaul, wholesale, voice, etc.), and found either no overlap or only a small number (approximately 215 of Comcast and TWC customers in common zip codes). As the Commission has previously recognized, such *de minimis* overlaps are no cause for competitive concern. See *Insight-TWC Order* ¶ 20 (“[W]e find here that the 2,600 Insight customers (out of approximately 643,000 customers system-wide) in the overbuild area represent a *de minimis* reduction in competition that is unlikely to have an adverse effect warranting divestiture or other conditions.”); *AT&T Broadband-Comcast Order* ¶ 153 (“Comcast and AT&T Broadband largely compete in separate geographic markets, and, to the extent their service areas overlap, we find no material increase in concentration that would raise the potential of competitive harm.”); *Adelphia Order* ¶¶ 81, 82 n.287 (“Since the Applicants generally operate in non-overlapping territories and do not compete with each other in the distribution markets they serve, the proposed transactions would not reduce the number of competitive alternatives available to the vast majority of households. . . . In the few areas where Time Warner and Comcast have overlapping service areas, the number of affected subscribers is very low.”).



Nor does the transaction present any plausible threat of “vertical” anticompetitive effects. Such effects may arise when a transaction increases a vertically integrated firm’s incentive or ability to raise its rivals’ costs, for example, by withholding distribution from rivals in an upstream content market or by withholding content from rivals in a downstream distribution market.³⁰⁸ As the Commission has recognized, both theories of vertical foreclosure require (1) that the combined company “possess market power,” and (2) that the proposed “transaction increases the [parties’] incentive and ability to gain from withholding a given input.”³⁰⁹

³⁰⁸ *News Corp.-Hughes Order* ¶ 78; see also *Adelphia Order* ¶ 115; *AT&T-BellSouth Order* ¶ 39; *SBC-AT&T Order* ¶ 35; *Verizon-MCI Order* ¶ 35.

³⁰⁹ *News Corp.-Hughes Order* ¶ 85; see also *Comcast-NBCUniversal Order* ¶ 28.

Neither prerequisite is met here. Comcast and others have documented at length elsewhere that the broadband, video content and distribution, voice, business services, interconnection, and other relevant markets implicated by this transaction are highly competitive and dynamic.³¹⁰ These markets will remain so following the transaction. “The combined company will face the same vigorous competition across its lines of business that Comcast and TWC do as stand-alone companies.”³¹¹ Accordingly, the transaction will not harm the public interest by diminishing competition. Rather, the transaction will lead to substantial benefits for consumers and competition, as explained in Section IV above. As Dr. Israel concludes, “[g]iven (i) the lack of any valid competitive concerns and (ii) the substantial consumer benefits, the proposed transaction—as it relates to the provision of broadband services in particular—is pro-consumer, pro-competitive, and in the public interest.”³¹²

B. Relevant Markets

The Commission typically has commenced its analysis of the potential adverse competitive effects of prior transactions by defining the relevant market(s) in which the applicants operate.³¹³ Relevant markets are typically defined along two dimensions: the product market and the geographic market.³¹⁴ Assessing whether two goods or services should be

³¹⁰ See discussion *supra* Sections IV.A-C; see also Comments of Comcast Corp., MB Docket No. 12-203, at 32-33 (Sept. 10, 2012); Comments of Comcast Corp., MB Docket No. 12-68, at 4-13 (June 22, 2012); Comments of Comcast Corp., MB Docket No. 11-131, at 7-17 (Nov. 28, 2011); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd. 10496 (2013) (“*Fifteenth Annual Video Competition Report*”); Comments of NCTA, MB Docket No. 14-16, at 4-8 (Mar. 21, 2014).

³¹¹ Rosston/Topper Decl. ¶ 18.

³¹² Israel Decl. ¶ 12.

³¹³ *News Corp.-Hughes Order* ¶ 50; *AT&T Broadband-Comcast Order* ¶ 42; *Adelphia Order* ¶¶ 59-60; see also *Application of EchoStar Commc’ns Corp., General Motors Corp., Hughes Elec. Corp. & EchoStar Commc’ns Corp.*, Hearing Designation Order, 17 FCC Rcd. 20559 ¶ 106 (2002) (“*EchoStar-DirectTV HDO*”). It is important to recognize that market definition is only a means to an end, not an end in itself. This is important because difficulties in market definition can sometimes be an obstacle to sound analysis.

³¹⁴ See *News Corp.-Hughes Order* ¶ 50; *Adelphia Order* ¶ 59; *EchoStar-DirectTV HDO* ¶ 106.

