W. P. Carey Inc.
Form 10-Q
May 05, 2016

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

þ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2016
or

o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from__________ to __________

Commission File Number: 001-13779

W. P. CAREY INC.
(Exact name of registrant as specified in its charter)

Maryland	45-4549771
(State of incorporation)	(I.R.S. Employer Identification No.)

50 Rockefeller Plaza	
New York, New York	10020
(Address of principal executive offices)	(Zip Code)

Investor Relations (212) 492-8920
(212) 492-1100
(Registrant's telephone numbers, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes þ No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.
Large accelerated filer þ Accelerated filer o Non-accelerated filer o

Smaller reporting company o

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No þ

Registrant has 104,871,813 shares of common stock, $0.001 par value, outstanding at April 29, 2016.

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Forward-Looking Statements

This Quarterly Report on Form 10-Q, or this Report, including Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 2 of Part I of this Report, contains forward-looking statements within the meaning of the federal securities laws. These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "plan," "may," "should," "will," "would," "will b "will likely result," and similar expressions. These forward-looking statements include, but are not limited to, statements regarding our formal strategic review; capital markets; tenant credit quality; general economic overview; our expected range of Adjusted funds from operations, or AFFO; our corporate strategy; our capital structure; our portfolio lease terms; our international exposure and acquisition volume; our expectations about tenant bankruptcies and interest coverage; statements regarding estimated or future economic performance and results, including our underlying assumptions, occupancy rate, credit ratings, and possible new acquisitions by us and our investment management programs; the Managed Programs discussed herein, including their earnings; statements that we make regarding our ability to remain qualified for taxation as a real estate investment trust, or REIT; the amount and timing of any future dividends; our existing or future leverage and debt service obligations; our ability to sell shares under our "at the market" program; our future prospects for growth; our projected assets under management; our future capital expenditure levels; our historical and anticipated funds from operations; our future financing transactions; our estimates of growth; and our plans to fund our future liquidity needs. These statements are based on the current expectations of our management. It is important to note that our actual results could be materially different from those projected in such forward-looking statements. There are a number of risks and uncertainties that could cause actual results to differ materially from these forward-looking statements. Other unknown or unpredictable factors could also have material adverse effects on our business, financial condition, liquidity, results of operations, AFFO, and prospects. You should exercise caution in relying on forward-looking statements as they involve known and unknown risks, uncertainties, and other factors that may materially affect our future results, performance, achievements or transactions. Information on factors that could impact actual results and cause them to differ from what is anticipated in the forward-looking statements contained herein is included in this Report as well as in our other filings with the Securities and Exchange Commission, or the SEC, including but not limited to those described in Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2015, as filed with the SEC on February

26, 2016, or the 2015 Annual Report. Moreover, because we operate in a very competitive and rapidly-changing environment, new risks are likely to emerge from time to time. Given these risks and uncertainties, potential investors are cautioned not to place undue reliance on these forward-looking statements as a prediction of future results, which speak only as of the date of this Report, unless noted otherwise. Except as required by federal securities laws and the rules and regulations of the SEC, we do not undertake to revise or update any forward-looking statements.

All references to “Notes” throughout the document refer to the footnotes to the consolidated financial statements of the registrant in Part I, Item 1. Financial Statements (Unaudited).

PART I — FINANCIAL INFORMATION
Item 1. Financial Statements.

W. P. CAREY INC.
CONSOLIDATED BALANCE SHEETS (UNAUDITED)
(in thousands, except share and per share amounts)

	March 31, 2016	December 31, 2015
Assets		
Investments in real estate:		
Real estate, at cost (inclusive of $883,703 and $923,253, respectively, attributable to variable interest entities, or VIEs)	$5,350,924	$5,309,925
Operating real estate, at cost (inclusive of $43,135 and $42,472, respectively, attributable to VIEs)	80,224	82,749
Accumulated depreciation (inclusive of $81,918 and $75,271, respectively, attributable to VIEs)	(414,623)	(381,529)
Net investments in properties	5,016,525	5,011,145
Net investments in direct financing leases (inclusive of $62,387 and $61,454, respectively, attributable to VIEs)	753,746	756,353
Assets held for sale	3,747	59,046
Net investments in real estate	5,774,018	5,826,544
Equity investments in the Managed Programs and real estate	281,546	275,473
Cash and cash equivalents (inclusive of $12,016 and $12,382, respectively, attributable to VIEs)	267,064	157,227
Due from affiliates	61,548	62,218
In-place lease and tenant relationship intangible assets, net (inclusive of $214,233 and $214,924, respectively, attributable to VIEs)	856,496	902,848
Goodwill	680,043	681,809
Above-market rent intangible assets, net (inclusive of $80,314 and $80,901, respectively, attributable to VIEs)	460,422	475,072
Other assets, net (inclusive of $36,613 and $37,161, respectively, attributable to VIEs)	322,114	360,898
Total assets	$8,703,251	$8,742,089
Liabilities and Equity		
Liabilities:		
Non-recourse debt, net (inclusive of $449,187 and $439,285, respectively, attributable to VIEs)	$2,247,993	$2,269,421
Senior Unsecured Notes, net	1,501,281	1,476,084
Senior Unsecured Credit Facility - Revolver	564,600	485,021
Senior Unsecured Credit Facility - Term Loan, net	249,790	249,683
Accounts payable, accrued expenses and other liabilities (inclusive of $92,403 and $97,441, respectively, attributable to VIEs)	281,844	342,374
Below-market rent and other intangible liabilities, net (inclusive of $45,572 and $45,850, respectively, attributable to VIEs)	132,363	154,315
Deferred income taxes (inclusive of $6,872 and $8,020, respectively, attributable to VIEs)	88,935	86,104
Distributions payable	103,990	102,715
Total liabilities	5,170,796	5,165,717
Redeemable noncontrolling interest	965	14,944
Commitments and contingencies (Note 12)		
Equity:		

