leverage against Comcast even though Comcast will provide service in more DMAs.[220] Today, given a content provider's return from having its programming distributed in Comcast's and TWC's respective footprint, Comcast and TWC will demand the best deal from the provider in their respective negotiations. Because Comcast and TWC do not compete with each other, what Comcast would agree to does not depend on whether the content provider already has a deal with TWC and vice versa. In addition, because a content provider can sell its programing to other distributors that have a large presence in these top DMAs, including DBS and telco MVPDs as well as other distributors like OVDs, the provider does not have to rely upon Comcast and TWC to distribute its programming in these areas. Thus, relative to its current negotiation position, Comcast does not gain leverage post-transaction.

184. It may be possible that certain DMAs, such as New York, are more valuable to content providers and/or advertisers than other areas. If that is true, an MVPD with a bigger share of its customers in such DMAs would likely be able to negotiate a better deal (e.g., a lower license fee) with content providers, which reflects the value of customers in such DMAs to content providers and is a competitive outcome based on market forces. The transaction will not change that – for a content provider, the value of a customer in New York does not depend on whether the customer is served by TWC or Comcast. Mathematically, Comcast's deals reflect the average value of its customer base. Even if Comcast may have a bigger share of its customers in high-value DMAs post-transaction, the change is likely to be small and any effect of the change on the deals that Comcast will negotiate post-transaction will reflect a change in Comcast's customer composition, rather than any competitive issue.

b) Comcast Will Not Be a Bottleneck for Content Providers to Be Viable

185. We next consider whether Comcast would gain market power against content providers because it would be a post-transaction "bottleneck" that prevents a network from reaching a national audience and being commercially viable. Comcast will not become such a "bottleneck"

[220] The combined company may gain some benefits if certain *existing* Comcast carriage agreements could be applied to TWC subscribers and the Comcast terms are better than the existing TWC terms. Interview with Greg Rigdon (Executive Vice President, Content Acquisition, Comcast).

as content providers have a large open field other than Comcast for selling their programming after the transaction. In fact, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") found in 2009 that because of increasing competition from DBS and telco MVPDs, "[c]able operators, therefore, *no longer have the bottleneck power over programming* that concerned the Congress in 1992."[221] Given the significant growth of DBS and telco MVPDs as well as other video distributors since 2009, Comcast will not have any "bottleneck power" even after the transaction.

186. Comcast will have an approximately 30% national share of MVPD customers post-transaction. So even if a content provider (including a new network) could not reach an agreement with Comcast, it would still be able to sell its national programming to other MVPDs that account for 70% of MVPD customers nationally (or more than 70 million households).

187. In the FCC's Fourth Report and Order where the Commission set the cable horizontal ownership limit, the Commission estimated that the minimum viable scale for a network was 19 million customers, which is far less than the "open field" of more than 70 million households that will be served by other MVPD providers after this transaction.[222] Even under this approach from the FCC (which has a number of problems as noted by the D.C. Circuit), a content provider would need to achieve a penetration rate of just 27% in the open field of 70 million households to reach the minimum viable scale of 19 million customers (27% = 19 million / 70 million) if it were not carried by Comcast. For example, carriage by DirecTV alone, which has 20.2 million customers, would exceed the threshold.[223] Thus, the transaction will not materially affect a content provider's ability to achieve viable scale.

188. Additionally, OVDs such as Netflix and Amazon are becoming a growing channel of distribution and monetization for content providers. OVDs have experienced rapid growth since 2010. By SNL Kagan's estimate, 45.2 million U.S. households subscribe to online video

[221] Comcast Corp. v. FCC, 579 F.3d 1, at 14 (D.C. Cir. 2009) (emphasis added).

[222] FCC Fourth Report & Order and Further Notice of Proposed Rulemaking, December 18, 2007.¶57 In a 2009 decision, the D.C. Circuit Court recognized that the Commission's estimated minimum viable scale and average penetration rate failed to consider the impact of DBS's growing market share. (*Comcast Corp. v. FCC*, 579 F.3d 1, 9 (D.C. Cir. 2009)).

[223] SNL Kagan, "MVPD Subscribers in Q3 2013."

services in 2013, more than double the 19.8 million in 2010.[224] The number of hours Americans spend watching video over the Internet has grown 70% since June 2010.[225] Surveys of TV households show that the percentage of TV watching time that is spent on viewing of Internet streaming to computers, TV sets, and handheld devices more than quadrupled, from 3% in 2011 to 13% in 2013.[226] Approximately 53 million households used online video viewing in 2013.[227] As OVD providers continue to grow, especially as they begin to offer linear programming, they will give content providers even more ways to distribute their programming and remain viable, which limits Comcast's bargaining leverage in acquiring programming. Indeed, OVDs are increasingly an outlet for original programming that is succeeding – with millions of online customers even though the programming is not carried by any traditional MVPD.[228]

c) Comcast Will Not Gain Market Power from the Perspective of Bargaining Theory

189. We next consider whether Comcast's larger size and footprint post-transaction would give it market power in bilateral negotiations with content providers from the perspective of bargaining theory. The economic literature on bargaining posits that each party in a negotiation considers its best alternative to a negotiated agreement ("BATNA"). In a carriage negotiation, an MVPD's willingness to pay will depend on its next best alternative to carrying the content provider's programming, and a content provider will also consider its next best alternative to obtaining carriage on that MVPD.

190. Concerns about a merger leading to an increase in bargaining power usually arise when the merging parties compete with each other for customers because the combined company would face less competitive pressure post-transaction.[229] This concern does not arise in the current transaction, because Comcast and TWC do not compete for customers. So the

[224] SNL Kagan, "Internet Video-On-Demand Revenue Projections, 2009-2022."
[225] Nielsen; FCC Fact Sheet on Internet Growth and Investment (Feb. 19, 2014).
[226] Horowitz Associates, Inc. Market & Multicultural Research. *An In-Depth Look at Alternative Platform Capability and Usage*, November 2013.
[227] SNL Kagan, "Online Video Buffets, But Does Not Break Multichannel Model," October 1, 2013.
[228] "OTT in a Pay-TV World," Parks Associates, December 2013.
[229] For example, such concerns have arisen related to hospital mergers. See, e.g., Gautam Gowrisankaran, Aviv Nevo and Robert Town (2013), "Mergers When Prices are Negotiated: Evidence from the Hospital Industry," NBER Working Paper 18875.

transaction will not change Comcast's incentives or next best alternative to carrying a content provider's programming – it will face the same risk of losing customers to competitors if it does not carry the programming.