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included within the same relevant product or geographic market requires an appraisal of the extent to which consumers regard them as substitutes.³¹⁵

In evaluating prior transactions, the Commission has relied on antitrust precedent and has defined a relevant market “as a product or group of products and a geographic area in which the product or products are produced or sold such that a hypothetical profit-maximizing monopolist would impose at least a ‘small but significant and nontransitory’ increase in price, assuming the terms of sale of all other products are held constant.”³¹⁶ Under this approach, which is generally consistent with the approach that the federal antitrust agencies apply in evaluating mergers,³¹⁷ transactions may raise concerns “when they reduce the availability of substitute choices (i.e., increase market concentration) to the point that the acquiring firm has a significant incentive and ability to engage in anticompetitive actions such as raising prices or reducing output.”³¹⁸

In analyzing transactions involving MVPDs, the Commission has examined two separate video product markets: (1) the distribution of programming to consumers (“the distribution market”); and (2) the acquisition of network programming (“the programming market”).³¹⁹ The Commission also has analyzed the markets for (3) Internet access services, (4) Internet interconnection (in less detail), (5) telephony services,³²⁰ and (6) advertising.³²¹

³¹⁵ See *News Corp.-Hughes Order* ¶ 50; *Adelphia Order* ¶ 59; *EchoStar-DirectTV HDO* ¶ 106.

³¹⁶ *News Corp.-Hughes Order* ¶ 50 (citing U.S. Dep’t of Justice & FTC, *Horizontal Merger Guidelines* § 1.0 (2010)) (“*Horizontal Merger Guidelines*”); *AT&T-BellSouth Order* ¶ 24 nn.85-86; *SBC-AT&T Order* ¶ 21 nn.83-84; *Verizon-MCI Order* nn.82-83; *Sprint-Nextel Order* ¶ 39.

³¹⁷ See generally *Horizontal Merger Guidelines* § 1.0.

³¹⁸ *Adelphia Order* ¶ 59; *EchoStar-DirectTV HDO* ¶ 97.

³¹⁹ See, e.g., *News Corp.-Hughes Order* ¶ 51; *Adelphia Order* ¶ 60; *Applications of Western Wireless Corp. & ALLTEL Corp.*, Memorandum Opinion & Order, 20 FCC Rcd. 13053 ¶ 22 (2005) (“*Western Wireless-ALLTEL Order*”); *AT&T-Cingular Order* ¶ 57.

³²⁰ See, e.g., *Comcast-NBCUniversal Order* ¶¶ 60-109, 144-154; *AT&T Broadband-Comcast Order* ¶¶ 127-153; *SBC-AT&T Order* ¶¶ 108-115; *Verizon-MCI Order* ¶¶ 109-116.

1. MVPD Services

a. Product Market

MVPDs include cable operators, DBS providers, telephone companies (e.g., Verizon and AT&T), and “overbuilders” (e.g., Google Fiber, RCN, and WOW!). MVPDs acquire programming and offer it to consumers, deriving revenue principally from subscription fees. MVPDs also can obtain revenue from the sale of advertising time (to the extent they obtain the right to sell advertising time through carriage agreements).

The Commission repeatedly has found that the relevant product market in which to analyze competition faced by cable operators includes services offered by all MVPDs,³²² expressly rejecting arguments that DBS and cable are not part of the same product market.³²³ And, as the *Comcast-NBCUniversal Order* anticipated, this market is beginning to expand as OVDs increasingly look to offer multiple channels of live, linear programming, in addition to competing with cable VOD offerings.

b. Geographic Market

In prior transactions, the Commission has concluded that the relevant geographic market for MVPD services is local (typically the franchise area of the local cable operator). The Commission has reasoned that consumers select an MVPD provider based on the MVPD choices available at their residences; consumers “are unlikely to change residences to avoid a small but

³²¹ See, e.g., *Comcast-NBCUniversal Order* ¶¶ 60-109, 144-154; *AT&T Broadband-Comcast Order* ¶¶ 127-153; *SBC-AT&T Order* ¶¶ 108-115; *Verizon-MCI Order* ¶¶ 109-116.

³²² See, e.g., *Adelphia Order* ¶ 63; *AT&T Broadband-Comcast Order* ¶ 89; *AOL-Time Warner Order* ¶¶ 244-245; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd. 3160 ¶ 21 (1999) (“*AT&T-TCI Order*”). This approach is consistent with the approach to product market definition adopted by the federal antitrust agencies. See, e.g., Compl. ¶¶ 24-27, *United States v. EchoStar Commc’ns Corp.*, No. 1:02CV02138 (D.D.C. filed Oct. 31, 2002) (“*DBS Complaint*”).

³²³ *Adelphia Order* ¶¶ 62-63; *News Corp.-Hughes Order* ¶¶ 52-53; *AT&T Broadband-Comcast Order* ¶ 33; *AOL-Time Warner Order* ¶ 244.

significant increase in the price of MVPD service.”³²⁴ Moreover, to simplify the analysis, the Commission has aggregated consumers that face the same choice in MVPDs into larger relevant geographic markets.³²⁵ There is no reason for the Commission to deviate from its prior approach in this case.

2. Video Programming

Cable programming network rights and broadcast television retransmission rights are licensed to MVPDs by content owners. Companies that own cable or broadcast programming networks produce their own programming and acquire programming produced by others. These companies “package and sell this programming as a network or networks to MVPDs for distribution to consumers.”³²⁶ Companies that own broadcast networks distribute programming through both owned-and-operated (“O&O”) and affiliated television broadcast stations.³²⁷ Television broadcast stations redistribute their programming via MVPDs pursuant to an election that each station makes either to engage in commercial negotiations (“retransmission consent”) or enjoy mandatory (but uncompensated) carriage (“must-carry”).³²⁸ Both cable programmers and broadcast networks also widely license content in different windows to OVDs, which increasingly offer content on an exclusive basis, including original content.