W. P. Carey stockholders’ equity:		
Preferred stock, $0.001 par value, 50,000,000 shares authorized; none issued	—	—
Common stock, $0.001 par value, 450,000,000 shares authorized; 104,866,351 and 104,448,777 shares, respectively, issued and outstanding	105	104
Additional paid-in capital	4,295,469	4,282,042
Distributions in excess of accumulated earnings	(786,217)	(738,652)
Deferred compensation obligation	60,550	56,040
Accumulated other comprehensive loss	(171,903)	(172,291)
Total W. P. Carey stockholders’ equity	3,398,004	3,427,243
Noncontrolling interests	133,486	134,185
Total equity	3,531,490	3,561,428
Total liabilities and equity	$8,703,251	$8,742,089

See Notes to Consolidated Financial Statements.

W. P. CAREY INC.
CONSOLIDATED STATEMENTS OF INCOME (UNAUDITED)
(in thousands, except share and per share amounts)

	Three Months Ended March 31, 2016	2015
Revenues		
Owned Real Estate:		
Lease revenues	$175,244	$ 160,165
Lease termination income and other	32,541	3,209
Operating property revenues	6,902	7,112
Reimbursable tenant costs	6,309	5,939
	220,996	176,425
Investment Management:		
Reimbursable costs	19,738	9,607
Asset management revenue	14,613	11,159
Structuring revenue	12,721	21,720
Dealer manager fees	2,172	1,274
Other advisory revenue	—	203
	49,244	43,963
	270,240	220,388
Operating Expenses		
Depreciation and amortization	84,452	65,400
Reimbursable tenant and affiliate costs	26,047	15,546
General and administrative	21,438	29,768
Property expenses, excluding reimbursable tenant costs	17,772	9,364
Restructuring and other compensation	11,473	—
Stock-based compensation expense	6,607	7,009
Property acquisition and other expenses	5,566	5,676
Dealer manager fees and expenses	3,352	2,372
Subadvisor fees	3,293	2,661
Impairment charges	—	2,683
	180,000	140,479
Other Income and Expenses		
Interest expense	(48,395)	(47,949)
Equity in earnings of equity method investments in the Managed Programs and real estate	15,011	11,723
Other income and (expenses)	3,871	(4,306)
	(29,513)	(40,532)
Income before income taxes and gain on sale of real estate	60,727	39,377
Provision for income taxes	(525)	(1,980)
Income before gain on sale of real estate	60,202	37,397
Gain on sale of real estate, net of tax	662	1,185
Net Income	60,864	38,582
Net income attributable to noncontrolling interests	(3,425)	(2,466)
Net Income Attributable to W. P. Carey	$57,439	$ 36,116
Basic Earnings Per Share	$0.54	$ 0.34
Diluted Earnings Per Share	$0.54	$ 0.34
Weighted-Average Shares Outstanding		

Basic	105,939,161	105,303,679
Diluted	106,405,453	106,109,877
Distributions Declared Per Share	$ 0.9742	$ 0.9525

See Notes to Consolidated Financial Statements.

W. P. CAREY INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS) (UNAUDITED)
(in thousands)

	Three Months Ended March 31,	
	2016	2015
Net Income	$60,864	$38,582
Other Comprehensive Income (Loss)		
Foreign currency translation adjustments	14,033	(114,080)
Realized and unrealized (loss) gain on derivative instruments	(11,775)	26,818
Change in unrealized gain on marketable securities	—	14
	2,258	(87,248)
Comprehensive Income (Loss)	63,122	(48,666)
Amounts Attributable to Noncontrolling Interests		
Net income	(3,425)	(2,466)
Foreign currency translation adjustments	(1,870)	5,143
Comprehensive (income) loss attributable to noncontrolling interests	(5,295)	2,677
Comprehensive Income (Loss) Attributable to W. P. Carey	$57,827	$(45,989)

See Notes to Consolidated Financial Statements.