191. The transaction also will not significantly affect a content provider's next best alternative to obtaining carriage on Comcast. As discussed above, an increase of Comcast's share of MVPD customers from 22% to 30% share does not make Comcast a bottleneck for content providers to succeed – they will still have a large open field other than Comcast to sell their programming.

192. Ultimately, the increase of Comcast's customers from approximately 22 million to 30 million raises the stakes in a programming agreement for both Comcast and content providers and affects both sides' best alternative to a negotiated agreement in similar ways. Distributors and content providers come to an agreement when there are benefits to both sides. For example, Comcast recently negotiated with Fox to carry its programming on Comcast cable systems. Not carrying the programming would have hurt Comcast and hurt Fox. The same is true for negotiations between TWC and content providers. After the transaction, Comcast will continue to face the competition that Comcast and TWC face now. So if Comcast does not carry the programming post-transaction, it will suffer the sum of losses that Comcast and TWC would suffer pre-merger if the two do not carry the programming. The same is the case for content providers. Thus, both sides would still benefit from reaching an agreement for desirable programming post-transaction as they do now. This economic reasoning applies to all content providers, including those who are not as large as or do not have programming as compelling as Fox.

193. Moreover, increasing competition among video distributors has enabled content providers to gain negotiation leverage in programming negotiations, which is reflected in the substantial increase in programming costs incurred by MVPDs over the past few years.[230] For example, by SNL Kagan's estimates, average retransmission consent fees for all broadcast networks paid by MVPDs has risen from $1.03 per sub per month in 2010 to $2.74 in 2013, a compound annual growth rate of nearly 40%, and SNL Kagan projects the average fees will increase to $6.32 in

[230] SNL Kagan Special Report, "U.S. Multichannel Subscriber Update and Programming Cost Analysis," by Robin Flynn, June 2013.

2019.[231] Similarly, average affiliate fees per sub for cable networks have also increased significantly. The annual growth rate between 2010 and 2013 was [[ ]]% for TBS, [[ ]]% for TNT,[[ ]]% for ESPN, [[ ]]% for Disney Channel, [[ ]]% for Nickelodeon, and [[ ]]% for FOX News.[232] The average affiliate fee per sub for RSNs also increased about [[ ]]% annually between 2010 and 2013.[233]

194. Comcast is paying increased programming fees, just like other MVPDs. Between 2010 and 2013, Comcast's programming cost per customer increased by 29.0%, more than the increases of 21.4%, 21.5%, and 26.7% for TWC, Charter, and DirecTV respectively over the same period.[234] Competition among distributors for compelling video content will continue to limit MVPD negotiating power regarding programming fees. For example, SNL Kagan projects that retransmission and affiliate fees will continue to increase at 8-11% for the next few years.[235]

195. Because content providers' increased leverage has resulted from increasing competition among distributors and the transaction will not reduce that competition, content providers will continue to hold considerable leverage against Comcast (and other MVPDs) post-transaction.

196. There are also a variety of theoretical models in academic literature on how a merger of buyers operating in different geographic areas may affect the merged firm's "buyer power" by changing its bargaining position with respect to sellers' bargaining positions. However, there is not any conclusive finding in this literature. Depending on the specific assumptions that a model makes, the model may predict an increase in bargaining power for the buyer, for the seller, or neither.[236] In fact, a previous study of cable industry mergers found empirical evidence that

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[231] SNL Kagan, "Broadcast retransmission fee projections through 2019, November 2013."

[232] SNL Kagan, "TV Network Summary Basic Cable Networks by Affiliate Revenue Per Sub Per Month 2006-2017."

[233] SNL Kagan, "TV Network Summary RSN Networks by Affiliate Revenue Per Sub Per Month 2006-2017."

[234] 10-K's of Comcast, TWC, Charter and DirecTV. These figures do not control for any difference in the rights obtained by MVPDs for the programming fees. For example, some MVPDs may pay more to acquire broader digital/new media rights, or may drop some more expensive channels in favor or less costly alternatives.

[235] SNL Kagan, "Economics of Basic Cable Networks 2012 Edition, Basic & HD Cable Network Economics, 2002-2021"; SNL Kagan, "Broadcast retransmission fee projections through 2019," November 2013.

[236] See, for example, Tasneem Chipty and Christopher M. Snyder (1999), "The Role of Firm Size in Bilateral Bargaining: A Study of the Cable Television Industry," Review of Economics and Statistics, 81(2):326-340; Alexander Raskovich (2003), "Pivotal Buyers and Bargaining Position," Journal of Industrial Economics, 51(4): 405-26. We understand that Dr. Mark Israel's declaration has a detailed discussion of the various models and conditions in the bargaining literature and the applicability of the assumptions in those models to this transaction.

mergers of MVPDs would *reduce* the merged firm's bargaining power.[237] As explained above, because this transaction does not change the demand for and supply of programming, a bargaining theory perspective does not give rise to any new competitive concerns regarding Comcast's acquisition of programming from content providers.

197. Our analysis above shows that speculation that Comcast would be able to depress what it pays for programming is not based on sound economics. We also note that even if the transaction could, hypothetically, slow down the increase in Comcast's programming costs, it would benefit consumers. Programming costs constitute a large share of Comcast's marginal cost of serving an MVPD customer. As is well-known in economics, a reduction (or slower increase) of marginal cost of a supplier tends to get passed through to consumers in whole or in part, whether or not the supplier has market power. Thus, over time, part or all of the savings in Comcast's programming costs would be passed through to Comcast's customers in the form of slower growth in their subscription fees, or through greater investments in service, expanded program offerings, or other non-price alternatives, relative to what consumers might pay without the transaction, implying an increase in consumer welfare.[238]

198. We also note that if Comcast were to pay less for programming, it is *not* likely to affect the prices paid by other MVPDs. Content providers negotiate to get the best deal they can get from each MVPD. If one pays less, there is no fundamental reason that others would or could be charged more. Programming fees are not a zero-sum game with the programmer getting a fixed amount overall. Nor is there any basis to assume that content providers are "leaving money on the table" by agreeing to a lower amount from other MVPDs today than they can get. In addition, some MVPDs may have most favored nation ("MFN") clauses in their contracts that may ensure that they benefit from any rate reductions another MVPD obtains, rather than the reverse.

