

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of Comcast Corp.,)	
Time Warner Cable Inc., Charter)	MB Docket No. 14-57
Communications, Inc., and SpinCo)	
)	
For Consent to Assign or Transfer)	
Control of Licenses and Authorizations)	
)	

MOTION FOR EXTENSION OF TIME TO FILE REPLIES

Pursuant to Section 1.46(b) of the Commission’s Rules,¹ DISH Network Corporation (“DISH”) respectfully requests that the Commission grant an extension of time to file replies in the above-captioned proceeding.² The reply deadline should be extended to 30 days after the date on which the Commission indicates that the Applicants have fully responded to the Commission’s Request for Information and Data.³ This extension is necessary because the Applicants’ responses, which have reached the parties in installments, have been materially late and are still materially incomplete. The late information, as well as the information that has not

¹ See 47 C.F.R. § 1.46(b).

² See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, Applications and Public Interest Statement, MB Docket No. 14-57 (filed Apr. 8, 2014). The current deadline for replies to responses and oppositions is October 8, 2014. Public Notice, “Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licensees and Other Authorizations,” MB Docket No. 14-57, DA 14-986 (rel. July 10, 2014).

³ See Letter from William T. Lake, Chief, Media Bureau, Federal Communications Commission, to Kathryn A. Zachem, Senior Vice President, Comcast Corp., MB Docket No. 14-57 (Aug. 21, 2014) (“*Commission Information and Data Request*”); Letter from William T. Lake, Chief, Media Bureau, Federal Communications Commission, to Steven Teplitz, Senior Vice President, Time Warner Cable Inc., MB Docket No. 14-57 (Aug. 21, 2014); Letter from William T. Lake, Chief, Media Bureau, Federal Communications Commission, to Catherine Bohigian, Executive Vice President, Charter Communications, Inc., MB Docket No. 14-57 (Aug. 21, 2014).

yet been provided, is essential to the submission of well-considered replies by Petitioners, including DISH.

The Request for Information and Data, issued to Comcast on August 21, 2014, contained 93 questions and directed Comcast to respond by September 11, 2014. But what Comcast submitted on September 11 was largely a placeholder response. The answer to 56 of the questions in whole or in part was this: “[d]ocuments responsive to this request will be produced to the FCC.”⁴ This lack of documentation extends to a number of critical areas, including:

- programming and consumer premises equipment-interoperability contract terms;⁵
- analysis of critical departure rates for foreclosure strategies, the magnitude of vertical price increases associated with the transaction, and all other vertical foreclosure or competitive effects analysis conducted with regard to the transactions;⁶
- the possibility of new entrants for the provision of relevant services or substitutes for such services;⁷
- Comcast’s incentive to harm edge providers;⁸
- documentation relied upon by the Applicants’ declarants;⁹

⁴ Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 14-57 (Sept. 11, 2014) (“*Comcast Submission*”). Similarly, 32 out of TWC’s initial responses to the Commission’s 75 questions indicated that responsive information would be produced “shortly.” Letter from Matthew A. Brill, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 14-57 (Sept. 11, 2014). TWC has since filed two supplements providing some, but not all, of the required information. *See* Letter from Matthew A. Brill, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 14-57 (Sept. 18, 2014) (first supplement); Letter from Matthew A. Brill, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 14-57 (Sept. 19, 2014) (second supplement) (“TWC is still preparing its responses to the following specifications and will provide a supplementary response as soon as possible: 21(c), 48, and 71.”).

⁵ *See Comcast Submission* at 66, 89, 126.

⁶ *Id.* at 70-71, 238.

⁷ *Id.* at 31.

⁸ *Id.* at 204.

⁹ *Id.* at 237.

- advertising strategies for standalone and bundled services;¹⁰
- Comcast’s content delivery network and the terms of the offering of content delivery network services to third parties;¹¹
- the new products and services that Comcast claims it will be able to offer as a result of this transaction;¹²
- Comcast’s Internet Essentials program;¹³
- the use of, and plans for, data caps;¹⁴
- network management policies and practices;¹⁵
- specific instances in which Comcast has used traffic engineering;¹⁶
- Comcast’s processing of trouble reports regarding its Internet access services;¹⁷
- the effects of congestion on Comcast’s Internet access service;¹⁸
- Comcast’s interconnection policies and practices, including information related to the Netflix-congestion incident, congestion management practices, and Comcast’s settlement-free peering policies;¹⁹
- the effects of geographic rationalization or clustering;²⁰
- competition in the provision of each relevant service;²¹
- pricing forecasts and strategies;²²
- analysis of the profitability of bundles and their impact on customer retention;²³

¹⁰ *Id.* at 59.

¹¹ *Id.* at 180-81.

¹² *Id.* at 227, 232.

¹³ *Id.* at 138-39.

¹⁴ *Id.* at 156.

¹⁵ *Id.* at 165.

¹⁶ *Id.* at 169-70.

¹⁷ *Id.* at 172-73.

¹⁸ *Id.* at 174.

¹⁹ *Id.* at 175, 179, 182-83, 192.

²⁰ *Id.* at 25.

²¹ *Id.* at 28.

²² *Id.* at 29.

²³ *Id.* at 59.

- Comcast's compliance with the conditions and commitments in the *Comcast-NBCU* proceeding,²⁴ and
- pre-transaction and post-transaction strategic planning, including plans to roll out DOCSIS 3.1, a converged cable access platform, converged regional area networks, IP Cable, WiFi, mobile wireless services, and online video distribution service outside of the company's footprint.²⁵

Making a statement by the deadline that responsive documents will be submitted in the future cannot reasonably be considered a complete answer. In other cases, Comcast's narrative response appears to be defective, without even an assurance that the defect will be cured in the future. For instance, in response to the Commission's inquiry regarding Comcast's authentication of HBO Go on consumer-owned devices, Comcast provides a high level summary, but fails to provide any specifics with regard to Comcast's refusal to authenticate the app on Roku devices or the Sony PlayStation 3 system.