W. P. CAREY INC.
CONSOLIDATED STATEMENTS OF EQUITY (UNAUDITED)
Three Months Ended March 31, 2016 and 2015
(in thousands, except share and per share amounts)

	W. P. Carey Stockholders								
	Common Stock $0.001 Par Value Shares	Amount	Additional Paid-in Capital	Distributions in Excess of Accumulated Earnings	Deferred Compensation Obligation	Accumulated Other Comprehensive Loss	Total W. P. Carey Stockholders	Noncontrolling Interests	Total
Balance at January 1, 2016	104,448,777	$104	$4,282,042	$(738,652)	$56,040	$(172,291)	$3,427,243	$134,185	$3,561,428
Shares issued to a third party in connection with the redemption of a redeemable noncontrolling interest	217,011	1	13,418				13,419		13,419
Contributions from noncontrolling interests							—	90	90
Exercise of stock options and employee purchases under the employee share purchase plan	180	—	6				6		6
Grants issued in connection with services rendered	190,083	—	(6,662)				(6,662)		(6,662)
Shares issued under share incentive plans	10,300	—	(690)				(690)		(690)
Deferral of vested shares			(4,262)		4,262		—		—
Amortization of stock-based compensation expense			9,814				9,814		9,814
Redemption value adjustment			561				561		561
Distributions to noncontrolling interests							—	(6,084)	(6,084)

Distributions declared ($0.9742 per share)			1,242	(105,004)	248		(103,514)		(103,514)
Net income				57,439			57,439	3,425	60,864
Other comprehensive income (loss):									
Foreign currency translation adjustments						12,163	12,163	1,870	14,033
Realized and unrealized loss on derivative instruments						(11,775)	(11,775)		(11,775)
Balance at March 31, 2016	104,866,351	$105	$4,295,469	$(786,217)	$60,550	$(171,903)	$3,398,004	$133,486	$3,531,490

W. P. CAREY INC.
CONSOLIDATED STATEMENTS OF EQUITY (UNAUDITED)
(Continued)
Three Months Ended March 31, 2016 and 2015
(in thousands, except share and per share amounts)

	W. P. Carey Stockholders								
	Common Stock $0.001 Par Value Shares	Amount	Additional Paid-in Capital	Distributions in Excess of Accumulated Earnings	Deferred Compensation Obligation	Accumulated Other Comprehensive Loss	Total W. P. Carey Stockholders	Noncontrolling Interests	Total
Balance at January 1, 2015	104,040,653	$104	$4,293,450	$(497,730)	$30,624	$(75,559)	$3,750,889	$139,846	$3,890,735
Contributions from noncontrolling interests							—	208	208
Exercise of stock options and employee purchases under the employee share purchase plan	3	—	—				—		—
Grants issued in connection with services rendered	279,621	—	(14,533)				(14,533)		(14,533)
Shares issued under share incentive plans	17,146	—	(717)				(717)		(717)
Deferral of vested shares			(24,288)		24,288		—		—
Windfall tax benefits - share incentive plans			5,276				5,276		5,276
Amortization of stock-based compensation expense			7,009				7,009		7,009
Redemption value adjustment			(7,303)				(7,303)		(7,303)
Distributions to noncontrolling interests							—	(2,354)	(2,354)
Distributions declared ($0.9525 per			5,064	(108,035)	1,837		(101,134)		(101,134)

share)									
Net income				36,116			36,116	2,466	38,582
Other comprehensive (loss) income:									
Foreign currency translation adjustments						(108,937)	(108,937)	(5,143)	(114,080)
Realized and unrealized gain on derivative instruments						26,818	26,818		26,818
Change in unrealized gain on marketable securities						14	14		14
Balance at March 31, 2015	104,337,423	$104	$4,263,958	$(569,649)	$56,749	$(157,664)	$3,593,498	$135,023	$3,728,521

See Notes to Consolidated Financial Statements.