[237] Tasneem Chipty and Christopher M. Snyder (1999), "The Role of Firm Size in Bilateral Bargaining: A Study of the Cable Television Industry," Review of Economics and Statistics, 81(2):326-340.

[238] Any changes in programming costs would occur over time, rather than right away, due to the long term programming contracts that are in place. For example, an increase of 5% per year instead of 10% per year in programming costs would lead to lower cable prices than would otherwise have occurred even though consumers would not actually see nominal rate reductions. These changes might also take 3-5 years to come to fruition given the multi-year nature of programming contracts.

2. No "Program Carriage" Concerns Arise from the Transaction

199. In theory, a merger involving a vertically integrated MVPD could raise vertical program carriage issues if it gave the MVPD an increased incentive and ability to discriminate against non-affiliated content providers to benefit the MVPD's affiliated programming. According to this "program carriage" theory, by denying or limiting carriage of an unaffiliated network, a large MVPD could prevent an unaffiliated network from gaining economies of scale, thus weakening competition with its own affiliated networks.

200. We consider two potential program carriage concerns for the current transaction, both of which are analogous to program carriage concerns examined and addressed by the Commission in the NBCUniversal transaction. The first scenario is whether Comcast's acquisition of TWC systems would give it incentive to discriminate against competitors of Comcast's existing programming. The second scenario is whether Comcast's acquisition of TWC's programming would give it incentive to discriminate against competitors of the acquired TWC programming.

201. Our analysis shows that neither scenario raises competitive concerns.

a) No Incremental Incentive or Ability to Discriminate against Unaffiliated Programming to Benefit Comcast/NBCUniversal Programming

202. The first scenario is whether Comcast's acquisition of TWC systems would give it incentives to discriminate against competitors of Comcast/NBCUniversal's existing programming. For an anticompetitive program carriage strategy to be profitable in this scenario, there would have to be enough viewership increase for Comcast/NBCUniversal programming to offset the customers that Comcast would lose to other MVPDs due to it not carrying the non-affiliated programming targeted by the strategy. Such an anticompetitive program carriage strategy is unlikely with Comcast's acquisition of TWC systems.

203. First, Comcast/NBCUniversal programming faces strong competition from unaffiliated content providers.[239] If Comcast were to deny carriage to a particular cable network,

[239] As discussed in Section III.B, Comcast/NBCUniversal currently accounts for less than 12% of total network revenues.

Comcast/NBCUniversal's networks would continue to compete for viewers, advertising, and programming with a wide variety of other programming. Thus, denying carriage to a particular cable network would likely bring little benefit to Comcast/NBCUniversal programming.

204. Second, non-affiliated programming would be the target of the anticompetitive program carriage strategy in this scenario only if it is of potential or actual interest to Comcast's customers. Otherwise, carriage of the programming would have no impact on the viewing choice of Comcast's customers and thus would not affect Comcast's affiliated programming. However, if Comcast were to deny carriage to non-affiliated programming of interest to its customers, it would reduce the attractiveness of Comcast's MVPD service, which would in turn result in loss of customers to other MVPDs.

205. In short, the vigorous competition Comcast faces in the upstream (video programming) and downstream (video distribution) markets means an anticompetitive vertical carriage strategy would likely not be profitable – it would likely lead to some customers leaving Comcast while bringing little benefit to Comcast/NBCUniversal programming.

b) No Incremental Incentive or Ability to Discriminate against Unaffiliated Programming to Benefit TWC Programming.

206. The second scenario is whether Comcast's acquisition of TWC's programming would give Comcast incentive and ability to discriminate against competitors of TWC programming. Comcast is unlikely to have such incentive or ability given the very limited TWC programming assets it will acquire from TWC and the vigorous competition it faces in video distribution and video programming.

207. As discussed in Section III.B above, TWC does not have majority ownership of any national cable networks. Among TWC-affiliated RSNs, only three carry major league professional sports teams in English: TWC SportsNet (Lakers), which TWC owns; SportsNet LA (Dodgers), for which TWC provides certain services, but does not own the network; and SportsNet New York (Mets), in which both TWC and Comcast hold minority interests.[240] First,

[240] TWC also has three regional networks that carry major league sports in Spanish, including TWC Deportes (Lakers) and TWC Channel 858 (Clippers and Angels, based on programming feeds from Fox) in Los Angeles, and

we consider the potential for program carriage concerns in Los Angeles arising from the transaction. Today, TWC has cable systems in the Los Angeles DMA, the core of the footprints of TWC SportsNet and SportsNet LA, but Comcast does not. Thus, the transaction will not increase the combined company's number of customers in the area where customers likely care most passionately about RSNs carrying Los Angeles professional sports. As a result, the transaction does not give the combined company any incremental ability (relative to what TWC has now) to undertake a program carriage strategy in favor of these TWC RSNs.

208. Comcast and TWC already own minority stakes in SportsNet New York. Thus, the transaction does not give Comcast incremental incentives or ability (relative to the incentives or ability, if any, that TWC or Comcast has now) to discriminate against an unaffiliated network in program carriage to benefit SportsNet New York. Moreover, SportsNet New York competes for viewers and advertisers with a wide variety of programming. For example, if, hypothetically, Comcast anticompetitively denied carriage to the YES Network (NY Yankees), some Comcast customers who are avid Yankee fans would likely switch to other MVPDs that carry the YES Network. And customers who remained with Comcast, but no longer had access to the YES Network, would have a wide variety of viewing options other than SportsNet New York, including ESPN, Fox Sports, and other programming. Therefore, Comcast would risk losing MVPD customers if it tried to discriminate against the SportsNet New York's competitors like the YES Network and would receive little benefit from the strategy.