³²⁴ *Adelphia Order* ¶ 64; see also *Comcast-NBCUniversal Order* ¶ 42; *News Corp.-Hughes Order* ¶ 62; *AT&T Broadband-Comcast Order* ¶ 90; *EchoStar-DirecTV HDO* ¶ 119.

³²⁵ *Comcast-NBCUniversal Order* ¶ 42; *Adelphia Order* ¶ 64; *News Corp.-Hughes Order* ¶ 62.

³²⁶ *News Corp.-Hughes Order* ¶ 54; see *Adelphia Order* ¶ 61; *EchoStar-DirecTV HDO* ¶ 248; *AT&T Broadband-Comcast Order* ¶ 34; see also *The Commission’s Cable Horizontal & Vertical Ownership Limits, Second Further Notice of Proposed Rulemaking*, 20 FCC Rcd. 9374 ¶¶ 65-66 (2005).

³²⁷ *News Corp.-Hughes Order* ¶ 54 (“Television broadcast stations affiliated with broadcast networks combine network programming with their own locally originated programming and/or programming secured from other sources to provide over-the-air service.”).

³²⁸ See, e.g., *id.*

a. Product Market

The video programming marketplace is highly dynamic and diverse and includes a wide array of national, regional, and local content. As a result of dramatic growth, MVPDs and other distributors today carry hundreds of networks that did not exist a decade ago.³²⁹

In prior transactions, the Commission has found that markets that include video programming are “differentiated product markets.”³³⁰ According to the Commission, the programming of different networks “differs significantly in terms of characteristics, focus, and subject matter.”³³¹

The Commission has employed a flexible approach with respect to programming in prior transactions. In the *News Corp.-Hughes Order*, for example, the Commission addressed the three categories of programming offered by News Corp.: “(1) national and non-sports regional cable programming networks; (2) regional sports cable networks; and (3) local broadcast television programming.”³³² In the *Adelphia* transaction, the Commission evaluated two categories of programming: “(1) national cable programming networks and (2) regional cable networks, particularly regional sports networks.”³³³ Most recently, in the *NBCUniversal* transaction, the Commission considered regional sports networks, NBC broadcast networks, and national cable networks as part of overall programming.³³⁴

³²⁹ See *Fifteenth Annual Video Competition Report* ¶ 22.

³³⁰ *News Corp.-Hughes Order* ¶ 59; *Adelphia Order* ¶ 66. According to the Commission, “[d]ifferentiated products are products whose characteristics differ and which are viewed as imperfect substitutes by consumers.” *News Corp.-Hughes Order* ¶ 59 n.206 (citing Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* 281 (2d ed. 1991)).

³³¹ *Adelphia Order* ¶ 66; *News Corp.-Hughes Order* ¶ 59; *EchoStar-DirecTV HDO* ¶ 250.

³³² *News Corp.-Hughes Order* ¶ 60 (internal citations omitted).

³³³ *Adelphia Order* ¶ 67.

³³⁴ See *Comcast-NBCUniversal Order* ¶¶ 136, 140.

b. Geographic Market

In prior transactions, the Commission has concluded that it was “reasonable to approximate the relevant geographic market for video programming by looking to the area in which the program owner is licensing the programming.”³³⁵ Under this approach, the relevant geographic market for national programming networks is national in scope, as these networks are generally licensed to MVPDs and now other distributors nationwide.

Under the Commission’s approach, the relevant geographic market for RSNs and other regional networks is regional.³³⁶ Similarly, in the case of retransmission consent rights for local broadcast television programming, the Commission concluded that it is reasonable to use DMAs to approximate the relevant geographic market for each individual broadcast station.³³⁷

According to the Commission, contracts between broadcast stations and the distributors of programming, as well as FCC regulations and broadcasting technology, typically limit the extent to which broadcast station signals can be distributed outside of their assigned DMA.³³⁸ There is no reason for the Commission to adopt narrower geographic market definitions in this matter.

3. Internet Access Services

In prior transactions, the Commission has concluded that residential “high-speed Internet access services” constitute a relevant product market.³³⁹ The Commission determined that the

³³⁵ *Adelphia Order* ¶ 68; *see also News Corp.-Hughes Order* ¶ 64.

³³⁶ *See Adelphia Order* ¶ 68; *AT&T Broadband-Comcast Order* ¶¶ 59-60; *News Corp.-Hughes Order* ¶ 66.

³³⁷ *News Corp.-Hughes Order* ¶ 65.

³³⁸ Broadcasters have the right to prevent cable operators from carrying certain programming from the signals of broadcast stations from other markets. *See* 47 C.F.R. §§ 76.92-76.95 (network non-duplication rule); *id.* §§ 76.101-76.110 (syndicated exclusivity rule).