W. P. CAREY INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(in thousands)

	Three Months Ended March 31,	
	2016	2015
Cash Flows — Operating Activities		
Net income	$60,864	$38,582
Adjustments to net income:		
Depreciation and amortization, including intangible assets and deferred financing costs	84,956	66,994
Straight-line rent, amortization of rent-related intangibles, and deferred rental revenue	(36,309)	10,364
Stock-based compensation expense	9,814	7,009
Allowance for credit losses	7,064	—
Management income received in shares of Managed REITs and other	(6,939)	(4,988)
Realized and unrealized (gain) loss on foreign currency transactions, derivatives, extinguishment of debt, and other	(3,914)	7,615
Deferred income taxes	(3,027)	(1,733)
Gain on sale of real estate	(662)	(1,185)
Equity in earnings of equity method investments in the Managed Programs and real estate in excess of distributions received	464	331
Impairment charges	—	2,683
Changes in assets and liabilities:		
Deferred acquisition revenue received	7,560	8,738
Payments for withholding taxes upon delivery of equity-based awards and exercises of stock options	(7,352)	(15,250)
Increase in structuring revenue receivable	(2,266)	(6,645)
Net changes in other operating assets and liabilities	2,819	(31,586)
Net Cash Provided by Operating Activities	113,072	80,929
Cash Flows — Investing Activities		
Proceeds from sale of real estate	103,689	13,119
Funding of short-term loans to affiliates	(20,000)	—
Proceeds from repayment of short-term loans to affiliates	20,000	—
Capital expenditures on owned real estate	(4,092)	(308)
Change in investing restricted cash	(3,074)	6,852
Investment in real estate under construction	(2,562)	(10,481)
Distributions received from equity investments in the Managed Programs and real estate in excess of equity income	1,935	1,473
Other investing activities, net	(1,130)	489
Capital expenditures on corporate assets	(761)	(882)
Proceeds from repayments of note receivable	195	9,970
Capital contributions to equity investments in real estate	(5)	—
Purchases of real estate	—	(385,603)
Net Cash Provided by (Used in) Investing Activities	94,195	(365,371)
Cash Flows — Financing Activities		
Proceeds from Senior Unsecured Credit Facility	190,568	291,206
Repayments of Senior Unsecured Credit Facility	(130,000)	(877,685)
Distributions paid	(102,239)	(99,860)
Prepayments of mortgage principal	(36,894)	—
Scheduled payments of mortgage principal	(17,941)	(18,247)

Distributions paid to noncontrolling interests	(6,084)	(2,354)
Change in financing restricted cash	633	175
Payment of financing costs	(250)	(10,501)
Contributions from noncontrolling interests	90	208
Proceeds from exercise of stock options and employee purchases under the employee share purchase plan	6	—
Proceeds from issuance of Senior Unsecured Notes	—	1,022,303
Proceeds from mortgage financing	—	8,277
Windfall tax benefit associated with stock-based compensation awards	—	5,276
Net Cash (Used in) Provided by Financing Activities	(102,111)	318,798
Change in Cash and Cash Equivalents During the Period		
Effect of exchange rate changes on cash	4,681	(25,648)
Net increase in cash and cash equivalents	109,837	8,708
Cash and cash equivalents, beginning of period	157,227	198,683
Cash and cash equivalents, end of period	$267,064	$207,391

See Notes to Consolidated Financial Statements.

W. P. CAREY INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

Note 1. Business and Organization

W. P. Carey Inc., or W. P. Carey, is, together with its consolidated subsidiaries and predecessors, a REIT that provides long-term financing via sale-leaseback and build-to-suit transactions for companies worldwide and manages a global investment portfolio. We invest primarily in commercial properties domestically and internationally. We earn revenue principally by leasing the properties we own to single corporate tenants, primarily on a triple-net lease basis, which generally requires each tenant to pay substantially all of the costs associated with operating and maintaining the property.

Originally founded in 1973, we reorganized as a REIT in September 2012 in connection with our merger with Corporate Property Associates 15 Incorporated. We refer to that merger as the CPA®:15 Merger. On January 31, 2014, Corporate Property Associates 16 – Global Incorporated, or CPA®:16 – Global, merged with and into us, which we refer to as the CPA®:16 Merger. Our shares of common stock are listed on the New York Stock Exchange under the symbol "WPC."

We have elected to be taxed as a REIT under Section 856 through 860 of the Internal Revenue Code. As a REIT, we are not generally subject to United States federal income taxation other than from our taxable REIT subsidiaries, or TRSs, as long as we satisfy certain requirements, principally relating to the nature of our income and the level of our distributions, as well as other factors. We hold all of our real estate assets attributable to our Owned Real Estate segment under the REIT structure, while the activities conducted by our Investment Management segment subsidiaries have been organized under TRSs.