3. Market Dynamics between Comcast and Content Providers Will Continue After the Transaction

209. In recent years, Comcast has successfully entered into marketplace-based carriage agreements with many content providers, including a decade-long distribution agreement with Disney covering all its television content, a renewal agreement with the Fox Networks covering

Canal de Tejas (Mavericks, Spurs and Rangers, based on programming feeds from Fox) in Texas. The core footprint of these networks does not cover areas where Comcast's subscribers are located: Comcast is not present in Los Angeles; in Texas, most of Comcast's subscribers are in Houston, which is not covered by the footprint of Canal de Tejas and the network does not carry any Houston-based professional sports teams. More generally, as a Spanish-language sports network, Canal de Tejas has a limited viewership and faces vigorous competition from other English and Spanish-language sports networks and other networks. As a result, the transaction does not raise any incremental program carriage or program access issues for TWC affiliated Spanish-language RSNs. Other TWC RSNs do not carry highly desirable major league sports programming and mostly operate in areas where Comcast currently has no or few subscribers. So their acquisition also does not raise program carriage or program access concerns.

Fox broadcast stations and cable networks for both live and on demand programming, independent content providers including AMC and Scripps, as well as a number of RSNs including NESN. According to Comcast's reports to the Commission, no program carriage complaints were filed against Comcast since its initial acquisition of part of NBCUniversal.[241]

210. The outcomes of these recent carriage negotiations between Comcast and content providers show that Comcast can work with content providers under the current market conditions. Such dynamics will continue after the transaction as Comcast will not gain any market power and there will not be any new competitive concerns. And in all events, the Commission's existing program carriage rules and the conditions agreed to in the NBCUniversal transaction remain in place to address any competitive concerns.

C. No Competitive Concerns in the Sale of Video Programming

211. We now turn to potential competitive concerns about the sale of video programming by the combined company. In previous transactions, the Commission and various parties have raised concerns that after a merger involving MVPDs and content providers, the merged entity could exercise market power as a seller of programming and charge higher prices to all other MVPDs (horizontal market power concerns), or could charge higher prices for or withhold programming to disadvantage its MVPD rivals (vertical "program access" concern). These potential concerns regarding program selling do not arise in this transaction.

1. No Increase in Market Power in the Sale of Programming

212. In theory, a firm that acquires enough video programming could gain market power in the supply of programming and raise prices for its programming. However, Comcast will gain a very limited amount of programming from TWC in the transaction, and Comcast's shares of national and regional programming post-transaction will also be very limited. Thus, the transaction will not raise any competitive concerns in the sale of programming. In fact, the transaction only increases Comcast's share of total network revenues (including those related to broadcast networks, cable networks and RSNs) from 11.61% to 11.86%, an increase of 0.25%.

[241] 2011-2013 Comcast annual reports of compliance with transaction conditions to the FCC, Section III.1. We understand that there has been a dispute with Bloomberg TV involving the definition and interpretation of certain "neighborhooding" conditions in the NBCUniversal transaction.

213. As discussed in Section III.B., the transaction will not increase the number of national programming networks owned by Comcast and there will only be a small change in regional programming. As discussed above, there are also only three TWC-affiliated RSNs that carry major league sports teams in English, two of which (TWC SportsNet and SportsNet LA in Los Angeles) do not have a footprint that overlap with a Comcast RSN and the third one (SportsNet New York) is already partially owned by Comcast and Comcast would remain a minority owner after the transaction.[242] So the transaction does not materially change the concentration of regional programming either.

214. Another potential program selling concern might be that the combination of an NBC O&O station and a TWC-affiliated RSN in the same area could increase Comcast's ability to exercise market power and extract higher fees from other MVPDs for that programming. In this transaction, there are only two areas, Los Angeles and New York, where there is an NBC O&O station and an English language TWC-affiliated RSN that carries major league sports. Because programming on NBC O&Os and programming on RSNs mostly serve different demands (general entertainment versus regional sports), they are not close competitors. Moreover, in both areas the NBC O&O and TWC-affiliated RSN face many other programming competitors, including a large number of other national and regional broadcast and cable networks, as discussed earlier and in the next section.[243] As a result, the combination of an NBC O&O and TWC-affiliated RSN will not give Comcast market power.[244]

215. Comcast will also acquire a number of local or regional news and lifestyle networks from TWC, which face substantial competition from programming offered by local affiliates of the big four networks and other content providers.[245] Moreover, other content providers could enter to

[242] Other TWC regional sports networks do not carry major league professional sports and most do not have a footprint that overlaps with that of a Comcast RSN.

[243] Additionally, retransmission negotiations between MVPDs and Comcast/NBCUniversal for NBC O&Os are typically conducted for all NBC O&Os together that are carried by the MVPD in question and may or may not involve the negotiations for any Comcast/NBCUniversal RSNs carried by the MVPD.

[244] Similar analysis applies to areas where there is a Telemundo O&O station and a TWC affiliated Spanish-language RSN that carries major league sports, including Los Angeles (with a Telemundo O&O, TWC Deportes, and TWC Channel 858) and Dallas and San Antonio in Texas (with a Telemundo O&O and TWC's Canal de Tejas).

[245] For example, while Comcast currently owns an NBC O&O station in New York and will acquire TWC's local news station NY1, it faces competition from dozens of other news outlets in the area. Interview with Melinda Witmer (Executive Vice President, Chief Video Officer & Chief Operating Officer, Networks, TWC).

compete with Comcast's affiliated programming.[246] As a result, the acquisition of these regional networks does not raise competitive concerns.

2. No "Program Access" Concerns Arise from the Transaction

216. In theory, the proposed transaction could raise vertical "program access" concerns if it gave Comcast an increased incentive and ability to permanently or temporarily foreclose (or threaten to foreclose) the combined company's programming to rival MVPDs to benefit Comcast's own MVPD service. The Commission has considered these potential concerns in previous transactions involving vertically integrated MVPDs, including the NBCUniversal transaction.[247] At issue in the current transaction is whether Comcast's acquisition of TWC's cable systems and limited programming assets raises any incremental program access concerns.