³³⁹ *AOL-Time Warner Order* ¶ 56; *AT&T Broadband-Comcast Order* ¶ 128. The Commission has found that the market for high-speed Internet services includes, among other things, Internet access services provided “over coaxial cable in the form of cable modem service offered by cable operators, and over copper wires in the form of digital subscriber line (‘DSL’) services by local exchange carriers,” *AT&T Broadband-Comcast Order* ¶ 128

relevant geographic market for high-speed Internet services is local – just as with MVPD services. The Commission reasoned that a “consumer’s choice of broadband Internet access provider is limited to those companies that offer high-speed Internet access services in his or her area.”³⁴⁰ There is no reason for the Commission to define a different product or geographic market in this transaction.³⁴¹

4. Internet Interconnection

The Commission has not previously defined the precise contours of “the market for exchanging and carrying [Internet] traffic.”³⁴² As the Commission has recognized, any “market for exchange of Internet traffic,” or Internet interconnection, contains numerous service providers and is at least national in geographic scope.³⁴³

Should the Commission attempt to define the market for interconnection, it would be sensible to consider two related services together: (1) “peering” services, which facilitate the “exchange of traffic destined for addresses on the peering entities’ own networks or the networks of their customers”;³⁴⁴ and (2) “transit” services, which provide access to “at a minimum, an

(internal citations omitted), as well as fixed wireless, satellite broadband, fiber, and increasingly, mobile wireless. *see infra* Section IV.

³⁴⁰ *AT&T Broadband-Comcast Order* ¶ 128; *see also AOL-Time Warner Order* ¶ 74.

³⁴¹ *See Israel Decl.* ¶ 21 (“Defining a national geographic market would suggest that Comcast and TWC are direct competitors despite the fact that they do not compete, but instead serve different, geographically distinct footprints, and thus are not an option for one another’s customers. Put simply, the transaction will not change the number of broadband choices available to consumers.”).

³⁴² *Applications Filed by Global Crossing Ltd. and Level 3 Commc’ns, Inc. for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd. 14056 ¶ 19 n.64 (WCB & IB 2011) (“*Level 3-Global Crossing Order*”). The Commission has found that there is a distinct product market for Tier 1 Internet backbone services. *Id.* ¶ 21; *see also SBC-AT&T Order* ¶¶ 112-113; *Verizon-MCI Order* ¶¶ 110-113. Neither Comcast nor TWC is a Tier 1 ISP, which is an ISP able to carry traffic to the entire Internet without having to buy transit services from other ISPs.

³⁴³ *Level 3-Global Crossing Order* ¶¶ 20-21 (citing *SBC-AT&T Order* ¶¶ 112-114; *Verizon-MCI Order* ¶ 115).

³⁴⁴ *Level 3-Global Crossing Order* ¶ 19. Peering may be settlement-free (exchange of traffic without exchange of money) or paid (one network compensates the other for the exchange of traffic). *Id.*

Internet region.”³⁴⁵ The Commission previously has observed that peering services may be “settlement-free,” which means that traffic is exchanged without payment, or paid.³⁴⁶ Settlement-free peering is more common when the traffic in each direction is roughly commensurate, or the exchange of network facilities and services each network performs for the other is roughly equal, and paid peering is more common when there is a significant traffic or network imbalance. Similarly, “transit agreements are diversifying into more complex pricing arrangements based on metrics attempting to approximate the cost of carrying traffic.”³⁴⁷ The networks that provide peering and transit vary in type and include Tier 1 Internet backbone providers,³⁴⁸ ISPs, and content delivery networks (CDNs).³⁴⁹ These peering and transit services are often substitutable for one another, and providers compete to offer peering and transit services to one another and to Internet content providers (or “edge providers”).

As explained below, there is no plausible basis to conclude that the combination of Comcast and TWC will harm competition in any market for peering and transit services.

5. Telephony

In prior transactions, the Commission has identified residential telephone services as a relevant product market and determined that cable-based providers compete in that market with

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ The Internet “backbone” refers to high-capacity long-haul transmission facilities, which are interconnected with each other. *SBC-AT&T Order* ¶ 109; *Verizon-MCI Order* ¶ 110; *AT&T-BellSouth Order* ¶ 122.

³⁴⁹ CDNs are “overlay networks that cache content closer to users and compete with transit providers for certain classes of customers.” *Level 3-Global Crossing Order* ¶ 19 n.60.

LECs.³⁵⁰ The Commission also has indicated that, as with MVPD and Internet access services offered by cable companies, the relevant geographic market for telephony services is local.³⁵¹

6. Advertising

The Commission has not attempted to define formally a market or markets for advertising, but it has analyzed competition in advertising in prior transactions. In the *Comcast-NBCUniversal Order*, the Commission expressly rejected a product market definition that would include both broadcast advertising and cable advertising.³⁵² The Commission concluded that “[b]roadcast and cable programming advertising are not sufficiently close substitutes to advertisers to warrant defining a product market that would include both,” and observed that its “view is consistent with the DOJ’s conclusion that cable and broadcast advertising are in separate product markets.”³⁵³ There is no reason for the Commission to adopt a different analysis for this transaction. Nevertheless, should the Commission do so, it should recognize that the advertising marketplace is much broader than just cable and broadcast, encompassing numerous competitors, such as radio, online, and others, as Drs. Rosston and Topper note.³⁵⁴

As explained below, there is no plausible basis to conclude that the combination of Comcast and TWC would harm competition in any advertising market(s).