In addition to being materially incomplete, even the September 11 placeholder submission was not timely except in the most technical sense. While it was nominally filed by the Commission's deadline, no version of it (neither public nor confidential) became available to other parties on that date. The first version that did become available was the highly confidential version that reached eligible parties' outside counsel on September 15. While the *Joint Protective Order* gives Comcast two business days from the due date of the submission to send to requesting parties a highly confidential version, this two-business-day reprieve seems to be premised on the idea that at least a redacted, public version will be available on the due date. This is not the case here, where a public version was not available on September 11.²⁶ The

²⁴ *Id.* at 148-50, 155.

²⁵ *Id.* at 46.

²⁶ The public version of Comcast's submission did not appear on ECFS until September 22, 2014—eleven days after the filing was due; TWC's submission appeared on ECFS on September 19, 2014—eight days after the filing was due.

intervening weekend, coupled with the total absence of any version of the submission on September 11, meant that the Petitioners' counsel lost four days.

Installments have been coming in since, but at least one of them has itself been inadequate. Comcast filed a supplement on September 15, which became available to counsel in its highly confidential, unredacted form on September 16; it was confined to a list of interconnection and programming agreements to be disclosed in the future. Comcast next filed additional material on September 17, which was made available to the Petitioners on September 18, and which appears to provide only one small portion of the documents requested. Finally, on September 18 and 19, Comcast filed two additional supplements, which offered "backup data" associated with questions regarding Comcast's analysis of critical departure rates for foreclosure strategies and the magnitude of vertical price increases associated with the transaction, as well as new and corrected information responsive to two additional questions. The redacted and highly confidential versions of these supplements became available only today.

The Commission has previously recognized the importance of allowing commenters sufficient time to review information in the record, and has granted extensions of time in similar circumstances to those presented here. Specifically, the Commission has granted extensions of time when, as here, the applicants did not timely file responses,²⁷ commenters' access to confidential information was delayed,²⁸ and when the applicants' submissions were

²⁷ See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Order*, CC Docket No. 96-128, 22 FCC Rcd. 2547, 2548 ¶¶ 3 (2007) (granting an extension of time because, considering the Applicants' delay in filing initial comments and other filing irregularities, "providing additional time to file reply comments [would] facilitate the development of a more accurate and complete record in this proceeding").

²⁸ See Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, *Order*, WT Docket No. 12-4, 27 FCC Rcd. 2368, 2369 ¶¶ 3-4 (2012) (granting an extension of time because several commenters "had not been able to fully

voluminous.²⁹ Additionally, the Commission has demonstrated its strong preference for developing an accurate and complete record in its proceedings by granting extensions of time to enable commenters to review information submitted by transaction applicants, particularly when submissions include new facts and confidential materials.³⁰

DISH believes that an extension of 30 days from the date on which Comcast will have fully responded to the Commission's information requests to the Commission's satisfaction would provide sufficient time to more fully develop the record. The requested 30 days are approximately commensurate to the 27-day time period that the Commission afforded between the Commission's deadline for the Applicants to respond to its information requests, September 11, 2014, and the deadline for replies, October 8, 2014. An extension of time at this stage is unlikely to delay significantly the overall proceeding, and should therefore not prejudice the

review the Applicants' Opposition due to delays associated with obtaining access to the confidential version of the Opposition.").

²⁹ See, e.g., Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, *Order*, MB Docket No. 10-56, 25 FCC Rcd. 10201, 10202 ¶ 5 (2010) (granting an extension of time because it would "enable interested parties to fully review the filings and submit their views in their replies," given the voluminous material submitted by the Applicants); Letter from W. Kenneth Ferree, Chief, Media Bureau, Federal Communications Commission, to Pantelis Michalopoulos, Counsel for EchoStar Communications Corporation, and Gary M. Epstein, Counsel for General Motors Corporation and Hughes Electronics Corporation, CS Docket No. 01-348 (July 23, 2002) (restarting the merger clock review due to, *inter alia*, the "substantial amount of information submitted in response to the [Commission's] Initial Information and Document Request.").

³⁰ See Consolidated Application for Consent to Transfer Control of Stratos Global Corporation's FCC-Authorized Subsidiaries and Petition for Declaratory Ruling, *Order*, WC Docket No. 07-73, 22 FCC Rcd. 13072, 13073 ¶¶ 4-5 (2007) (granting an extension of time for commenters to "review and respond to the [confidential] material" filed by Applicants after their Oppositions); Application of Media General Broadcasting of South Carolina Holdings, Inc. for Renewal of License for Station WMBB(TV), Panama City, FL, *Order*, 20 FCC Rcd. 5176, 5176 ¶¶ 2-3 (2005) (granting an extension of time because the Applicant's Opposition was received late by the commenters and "contain[ed] a substantial number of new facts that must be reviewed," and an extension "[would] allow for the submission of a more thorough response to the matters raised.").

Applicants. For these reasons, DISH respectfully requests that the due date for replies be extended to 30 days after the date on which the Commission indicates that the Applicants have fully responded to the information requests.

Respectfully submitted,

/s/
Jeffrey H. Blum
Senior Vice President & Deputy
General Counsel
DISH Network Corporation

September 22, 2014

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2014, I caused a copy of the foregoing Motion for Extension of Time to File Replies of DISH Network Corporation to be filed electronically with the Commission using the ECFS system and caused a copy of the foregoing to be served upon the following individuals by electronic mail:

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Sincerely,



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