217. We consider two scenarios. The first scenario is whether Comcast's gain in customers from TWC, particularly in local areas where Comcast owns regional programming assets, would give Comcast incentive to withhold Comcast/NBCUniversal programming from competing MVPDs. The second scenario is whether Comcast's acquisition of programming assets from TWC, particularly in areas where Comcast currently has customers, would give it incentive to withhold the TWC programming assets from competing MVPDs. Our analysis shows that neither scenario is a concern.

a) NBC O&Os

218. The first question is whether the transaction would give Comcast increased incentive and ability to raise price or deny access to its 10 NBC O&O stations in order to hurt its MVPD competitors. Of these 10 stations, only four are in DMAs where Comcast is acquiring cable systems from TWC: New York, Los Angeles, Dallas, and San Diego. In these DMAs, Comcast will have the following share of MVPD customers post-transaction according to SNL Kagan: [[ ]]% in Los Angeles, [[ ]]% in New York, [[ ]]% in Dallas, and [[ ]]% in San Diego. The transaction does not give Comcast incentive or ability to foreclose other MVPDs' access to

[246] For example, in New York, Verizon has just started a local news network FioS1 that competes with TWC's local news station NY1.

[247] Comcast-NBCUniversal Order, ¶34; News Corp.-Hughes Order, ¶76; Adelphia Order, ¶115.

NBC O&Os in these areas. Moreover, to the extent the access to all 10 NBC O&O stations are negotiated at one time with an MVPD (e.g., DirecTV), a foreclosure strategy would put all 10 stations at risk.

219. Denying access of the NBC broadcast network to competing MVPDs in order to advantage Comcast's MVPD service has become increasingly costly due to the changing market landscape of video programming over the past few years. As discussed at length in the Commission's proceeding regarding the Comcast-NBCUniversal transaction, Comcast would have to sacrifice retransmission fees and advertising revenues if it were to deny access of an NBC O&O to a rival MVPD, not to mention harm to the network's reputation among consumers. This cost has increased significantly because retransmission fees for NBCUniversal stations (and broadcast affiliates of the other three major networks) have been rising. For example, between 2012 and 2013, the average per sub retransmission consent fee for NBC and Telemundo O&Os increased from [[ ]] to [[ ]].[248] Because NBC O&O's have a higher fee than Telemundo O&O's, the average fee of NBC O&O's should be even higher than [[ ]]. Both Comcast/NBCUniversal and industry analysts also expect these fees to continue to grow.[249] Losing advertising revenue would be even more costly. The advertising revenue per customer per month from the four NBC O&O stations ranged from [[ ]] to [[ ]] in addition to [[ ]] from the NBC network.[250]

220. As retransmission and advertising revenues of NBC O&O stations and the NBC network grow, temporarily or permanently foreclosing other MVPDs' access to the stations would run an increasing risk of damaging the economic value of the stations and even the network. Additionally, if Comcast were to foreclose just one or a subset of MVPDs in an area at issue and some customers of the MVPD(s) were to leave, Comcast would likely only capture a limited

[248] SNL Kagan, "Retrans per-subscriber fees increase 40.1% in Q3, 38.5% YTD," December 2013.

[249] According to Steve Burke, the CEO of NBCUniversal, "We will, as contracts come up, get those revenues the same way as CBS, ABC and Fox have. There may be a little bit of a lag, because our contracts may come up at a later date than some of the other broadcasters, but we have gone from essentially zero a couple of years ago to $200 million this year. I see no reason why we won't draft behind the other broadcasters and get paid in a similar fashion to the way they get paid in the future." (http://www.multichannel.com/cable-operators/burke-nbc-retrans-revenue-reach-200m-2013/145410) SNL Kagan projects an average annual growth rate of 12% - 30% for retransmission consent fees for all broadcast networks through 2017.

[250] SNL Kagan, "TV Station Database 2010-2016 & TV Networks 2010-2016."

share of those switchers since Comcast or TWC only has a limited share among customers in each area.

221. Moreover, the program access concern related to the vertical overlap between TWC customers and NBC O&Os in this transaction is essentially the same in nature as the program access concern related to the vertical overlap between Comcast customers and NBC O&O's in the NBCUniversal transaction. Since the close of that transaction, NBCUniversal has reached renewal agreements with multiple MVPDs (including those that compete directly with Comcast), suggesting that Comcast has neither the incentive nor the ability to withhold the NBC O&Os under existing market conditions. As discussed above, it will be even more costly to deny MVPDs access to NBC O&O going forward. Thus, the transaction does not raise any new competition issues regarding access to NBC O&Os.

b) Telemundo O&Os

222. Comcast also has 17 Telemundo O&O stations. Of these, only four are in DMAs where Comcast is acquiring a significant number of cable customers from TWC: New York, Los Angeles, Dallas, and San Antonio.[251] Comcast is unlikely to gain a substantial number of customers from rival MVPDs by withholding Telemundo O&O programming. First, the Telemundo network is much less widely viewed than the NBC network and other Big Four broadcast networks. Second, to the extent that the focus is limited to Spanish-language networks, Telemundo O&Os faces strong competition from Univision affiliates, the top Spanish language network in the nation, as well as from stations affiliated with other networks such as MundoFox and Azteca.[252] With such competition, foreclosing access to Telemundo O&Os in these markets would hurt the value of the Telemundo O&O and Telemundo network without necessarily gaining many (or any) customers.

[251] TWC also owns a local Spanish language news network (NY1 Noticias) in New York.

[252] For example, according to SNL Kagan, Telemundo's average 24 hour viewership in 2012 was 372,000 households, less than half of Univision's 782,000 households. Univision also owns UniMás.

c) NBCUniversal National Cable Networks

223. Comcast currently has an attributable ownership interest in 24 national cable networks and a pay-per-view programming service (iN Demand), including a majority interest in 16 networks such as USA, CNBC, MSNBC, Bravo, and the Golf Channel. NBCUniversal national cable networks mostly offer general entertainment and news programming. These networks face strong competition from programming of other content providers. For example, NBCUniversal's USA network faces vigorous competition from a variety of networks like TNT, TBS, and FX. Thus, foreclosing other MVPDs' access to Comcast's national cable networks would not benefit Comcast's MVPD service as it would not only cause the networks to lose revenues but also would likely not lead to many customers of other MVPDs switching to Comcast. Additionally, if Comcast were to foreclose just one or a subset of MVPD competitors and some customers of the MVPD(s) were to leave, Comcast would likely only capture a limited share of those switchers since Comcast will only have a less than 30% share nationally post-transaction.