³⁵⁰ *Insight-TWC Order* ¶ 17; *AT&T Broadband-Comcast Order* ¶¶ 152-53.

³⁵¹ See *TWC-Insight Order* ¶ 16 (“Overall, we conclude that any potential competitive harms are limited because [TWC and Insight] primarily serve separate geographic areas.”); see also *AT&T Broadband-Comcast Order* ¶ 153 (“Comcast and AT&T Broadband largely compete [for telecommunications customers] in separate geographic markets, and, to the extent their service areas overlap, we find no material increase in concentration that would raise the potential of competitive harm”).

³⁵² *Comcast-NBCUniversal Order* ¶ 152.

³⁵³ *Id.* DOJ has recently affirmed this position. See Compl. ¶¶ 14-16, *United States v. Gannett Co.*, No. 1:13-cv-01984 (D.D.C. filed Dec. 16, 2013).

³⁵⁴ See Rosston/Topper Decl. ¶ 237 n.266.

C. Because the Parties Do Not Compete for Consumers, There Is No Plausible Theory of Competitive Harm Arising from the Horizontal Elements of the Transaction.

1. The Transaction Will Not Reduce Competition in Any Relevant Market for MVPD, Broadband, or Voice Services.

a. Comcast and TWC Do Not Compete in Any Relevant Market.

The FCC's standard for whether two providers of broadband, video, or voice compete is whether they offer service to the same customers – the same standard reflected in the DOJ's and FTC's Horizontal Merger Guidelines.³⁵⁵ Consistent with this standard, as noted above, the Commission has concluded that the relevant market for each of these services is local.³⁵⁶ Because Comcast and TWC serve almost entirely distinct geographic areas, they do not compete for any of these services and the transaction will not result in any reduction in competition or consumer choice for broadband, video, or voice providers – nor will it increase Comcast's market share in any geographic product market.³⁵⁷

The lack of competition between Comcast and TWC fundamentally distinguishes this transaction from proposed mergers recently challenged by antitrust regulators, such as the AT&T/T-Mobile transaction. Indeed, the absence of any reduction in competition should end the inquiry into any potentially anticompetitive effects in these consumer markets resulting from the horizontal aspects of the transaction. Some have protested that cable – or Comcast or TWC's – local market share is “too high” in one or more services. Not only does this assertion ignore

³⁵⁵ See *Horizontal Merger Guidelines* § 4.2.2 (“[T]he Agencies may define geographic markets based on the locations of targeted customers. Geographic markets of this type often apply when suppliers deliver their products or services to customers’ locations. Geographic markets of this type encompass the region into which sales are made. Competitors in the market are firms that sell to customers in the specified region.”).

³⁵⁶ See, e.g., *Adelphia Order* ¶ 81 (“Consistent with our precedent, we find that the relevant geographic unit for the analysis of competition in the retail [video] distribution market is the household.”); *SBC-AT&T Order* ¶ 97 (“As with special access and enterprise services, we conclude that the relevant geographic market for mass market local, long distance, and bundled local and long distance services is the customer’s location.”).

³⁵⁷ See *supra* note 307.

the intense competition the companies face for *each* of their services, but it also has no relevance to this transaction. No relevant local market share *changes* as a result of this deal, and the transaction should not be used as an opportunity to air generalized concerns or views of what a different hypothetical market might look like.³⁵⁸

Equally irrelevant to a competitive analysis is the extent of the combined company's presence in particular regional or metropolitan areas, such as DMAs and/or Metropolitan Service Areas ("MSAs"). Consumers do not buy video, broadband, or voice service based on which provider is in their DMA or MSA, but rather based on which provider services their local neighborhood.³⁵⁹ And, the only relevant question is the effects of the transaction on individual consumers. Again, because TWC and Comcast do not compete with each other there will be no reduction in competitive choices in any relevant market. As Drs. Rosston and Topper explain:

Some public commentary on the proposed transaction has focused on Comcast's increased customer share in top DMAs and raised concerns that Comcast's increased presence in these top DMAs will give it increased market power in programming acquisition. Those concerns are without economic basis.

DMAs are Nielsen constructs for rating measurement purposes and do not constitute relevant antitrust markets. Comcast does not compete with TWC for customers or for programming even when both firms operate cable systems in the same DMA. Thus, Comcast and TWC do not compete with each other in purchasing programming, which means content providers currently do not realize any benefits from playing TWC and Comcast off against each other in carriage negotiations that involve a single or multiple DMAs. After the transaction, the combined firm's demand for a content provider's programming in top DMAs (or any DMAs) will not change.³⁶⁰

³⁵⁸ See Section III (discussing precedent on transaction-specific standard of review).