Through our TRSs, we also earn revenue as the advisor to publicly-owned, non-listed REITs, which are sponsored by us under the Corporate Property Associates, or CPA®, brand name and invest in similar properties. At March 31, 2016, we were the advisor to Corporate Property Associates 17 – Global Incorporated, or CPA®:17 – Global, and Corporate Property Associates 18 – Global Incorporated, or CPA®:18 – Global. We refer to CPA®:17 – Global and CPA®:18 – Global together as the CPA® REITs. We were also the advisor to CPA®:16 – Global until its merger with us on January 31, 2014. At March 31, 2016, we were also the advisor to Carey Watermark Investors Incorporated, referred to as CWI 1, and Carey Watermark Investors 2 Incorporated, or CWI 2, two publicly-owned, non-listed REITs that invest in lodging and lodging-related properties. We refer to CWI 1 and CWI 2 together as the CWI REITs and, together with the CPA® REITs, as the Managed REITs (Note 4). At March 31, 2016, we also served as the advisor to Carey Credit Income Fund, or CCIF, a business development company, or BDC (Note 7). We refer to CCIF and the two feeder funds of CCIF, or the CCIF Feeder Funds, collectively as the Managed BDCs and, together with the Managed REITs, as the Managed Programs.

Reportable Segments

Owned Real Estate — We own and invest in commercial properties principally in the United States, Europe, and Asia that are then leased to companies, primarily on a triple-net lease basis. We have also invested in several operating properties, such as lodging and self-storage properties. We earn lease revenues from our wholly-owned and co-owned real estate investments that we control. In addition, we generate equity income through co-owned real estate investments that we do not control and through our ownership of shares of the Managed Programs (Note 7). Through our special member interests in the operating partnerships of the Managed REITs, we also participate in their cash flows (Note 4). At March 31, 2016, our owned portfolio was comprised of our full or partial ownership interests in 866 properties, totaling approximately 89.3 million square feet, substantially all of which were net leased to 220 tenants, with an occupancy rate of 98.5%.

Investment Management — Through our TRSs, we structure and negotiate investments and debt placement transactions for the Managed REITs, for which we earn structuring revenue, and manage their portfolios of real estate investments, for which we earn asset-based management revenue. We also earn asset management revenue from CCIF based on the average of its gross assets at fair value. We may earn disposition revenue when we negotiate and structure the sale of properties on behalf of the Managed REITs, and we may also earn incentive revenue and receive other compensation in connection with providing liquidity events for the Managed REITs' stockholders. At March 31, 2016, CPA®:17 – Global and CPA®:18 – Global collectively owned all or a portion of 431 properties, including certain properties in which we have an ownership interest. Substantially all of these properties, totaling approximately 49.9 million square feet, were net leased to 205 tenants, with an average occupancy rate of approximately 99.8%. The Managed REITs also had interests in 176 operating properties, totaling approximately 20.2 million square feet. We continue to explore alternatives for expanding our investment management operations beyond advising the existing Managed Programs. Any such expansion could involve the purchase of properties or other investments as principal, either for our owned portfolio or with the intention of transferring such investments to a newly-

Notes to Consolidated Financial Statements (Unaudited)

created fund. These new funds could invest primarily in assets other than net-lease real estate and could include funds raised through private placements or publicly-traded vehicles, either in the United States or internationally.

Note 2. Revisions of Previously-Issued Financial Statements

During the second quarter of 2015, we identified errors in the March 31, 2015 interim consolidated financial statements related to the calculation of foreign currency translation of the assets and liabilities of a foreign investment acquired in January 2015 and the presentation of certain foreign currency losses within the consolidated statement of cash flows for the three months ended March 31, 2015. We evaluated the impact on the previously-issued financial statements and concluded that these errors were not material to our consolidated financial statements as of and for the three months ended March 31, 2015. However, in order to correctly present such foreign currency translation and certain foreign currency losses, we elected to revise the previously-issued consolidated statements of comprehensive loss, equity, and cash flows for the three months ended March 31, 2015. The interim consolidated financial statements as of and for the three months ended June 30, 2015 and September 30, 2015 are not impacted by these adjustments.

The corrections of the foreign currency translation adjustments resulted in a $17.3 million decrease in Accumulated other comprehensive loss on the consolidated statement of equity with a corresponding reduction in Other comprehensive loss, Comprehensive loss, and Comprehensive loss attributable to W. P. Carey within the consolidated statement of comprehensive loss for the three months ended March 31, 2015 as compared to amounts previously presented. The correction of the presentation of the foreign currency losses within the consolidated statement of cash flows for the three months ended March 31, 2015 resulted in a $13.6 million increase in Net cash provided by operating activities, with a corresponding decrease to the Effect of exchange rate changes on cash as compared to the amounts previously presented.
The revisions described above had no effect on our cash balances or liquidity as of March 31, 2015, or the consolidated statements of income or basic and diluted earnings per share for the three months ended March 31, 2015.