224. Again, the potential program access concern related to NBCUniversal national cable networks are analogous to those examined and addressed by the Commission in the NBCUniversal transaction. Since the close of the NBCUniversal transaction, NBCUniversal has reached renewal agreements with multiple MVPDs (including those that compete directly with Comcast), suggesting that Comcast has neither the incentive nor the ability to withhold these national cable networks under the existing market conditions. The transaction will not change the market conditions so there will not be any program access concerns regarding these national cable networks going forward either.

d) Comcast and TWC RSNs

225. We now consider potential program access concerns associated with Comcast and TWC RSNs. In theory, the vertical overlap between Comcast RSNs and TWC customers (or between TWC RSNs and Comcast customers) potentially could lead to a program access competitive concern. However, the incremental vertical overlap between cable systems and RSNs that arises in this transaction is limited and does not lead to program access concerns. In addition, broad distribution is critical for RSNs as affiliate fees account for most of the RSNs' revenues, so

denying other MVPDs' access to Comcast or TWC RSNs would damage the value of those RSNs.[253]

226. We start by considering vertical overlap between Comcast RSNs and TWC cable systems. Comcast will acquire TWC cable systems in the footprint of four Comcast affiliated RSNs that carry major league professional sports: CSN Mid-Atlantic, CSN Chicago, SportsNet New York, and CSN New England.[254] Comcast will only gain a small number of TWC customers in most of these RSNs' footprints, particularly in the DMAs that are home to the major league team(s) carried by the RSNs ("home DMAs").[255]

227. CSN Mid-Atlantic is distributed throughout Maryland, Virginia, the District of Columbia, as well as parts of Delaware, Pennsylvania, and West Virginia. Across CSN Mid-Atlantic's footprint, Comcast will acquire less than {{ }}% of the customers that currently receive CSN Mid-Atlantic, all of which are in the outer market of its footprint.[256] Comcast will not acquire any systems from TWC in the Washington, DC DMA, home to the teams carried by CSN Mid-Atlantic (Washington Wizards and Washington Capitals). Thus, the transaction does not raise any new program access concern regarding CSN Mid-Atlantic.

228. CSN Chicago is distributed throughout most of Illinois, and parts of Indiana and Iowa. Comcast only owns 30% of CSN Chicago,[257] so it is not in a position to sacrifice the RSN's interest by denying other MVPDs' access to the RSN. Comcast also will not acquire any systems from TWC in the Chicago DMA, home to the teams carried by the CSN Chicago (Chicago Bulls, Chicago Blackhawk, Chicago White Sox and Chicago Cubs). In addition, across CSN Chicago's footprint, Comcast will acquire less than {{ }}% of the customers that currently

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[253] Interview with John Ruth (CFO, Comcast SportsNet).

[254] We focus on the four Comcast RSNs that carry major league professional sports and currently have a contract with TWC. For other Comcast RSNs, the lack of carriage by TWC suggests either TWC has no or very few subscribers in the RSNs' footprint or the programming on these RSNs is not essential to TWC subscribers in the footprint. In any of these scenarios, the transaction does not raise any program access concerns.

[255] In the Adelphia order, the Commission stated "we find it reasonable to define the relevant geographic market for the analysis of harms concerning access to RSNs as any DMA that is home to a sports team." See *In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Memorandum Opinion and Order (*"Adelphia Order"*), 21 FCC Rcd, ¶125 (2006).

[256] Interview with John Ruth (CFO, Comcast SportsNet).

[257] In addition to Comcast, CSN Chicago is owned by four Chicago professional sports teams including the Chicago Bulls, Cubs, White Sox and Blackhawks.

receive CSN Chicago, all of which are in the outer market of its footprint.[258] Thus, the transaction does not raise any new program access concern regarding CSN Chicago.

229. CSN New England is distributed throughout New England. Across CSN New England's footprint, Comcast will acquire less than {{ }}% of the customers that currently receive CSN New England, almost all of which are with TWC systems outside Boston, the home DMA of the major league team carried by the RSN (Celtics).[259] Thus, the transaction does not raise any new program access concern regarding CSN New England.

230. SportsNet New York is distributed in most parts of New York State, and in parts of Connecticut, New Jersey, and Pennsylvania. Comcast will remain a minority owner of SportsNet New York after the transaction so it cannot sacrifice SportsNet New York's interest by denying other MVPDs' access to the RSN. Moreover, both TWC and Comcast are minority owners of the RSN now and both have systems in the footprint of the RSN, so the transaction does not give them an incremental incentive or ability to undertake any anticompetitive program access strategy.

231. We now consider vertical overlap between Comcast cable systems and TWC RSNs that Comcast will own post-transaction. For the TWC RSN that carries major-league professional sports teams in English, such overlap only happens in the fringe area of the footprint of TWC SportsNet (Lakers). In Los Angeles, home to the LA Lakers, Comcast does not have any customers currently, though it will acquire TWC customers in the transaction.[260] Thus, the transaction will not increase the number of customers managed by the combined company in the area where the TWC RSNs likely matter the most to MVPD customers. Thus, relative to TWC today, the combined company will not gain additional incentive or ability to foreclose competing MVPDs post-transaction, and there is not any transaction-specific program access concern.[261]

[258] Interview with John Ruth (CFO, Comcast SportsNet).
[259] Interview with John Ruth (CFO, Comcast SportsNet). According to SNL Kagan, TWC only has approximately [[ ]] subscribers in the Boston DMA, which is less than [[ ]]% of MVPD subscribers in the DMA.
[260] Comcast has some MVPD customers in the Santa Barbara DMA, where TWC SportsNet is carried.
[261] Some public press also suggests that MVPDs operating in the core of these RSNs' footprint may be able to compete and be viable without carrying these RSNs. See Matthew Futterman, "Pay TV Balks at Price of the Dodgers," Wall Street Journal, March 12, 2014, available at < http://online.wsj.com/news/articles/SB10001424052702303546204579435602453033552>. According to the article, Dish decided not to carry the TWC's RSNs carrying the LA Lakers in the Los Angeles area despite the team being "the city's most heralded team" and "has gained about 1,300 subscribers during the period it hasn't carried the Lakers

e) The Transaction Will Not Lead to Any Program Access Concerns for OVDs

232. The analysis above regarding program access for MVPDs applies to OVDs as well – Comcast will not gain either the incentive or ability to undertake a national foreclosure strategy against OVDs as a result of its minimal gains in programming or incremental gains in distribution from the transaction. In addition, although some OVDs are positioning themselves as competitors to MVPDs through OTT linear streaming services, OVDs are not generally considered to be full competitive substitutes for MVPD service today. To the extent a customer already "cut the cord" on MVPD service and relies exclusively on OVD service, it is unlikely that such a customer would switch back to MVPD service based on the absence of specific programming on a single OVD.[262] Indeed, to be effective, a foreclosure strategy would likely have to deny *all* OVDs access to valuable programming because the same content is often made available on a non-exclusive basis to numerous OVDs (i.e., Amazon has many of the same NBCUniversal movies and television shows as iTunes and Netflix, etc.).