³⁵⁹ Specifically, DMAs are relevant measures for advertisers buying *broadcast* advertising, which is not at issue in the transaction. And as shown below, the company faces competition in its DMAs, which protects programmers and advertisers.

³⁶⁰ Rosston/Topper Decl. ¶¶ 180-81.

Other critics have alleged that an increase in Comcast's putative national "market" shares generally will reduce competition in consumer markets. Because the relevant markets are local, however, that argument is baseless. In fact, the increase in Comcast's share of video, broadband, and voice consumers nationwide will not change the Herfindahl-Herschman Index ("HHI")³⁶¹ in any relevant market.³⁶² Critics have failed to provide any antitrust or economic analysis to warrant a departure from this consistent approach.³⁶³

b. The Consumer Markets That Comcast and TWC Serve Are Competitive and Dynamic.

The transaction will not reduce consumer choices, and that alone precludes a finding of horizontal harm. Nonetheless, it bears emphasis that Comcast and TWC also face robust competition in the local markets for video, Internet, and voice that they respectively serve.

Video. In 2011, 98.6% of homes had access to at least three MVPDs, and 35.3% had access to at least four.³⁶⁴ And as shown above, the video marketplace continues to become ever more competitive, with cable losing market share both to well-established and new competitors.³⁶⁵ These competitive conditions will not change as a result of the proposed transaction. Moreover, the traditional metrics of competition do not account for additional competition from established OVDs or emerging over-the-top multichannel linear service providers like Sony.

³⁶¹ HHI is a measure used by the *Horizontal Merger Guidelines* to assess concentration levels. *Horizontal Merger Guidelines* § 5.3.

³⁶² See Rosston/Topper Decl. ¶ 163.

³⁶³ See Israel Decl. ¶¶ 18-21. As Dr. Israel explains, "[i]n an attempt to find harms to residential broadband customers, commenters may attempt to define a 'national market' for residential broadband services and claim that the transaction increases concentration in such a 'market,' including claims that the combined firm will have a large share in this alleged national market. Such claims are not grounded in any sound economic theory and provide no valid support for horizontal harms from the proposed transaction." *Id.* ¶ 20.

³⁶⁴ *Fifteenth Annual Video Competition Report* ¶ 36.

³⁶⁵ See *supra* Section IV.B.2.

Broadband. As discussed in Section IV, the broadband marketplace is especially dynamic, as reflected by the more recent emergence or recent expansion of providers like AT&T, CenturyLink, Verizon, and Google Fiber; continued robust competition from other wireline providers; and the ever-improving broadband speeds offered by the four national wireless carriers – Verizon Wireless, AT&T Wireless, Sprint, and T-Mobile. As wireless data speeds continue to increase substantially with the deployment of advanced technology – including 4G LTE, LTE-Advanced, and beyond – mobile broadband service is increasingly competing with wireline broadband, as the Commission and DOJ have recognized.³⁶⁶ As SoftBank’s Son argued, “[i]n the past, only fixed line broadband could provide high-speed Internet for [tablets and smartphones], but now wireless is becoming very powerful that it would be an alternative.”³⁶⁷ In many ways, wireless broadband is an even more formidable competitor because it offers consumers mobility and national reach.

Again, the relevant market for broadband is local, but it bears noting that Comcast does and the combined company will face competition nearly everywhere it does business from other robust broadband providers, before and after the deal. Although as noted above MSAs are not

³⁶⁶ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Servs.*, Sixteenth Report, 28 FCC Rcd. 3700 ¶ 2 (2013) (“Mobile wireless Internet access service could provide an alternative to wireline service for consumers who are willing to trade speed for mobility, as well as consumers who are relatively indifferent with regard to the attributes, performance, and pricing of mobile and fixed platforms.”); *id.* ¶ 371 (“[M]obile wireless providers have made substantial progress in upgrading their networks with higher-speed technologies and expanding coverage with these technologies. In some cases mobile broadband networks are being used as a replacement for wireline last-mile solutions, where location makes deployment of wireline facilities inefficient.”); *Ex Parte* Submission of the U.S. Dep’t of Justice, GN Docket No. 09-51, at 8 (Jan. 4, 2010) (“Wireless may be a very attractive alternative for consumers who greatly value mobility and for consumers who do not place much value on the highest speeds (*e.g.*, consumers who do not want advanced services, such as HD video streaming). It appears to offer the most promising prospect for additional competition in areas where user density or other factors are likely to limit the construction of additional broadband wireline infrastructure.”).

³⁶⁷ Masayoshi Son, CEO, SoftBank Corp., Presentation: The Promise of Mobile Internet in Driving American Innovation, the Economy and Education, Tr. at 12 (Mar. 11, 2014), http://cdn.softbank.jp/en/corp/set/data/irinfo/presentations/vod/2013/pdf/press_20140311_02.pdf.