During the year ended December 31, 2015, we determined that our presentation of common shares repurchased should be classified as a reduction to Common stock, for the par amount of the common shares repurchased, Additional paid-in capital, and Distributions in excess of accumulated earnings, and included as shares unissued within the consolidated financial statements. We previously classified common shares repurchased as Treasury stock in the consolidated financial statements. We evaluated the impact of this correction on previously-issued financial statements and concluded that they were not materially misstated. In order to conform previously-issued financial statements to the current period, we elected to revise previously-issued financial statements the next time such financial statements are filed to include the elimination of Treasury stock of $60.9 million, with corresponding reductions of Common stock and Additional paid-in capital of $28.8 million, and Distributions in excess of accumulated earnings of $32.1 million as of March 31, 2015. These revisions resulted in no change in Total equity within the consolidated statements of equity for the three months ended March 31, 2015.

Note 3. Basis of Presentation

Basis of Presentation

Our interim consolidated financial statements have been prepared in accordance with the instructions to Form 10-Q and, therefore, do not necessarily include all information and footnotes necessary for a fair statement of our consolidated financial position, results of operations, and cash flows in accordance with generally accepted accounting principles in the United States, or GAAP.

In the opinion of management, the unaudited financial information for the interim periods presented in this Report reflects all normal and recurring adjustments necessary for a fair statement of financial position, results of operations, and cash flows. Our interim consolidated financial statements should be read in conjunction with our audited consolidated financial statements and accompanying notes for the year ended December 31, 2015, which are included in the 2015 Annual Report, as certain disclosures that would substantially duplicate those contained in the audited consolidated financial statements have not been included in this Report. Operating results for interim periods are not necessarily indicative of operating results for an entire year.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts and the disclosure of contingent amounts in our consolidated financial statements and the accompanying notes. Actual results could differ from those estimates.

Notes to Consolidated Financial Statements (Unaudited)

Basis of Consolidation

Our consolidated financial statements reflect all of our accounts, including those of our controlled subsidiaries and our tenancy-in-common interest as described below. The portion of equity in a consolidated subsidiary that is not attributable, directly or indirectly, to us is presented as noncontrolling interests. All significant intercompany accounts and transactions have been eliminated.

On January 1, 2016, we adopted the Financial Accounting Standards Board's, or FASB's, Accounting Standards Update, or ASU, 2015-02, Consolidation (Topic 810): Amendments to the Consolidation Analysis, as described in the Recent Accounting Pronouncements section below, which amends the current consolidation guidance, including introducing a separate consolidation analysis specific to limited partnerships and other similar entities. When we obtain an economic interest in an entity, we evaluate the entity to determine if it should be deemed a variable interest entity, or VIE, and, if so, whether we are the primary beneficiary and are therefore required to consolidate the entity. We apply accounting guidance for consolidation of VIEs to certain entities in which the equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. Fixed price purchase and renewal options within a lease, as well as certain decision-making rights within a loan or joint-venture agreement, can cause us to consider an entity a VIE. Limited partnerships and other similar entities which operate as a partnership will be considered a VIE unless the limited partners hold substantive kick-out rights or participation rights. Significant judgment is required to determine whether a VIE should be consolidated. We review the contractual arrangements provided for in the partnership agreement or other related contracts to determine whether the entity is considered a VIE, and to establish whether we have any variable interests in the VIE. We then compare our variable interests, if any, to those of the other variable interest holders to determine which party is the primary beneficiary of the VIE based on whether the entity (i) has the power to direct the activities that most significantly impact the economic performance of the VIE and (ii) has the obligation to absorb losses or the right to receive benefits of the VIE that could potentially be significant to the VIE. We performed this analysis on all of our subsidiary entities following the guidance in ASU 2015-02 to determine whether they qualify as VIEs and whether they should be consolidated or accounted for as equity investments in an unconsolidated venture. As a result of our assessment, at March 31, 2016, we considered 33 entities VIEs, 26 of which we consolidated and seven of which we accounted for as an equity investment. As a part of this assessment, we determined that 13 entities that were previously classified as voting interest entities should now be classified as VIEs as of January 1, 2016 and therefore included in our VIE disclosures. However, there was no change in determining whether or not we consolidate these entities as a result of the new guidance. We elected to retrospectively adopt ASU 2015-02, which resulted in changes to our VIE disclosures within the consolidated balance sheets. There were no other changes to our consolidated balance sheets or results of operations for the periods presented.

At March 31, 2016, we had an investment in a tenancy-in-common interest in various underlying international properties. Consolidation of this investment is not required as such interest does not qualify as a VIE and does not meet the control requirement for consolidation. Accordingly, we account for this investment using the equity method of accounting. We use the equity method of accounting because the shared decision-making involved in a tenancy-in-common interest investment provides us with significant influence on the operating and financial decisions of this investment.