233. In any event, if Comcast were to deny an OVD's access to NBCUniversal's national programming and some cord cutters were to switch back to MVPDs with access to such programming, Comcast would likely only gain a limited share of the switchers (since Comcast's nationwide share of MVPD customers will be less than 30%), while bearing 100% of the lost revenues associated with the programming that is withheld – revenues that are increasing as OVDs have increased their purchases of programming.[263] Moreover, reducing the attractiveness of OVDs by denying NBCUniversal content would also adversely affect Comcast's profitable broadband business. In the three years since the NBCUniversal transaction, NBCUniversal has

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network." There are other examples where MVPDs have chosen not to carry RSNs of professional and college sports with apparently minimal adverse effect or concern. For example, "DirecTV has passed on carrying the Pac-12 Network, which features the sports of the dominant college conference in the Western U.S. . . . [and] . . . subscriber losses have been 'de minimus.'" DirecTV, as well as AT&T and other pay-TV providers, also have passed on carrying Comcast SportsNet Houston, which broadcasts games of Houston Rockets and Houston Astros. Similarly, "subscriber outcry and action has been minimal."

[262] Since the analysis would involve marginal customers, the customer on the fringe of deciding to "cut the cord" would be making essentially the same decision.

[263] See Amol Sharma, How Netflix Is Shaking Up Hollywood," Wall St. Journal, July 7, 2013, available at http://online.wsj.com/news/articles/SB10001424127887324251504578581330740965110: "Netflix, along with other digital-video rivals, has become a significant driver of media-industry profit growth. Big media companies generated about $1.6 billion of revenue last year from licensing their content to such services. Though that represents just 1% of their aggregate revenue, it accounts for a large percentage of operating-income growth, according to Bernstein Research."

continued to license its valuable programming to multiple OVDs, including Amazon, Netflix, YouTube, and many others.[264]

3. Market Dynamics between Comcast/NBCUniversal and Video Distributors Will Continue After the Transaction

234. In recent years, Comcast/NBCUniversal has successfully negotiated comprehensive renewal for its programming, including O&Os, RSNs, national programming networks, and associated content rights, with a number of MVPDs such as Verizon, Cablevision, Suddenlink, Mediacom, and NCTC without resort to arbitration. In addition, no MVPD has submitted any program access dispute to commercial arbitration since the completion of the Comcast-NBCUniversal transaction. As noted, it has also successfully licensed or renewed licenses to programming with dozens of OVDs, including Amazon, Netflix, and YouTube.

235. The outcomes of those recent negotiations show that Comcast/NBCUniversal can work with video distributors under current market conditions. Such dynamics will continue as the transaction will not change the competitive conditions in the marketplace. In addition, the Commission's program access rules from the NBCUniversal transaction are in place to mitigate any possible competitive concerns.

VI. No Competitive Concerns in the Sale of Video Advertising

236. Another potential competitive concern in media industry mergers is that the transaction could give an MVPD, broadcaster, or cable network the incentive and ability to exercise market power in the sale of advertising. The proposed transaction raises no competitive concerns in the sale of video advertising, including television advertising.

237. Competition in the advertising industry is robust, and the current advertising services offered by Comcast and TWC compete with many other media.[265] Moreover, the lack of overlap

[264] 2011-2013 Comcast annual reports of compliance with transaction conditions to the FCC, Section II.

[265] While both the Department of Justice and the Commission have concluded that spot cable advertising and local broadcast advertising are not sufficiently close substitutes to be in the same product market, in the event they were in the same market, it would also encompass online, radio, print, outdoor and other forms of advertising. See Complaint, United States Department of Justice Antitrust Division v. Gannett Co., Inc, Belo Corp., and Sander Media LLC, December 16, 2013. See also Complaint, U.S. v. Raycom Media, Inc., August 28, 2008. See also FCC Memorandum Opinion and Order in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, January 20, 2011

between Comcast and TWC systems and the limited programming assets owned by TWC mean that the transaction will not reduce the advertising options available to national, regional, or local advertisers. As described above in Section IV.D, the transaction will yield benefits for advertisers by speeding up the deployment and measurement of advanced advertising services in a combined footprint with greater scale, geographic reach, and content rights.

A. Sale of National Video Advertising

238. Since the proposed transaction does not change the ownership of any national broadcast and cable networks that compete for advertising expenditures today, buyers of network advertising will continue to be able to choose from all of the competing suppliers that they have today. Even considering only national cable and broadcast television networks and excluding all other media, Comcast's share of net advertising revenue was [[ ]]% in 2013.[266] Because Comcast will not acquire any national network programming assets from TWC, the transaction will have no impact on Comcast's share of network advertising revenue.

239. Moreover, television advertising competes with other forms of video advertising like online video advertising, a rapidly growing segment of digital/online advertising. TWC notes that it faces "intense competition" for advertising revenue from a range of different media and advertising platforms.[267]

B. Sale of Local or Regional Video Advertising

240. The combination of Comcast and TWC's cable systems will not reduce competition in the sale of local or regional advertising because the companies operate in distinct footprints. Even in the handful of DMAs in which both have a non-negligible presence, Comcast and TWC operate in different geographic areas and do not serve or compete for the same households. Because they do not represent competing choices for an advertiser seeking to reach a given cable household, combining their complementary systems will not reduce the array of choices by which an advertiser can reach a given household today.