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appropriate markets for assessing potential competitive harms in this transaction, even if one were to consider broadband availability at the MSA level, as the chart below illustrates, there are numerous other broadband providers in all of the top 20 MSAs:³⁶⁸

Broadband Providers in the Top 20 Metropolitan Statistical Areas (MSAs)

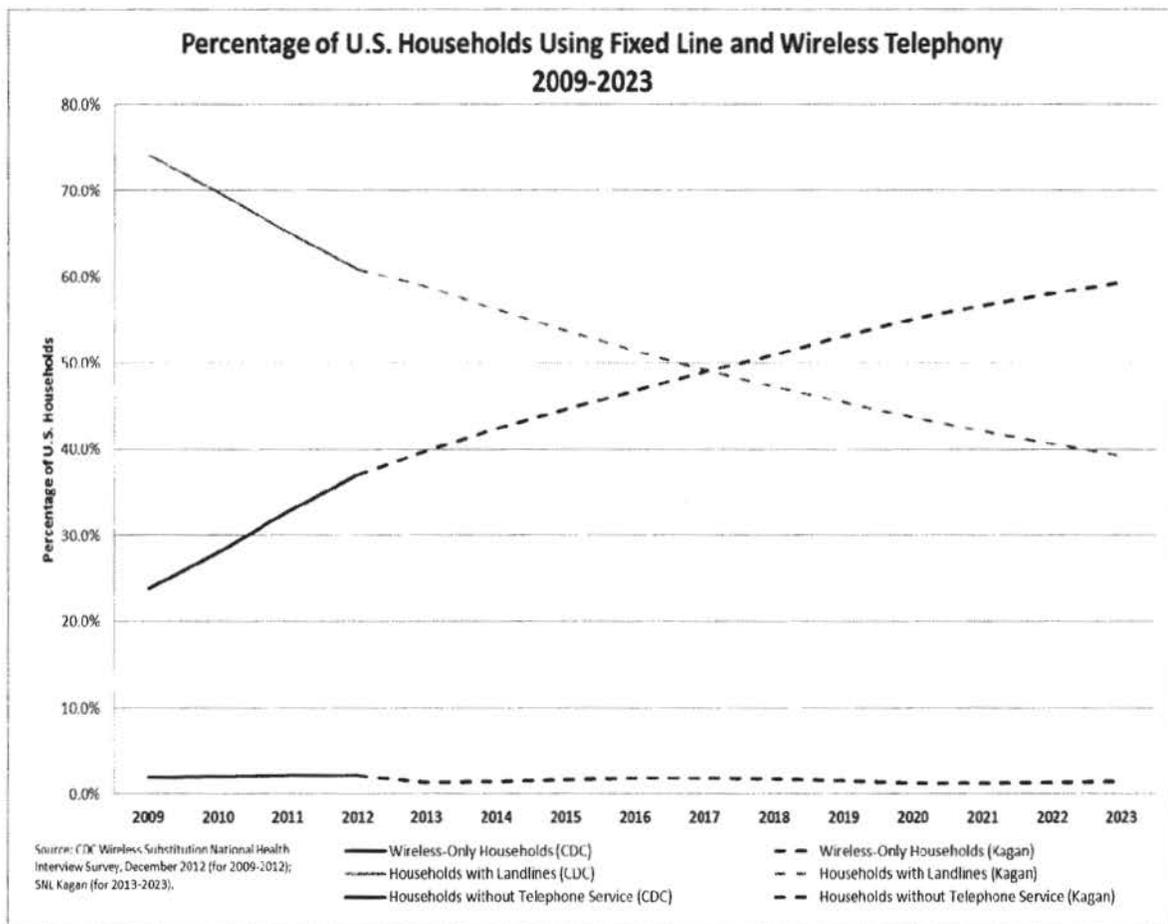
Rank	MSA	Providers (excluding Comcast and TWC)	Total	Post-Transaction
1	New York-Newark-Jersey City, NY-NJ-PA	AT&T, Cablevision, CenturyLink, RCN, Verizon, and 24 others	29	No Change
2	Los Angeles-Long Beach-Santa Ana, CA	AT&T, Cablevision, Charter, Cox, Verizon, and 12 others	17	No Change
3	Chicago-Joliet-Naperville, IL-IN-WI	AT&T, RCN, T-Mobile, Sprint, Verizon, WOW, and 16 others	22	No Change
4	Dallas-Fort Worth-Arlington, TX	AT&T, CenturyLink, Charter, Suddenlink, Verizon, and 28 others	33	No Change
5	Houston-Sugar Land-Baytown, TX	AT&T, CenturyLink, Charter, Suddenlink, Verizon, and 27 others	32	No Change
6	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	AT&T, Cavalier, Frontier, RCN, Verizon, and 27 others	32	No Change
7	DC-Arlington-Alexandria, DC-VA-MD-WV	AT&T, Cavalier, CenturyLink, Cox, Frontier, RCN, and 31 others	37	No Change
8	Miami-Fort Lauderdale-Pompano Beach, FL	AT&T, CenturyLink, T-Mobile, Sprint, Verizon, and 10 others	15	No Change
9	Atlanta-Sandy Springs-Marietta, GA	AT&T, Charter, Frontier, Mediacom, Sprint, Verizon, and 19 others	25	No Change
10	Boston-Cambridge-Quincy, MA-NH	AT&T, Charter, RCN, Sprint, T-Mobile, Verizon, and 14 others	20	No Change
11	San Francisco-Oakland-Fremont, CA	AT&T, Sprint, T-Mobile, Verizon, Windstream and 9 others	14	No Change
12	Phoenix-Mesa-Glendale, AZ	AT&T, CenturyLink, Cox, Mediacom, Verizon, and 25 others	30	No Change
13	Riverside-San Bernardino-Ontario, CA	AT&T, Charter, Frontier, Mediacom, Sprint, Verizon, and 10 others	16	No Change
14	Detroit-Warren-Livonia, MI	AT&T, CenturyLink, Charter, WOW, and 21 others	25	No Change
15	Seattle-Tacoma-Bellevue, WA	AT&T, CenturyLink, Sprint, T-Mobile, Verizon, and 20 others	25	No Change
16	Minneapolis-St. Paul-Bloomington, MN-WI	AT&T, CenturyLink, Charter, Mediacom, Verizon, and 35 others	40	No Change
17	San Diego-Carlsbad-San Marcos, CA	AT&T, Cox, Mediacom, T-Mobile, Verizon, and 7 others	12	No Change
18	Tampa-St. Petersburg-Clearwater, FL	AT&T, CenturyLink, Verizon, WOW, and 8 others	12	No Change
19	St. Louis, MO-IL (no Comcast or TWC presence)	--	--	--
20	Baltimore-Towson, MD	AT&T, Cavalier, RCN, Verizon, and 22 others	26	No Change