Additionally, we own interests in single-tenant, net-leased properties leased to companies through noncontrolling interests in partnerships and limited liability companies that we do not control but over which we exercise significant influence. We account for these investments under the equity method of accounting. At times, the carrying value of our equity investments may fall below zero for certain investments. We intend to fund our share of the jointly-owned investments' future operating deficits should the need arise. However, we have no legal obligation to pay for any of the liabilities of such investments nor do we have any legal obligation to fund operating deficits. At March 31, 2016, none of our equity investments had carrying values below zero.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation.

On January 1, 2016, we adopted ASU 2015-03, Interest-Imputation of Interest (Subtopic 835-30) as described in the Recent Accounting Pronouncements section below. ASU 2015-03 changes the presentation of debt issuance costs, which were previously recognized as an asset and requires that they be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability. As a result of adopting this guidance, we reclassified $12.6 million of deferred financing costs, net from Other assets, net to Non-recourse debt, net, Senior Unsecured Notes, net, and Senior Unsecured Credit Facility - Term Loan, net as of December 31, 2015.

Notes to Consolidated Financial Statements (Unaudited)

Recent Accounting Pronouncements

In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers (Topic 606) — ASU 2014-09 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer at an amount reflecting the consideration it expects to receive in exchange for those goods or services. ASU 2014-09 does not apply to our lease revenues, but will apply to reimbursed tenant costs and revenues generated from our operating properties and our Investment Management business. Additionally, this guidance modifies disclosures regarding the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. In August 2015, the FASB issued ASU 2015-14, which defers the effective date of ASU 2014-09 for all entities by one year, until years beginning in 2018, with early adoption permitted but not before 2017, the original public company effective date. We are currently evaluating the impact of ASU 2014-09 on our consolidated financial statements and have not yet determined the method by which we will adopt the standard.

In February 2015, the FASB issued ASU 2015-02, Consolidation (Topic 810), which amends the current consolidation guidance, including modification of the guidance for evaluating whether limited partnerships and similar legal entities are VIEs or voting interest entities. The guidance does not amend the existing disclosure requirements for VIEs or voting interest model entities. The guidance, however, modified the requirements to qualify under the voting interest model. Under the revised guidance, ASU 2015-02 requires an entity to classify a limited liability company or a limited partnership as a VIE unless the partnership provides partners with either substantive kick-out rights or substantive participating rights over the managing member or general partner. Refer to the discussion in the Basis of Consolidation section above.

In April 2015, the FASB issued ASU 2015-03, Interest-Imputation of Interest (Subtopic 835-30). ASU 2015-03 changes the presentation of debt issuance costs, which were previously recognized as an asset, and requires that they be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability. ASU 2015-03 does not affect the recognition and measurement guidance for debt issuance costs. ASU 2015-03 is effective for periods beginning after December 15, 2015, early adoption is permitted and retrospective application is required. We adopted ASU 2015-03 on January 1, 2016 and have disclosed the reclassification of our debt issuance costs in the Reclassifications section above.

In September 2015, the FASB issued ASU 2015-16, Business Combinations (Topic 805). ASU 2015-16 eliminates the requirement that an acquirer in a business combination account for measurement period adjustments retrospectively. Instead, an acquirer will recognize a measurement period adjustment during the period in which it determines the amount of the adjustment, including the effect on earnings of any amounts it would have recorded in previous periods if the accounting had been completed at the acquisition date. ASU 2015-16 is effective for fiscal years beginning after December 15, 2015, including interim periods within those fiscal years, early adoption is permitted and prospective application is required for adjustments that are identified after the effective date of this update. We elected to early adopt ASU 2015-16 and implemented the standard prospectively beginning July 1, 2015. The adoption and implementation of the standard did not have a material impact on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02 - Leases (Topic 842), which outlines a new model for accounting by lessees, whereby their rights and obligations under substantially all leases, existing and new, would be capitalized and recorded on the balance sheet. For lessors, however, the accounting remains largely unchanged from the current model, with the distinction between operating and financing leases retained, but updated to align with certain changes to the lessee model and the new revenue recognition standard. The new standard also replaces existing sale-leaseback guidance with a new model applicable to both lessees and lessors. Additionally, the new standard requires extensive quantitative and qualitative disclosures. ASU 2016-02 is effective for U.S. GAAP public companies for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years; for all other entities, the final lease standard will be effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early application will be permitted for all entities. The new standard must be adopted using a modified retrospective transition of the new guidance and provides for certain practical expedients. Transition will require application of the new model at the beginning of the earliest comparative period presented. We are in the process of evaluating the impact of the new standard on our business and on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-05 - Derivatives and Hedging (Topic 815): Effect of derivative contract novations on existing hedge accounting relationships, which clarifies that a change in counterparty to a derivative contract in and of itself, does not require the dedesignation of a hedging relationship. ASU 2016-05 is effective for fiscal years beginning after December 15, 2016, including interim periods within those years. Early adoption is permitted and entities have the option of adopting this guidance on a prospective basis to new derivative contracts or on a modified retrospective basis. We elected to