[266] SNL Kagan, "Television Network Ranking by Metric"; SNL Kagan, "Cable Network Ownership as of Dec-2013".
[267] TWC Form 10-K Filed February 18, 2014.

241. Nor will the combination of TWC's regional or local programming assets with Comcast's cable systems or regional programming assets reduce competition in the sale of advertising.[268] First, TWC's affiliated RSNs are generally located in areas in which Comcast does not have a cable system or RSN presence, other than TWC SportsNet New York. Comcast does not have a meaningful customer base in the home markets for TWC RSNs, and TWC does not have a meaningful customer base in the home markets for Comcast RSNs. Second, these TWC RSNs compete with a wide variety of other programming networks and other media for advertising dollars. Finally, even in a narrow calculation that includes only local television advertising and excludes all other media, both TWC's Los Angeles RSNs and SportsNet New York comprised only about [[ ]]% of total local television advertising revenue in their home DMAs in 2013.[269] Therefore, the acquisition of TWC RSNs will result in only a small increase in Comcast's share of local advertising sales, and will not provide Comcast with market power.

242. Finally, the combination of TWC cable systems or RSNs with NBC or Telemundo O&Os does not raise competitive concerns about local advertising, for several reasons. First, the scope of any potential overlap is limited. There are a total of four DMAs with a TWC-affiliated RSN and/or non-negligible number of TWC customers and an NBC O&O: New York, Los Angeles, Dallas, and San Diego. Telemundo O&O stations are present in three DMAs with a Spanish language TWC RSN: Los Angeles, Dallas, and San Antonio.[270]

243. Second, TWC's cable systems have a limited advertising inventory in comparison with the broadcast stations in these markets. The multiple MVPD systems within a given DMA control in aggregate a small fraction (approximately 15%) of the total inventory of television advertising impressions available for local advertising.

244. Third, the potential advertising competition issues raised by the combination of cable systems and/or RSNs with an NBC or Telemundo O&O broadcast station are essentially

[268] The principal programming assets for which TWC sells advertising comprise a handful of RSNs that carry major league sports teams in Los Angeles (TWC SportsNet, TWC Deportes, SportsNet LA, and Channel 858), New York (SportsNet New York), and Texas (Canal de Tejas).

[269] SNL Kagan (SNLKagan_TelevisionNetworkRankingbyMetric_v1.xls); BIA Kelsey Media Ad View Plus. Because the RSN advertising revenues are derived from advertising spanning multiple DMAs, these shares overstate the significance of these RSNs in Los Angeles and New York.

[270] New York has both a TWC cable system with a non-negligible presence and a Telemundo O&O stations, but TWC Media sells a minimal amount of Spanish language cable advertising.

identical to those that the Commission and DOJ considered in the NBCUniversal transaction where they did not see any likely effect on competition.[271] In fact, the advertising markets at issue in the NBCUniversal transaction have been operating with a combined NBC O&O and Comcast cable system and RSN for several years now, and we are not aware of any competitive concerns being raised by advertisers.

245. Fourth, given the differences between the spot advertising sold by broadcast stations and cable companies that limit substitution between the two for some advertisers, it would not be appropriate to measure the impact of this transaction in a spot television advertising market that includes broadcast and cable and excludes all other media. In particular, cable companies place a much greater emphasis on precise targeting within a DMA and selling local-zoned advertising, whereas broadcast advertising, by its very nature, has broad reach and blankets an entire DMA. These services tend to appeal to different types of advertisers.[272] And RSN programming has a different focus and audience than NBC and Telemundo O&Os. The transaction does not reduce the set of other local broadcast affiliates with which the NBC and Telemundo O&Os compete most closely. The NBC O&O stations face competition from at least 6 other local broadcasters in each of these four DMAs, and their share of local broadcast advertising revenue varies from [[ ]]% to [[ ]]%.[273]

[271] In the NBCUniversal transaction, the potential competitive concern involved the combination of an NBC O&O station with a Comcast cable system or RSN in a given DMA, whereas here, the potential concern involves the combination of a Comcast-owned NBC O&O station with a TWC cable system or RSN. See FCC Memorandum Opinion and Order in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, January 20, 2011: "We find that the proposed transaction is unlikely to harm competition in advertising. Broadcast and cable programming advertising are not sufficiently close substitutes to advertisers to warrant defining a product market that would include both....Our view is consistent with the DOJ's conclusion that cable and broadcast advertising are in separate product markets because there are many advertisers for which there is no substitute for broadcast television."

[272] Complaint, United States Department of Justice Antitrust Division v. Gannett Co., Inc., Belo Corp., and Sander Media LLC, December 16, 2013: "Like broadcast television, cable television and satellite television channels combine elements of sight, sound, and motion, but they are not a desirable substitute for broadcast television spot advertising for two important reasons. First, satellite, cable, and other landline content delivery systems do not have the "reach" of broadcast television. Typically, broadcast television can reach well-over 90% of homes in a DMA, while cable television often reaches much less, e.g., 50% or fewer of the homes in the St. Louis DMA....Second, because cable and satellite television may offer more than 100 channels, they fragment the audience into small demographic segments....Media buyers often buy cable television and satellite television not so much as a substitute for broadcast television, but rather to supplement a broadcast television message, to reach a narrow demographic with greater frequency (e.g., 18–24 year olds) or to target narrow geographic areas within a DMA."

[273] SNLKagan Broadcast Station Database. The Telemundo O&O stations face at least four other Spanish language broadcast stations in each of these three DMAs, and their share of local Spanish language broadcast advertising revenue varies from [[ ]]% to [[ ]]%.

246. Moreover, an analysis of local advertising competition that included broadcast and cable and excluded all other media would be artificially narrow and exaggerate the competitive impact of the proposed merger on local advertising by failing to consider the intense competition that local broadcast affiliates and cable systems face from other local advertising media in general and from online advertising in particular. Strong, technologically advanced competitors such as Google and Facebook offer targeted digital advertising that serves as a cost-effective alternative to local television advertising.

I, Gregory L. Rosston, declare under penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on April 4, 2014.

Gregory L. Rosston

I, Michael D. Topper, declare under penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on April 4, 2014.

Michael D. Topper