Source: National Broadband Map (www.broadbandmap.gov). Includes wireline, terrestrial fixed wireless, terrestrial mobile wireless, and satellite providers in the Top 20 MSAs with a reported "highest advertised download speed" of 3Mbps or more. Chicago-Joliet-Naperville, IL-IN-WI MSA information obtained from Broadband Illinois.

Voice. Residential and business customers have numerous competitive alternatives for telephone service, including other traditional providers of phone service, wireless providers, and

³⁶⁸ Information on broadband providers on the National Broadband Map is organized by state, county, state legislative district, MSA, Universal Service Fund (USF) study area, or Native Nations. Each MSA consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. Collecting broadband data at the MSA level is a requirement of the National Broadband Plan. FCC, Connection America: The National Broadband Plan at 44 (2010), available at <http://www.broadband.gov/download-plan/> ("The data collection should be done in a way that makes possible statistically significant, detailed analyses of at least metropolitan service area (MSA) or rural service area (RSA) levels, thus allowing the FCC to understand the effect of bundles and isolate the evolution of effective pricing and terms for broadband services.").

providers of nomadic VoIP services. The unmistakable trend in telephony continues to be toward wireless substitution of fixed telephone lines. As the figure below demonstrates, wireless has been eroding fixed line’s share of U.S. households and that trend is projected to continue over the next decade, exerting significant competitive pressure on fixed telephone services.



Moreover, millions of customers now use Vonage, Skype, and other over-the-top options.

2. Comcast’s Increased Scale as a Buyer of Programming Will Not Cause Any Competitive Harm.

As noted above, after the transaction and expected divestiture of systems, Comcast will manage systems serving fewer than 30 percent of total MVPD subscribers in the United States.

This share is plainly insufficient to give Comcast anticompetitive “monopsony” or “buyer power” vis-à-vis sellers of video programming.

Whether the level of concentration in the MVPD industry creates competitive concerns vis-à-vis programmers has been extensively litigated, resulting in clear judicial guidance on this issue. Specifically, the D.C. Circuit concluded more than a decade ago that the evidence before the FCC and the court could not have justified a horizontal ownership limit “lower than 60%” on the basis of buyer power concerns.³⁶⁹ And in 2009, the same court concluded that “[i]n light of the changed marketplace, *the Government’s justification for the 30% cap is even weaker now than in 2001. . . .*”³⁷⁰ As the court explained:

[T]he record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.³⁷¹

As explained above, today’s MVPD marketplace is even more competitive than it was in 2009 – let alone in 2001 – with cable providers’ share of U.S. MVPD subscribers having declined significantly in recent years in light of robust competition from DBS and telco providers.³⁷² Along with new wireline MVPD entrants, like Google Fiber, a number of online businesses like Netflix, Apple, Google, Amazon, Hulu, Sony, and a host of smaller companies, are entering the online video space and positioning themselves as full or partial competitors to MVPDs.³⁷³ At the same time, MVPDs like Dish,³⁷⁴ DirecTV,³⁷⁵ and Verizon FiOS³⁷⁶ are

³⁶⁹ See *Time Warner Entm’t Co. v. FCC*, 240 F.3d 1126, 1136 (D.C. Cir. 2001) (“*Time Warner II*”).

³⁷⁰ *Comcast Corp. v. FCC*, 579 F.3d 1, 9 (D.C. Cir. 2009) (emphasis added).

³⁷¹ *Id.* at 8.

³⁷² See discussion and graph *supra* Section IV.B.2.

³⁷³ See Rosston/Topper Decl. ¶ 171.