Notes to Consolidated Financial Statements (Unaudited)

early adopt ASU 2016-05 on January 1, 2016 on a prospective basis and there was no impact on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-07 - Investments - Equity Method and Joint Ventures (Topic 323), which simplifies the transition to the equity method of accounting. ASU 2016-07 eliminates the requirement to apply the equity method of accounting retrospectively when a reporting entity obtains significant influence over a previously held investment. Instead the equity method of accounting will be applied prospectively from the date significant influence is obtained. The new standard should be applied prospectively for investments that qualify for the equity method of accounting in interim and annual periods beginning after December 15, 2016. Early adoption is permitted and we elected to early adopt this standard as of January 1, 2016. The adoption of this standard had no impact on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09 - Improvements to Employee Share-Based Payment Accounting, which amends Accounting Standards Codification Topic 718, Compensation-Stock Based Compensation to simplify various aspects of how share-based payments are accounted for and presented in the financial statements including (i) reflecting income tax effects of share-based payments through the income statement, (ii) allowing statutory tax withholding requirements at the employees' maximum individual tax rate without requiring awards to be classified as liabilities and (iii) permitting an entity to make an accounting policy election for the impact of forfeitures on the recognition of expense. ASU 2016-09 is effective for public business entities for annual reporting periods beginning after December 15, 2016, and interim periods within that reporting period, with early adoption permitted. We are in the process of evaluating the impact of adopting ASU 2016-09 on our consolidated financial statements.

Note 4. Agreements and Transactions with Related Parties

Advisory Agreements with the Managed Programs

We have advisory agreements with each of the Managed Programs, pursuant to which we earn fees and are entitled to receive reimbursement for fund management expenses, as well as cash distributions. We also earn fees for serving as the dealer-manager of the public offerings of the Managed Programs. Unless otherwise renewed, the advisory agreements with each of the CPA® REITs and with the CWI REITs are scheduled to expire on December 31, 2016. The advisory agreement with CCIF, which commenced February 27, 2015, is subject to renewal on or before February 26, 2017.

The following tables present a summary of revenue earned and/or cash received from the Managed Programs for the periods indicated, included in the consolidated financial statements. Asset management revenue excludes amounts received from third parties (in thousands):

	Three Months Ended March 31,	
	2016	2015
Reimbursable costs from affiliates	$19,738	$9,607
Asset management revenue	14,590	11,112
Structuring revenue	12,721	21,720
Distributions of Available Cash	10,981	8,806
Dealer manager fees	2,172	1,274
Interest income on deferred acquisition fees and loans to affiliates	194	153
Other advisory revenue	—	203
	$60,396	$52,875

	Three Months Ended March 31,	
	2016	2015
CPA®:17 – Global	$18,192	$21,676
CPA®:18 – Global	8,541	18,940
CWI 1	11,449	12,259
CWI 2	20,534	—
CCIF	1,680	—
	$60,396	$52,875

Notes to Consolidated Financial Statements (Unaudited)

The following table presents a summary of amounts included in Due from affiliates in the consolidated financial statements (in thousands):

	March 31, 2016	December 31, 2015
Deferred acquisition fees receivable	$28,101	$ 33,386
Accounts receivable	21,181	15,711
Current acquisition fees receivable	4,491	4,909
Reimbursable costs	4,486	5,579
Asset management fees receivable	2,303	2,172
Organization and offering costs	986	461
	$61,548	$ 62,218

Asset Management Revenue

Under the advisory agreements with the Managed Programs, we earn asset management revenue for managing their investment portfolios. The following table presents a summary of our asset management fee arrangements with the Managed Programs:

Managed Program	Rate	Payable	Description
CPA®:17 – Global	0.5% - 1.75%	50% in cash and 50% in shares of its common stock	Rate depends on the type of investment and is based on the average market or average equity value, as applicable
CPA®:18 – Global	0.5% - 1.5%	In shares of its class A common stock	Rate depends on the type of investment and is based on the average market or average equity value, as applicable
CWI 1	0.5%	In cash	Rate is based on the average market value of the investment; we are required to pay 20% of the asset management revenue we receive to the subadvisor
CWI 2	0.55%	In shares of its class A common stock	Rate is based on the average market value of the investment; we are required to pay 25% of the asset management revenue we receive to the subadvisor
CCIF	1.75% - 2.00%	In cash	Based on the average of gross assets at fair value; we are required to pay 50% of the asset management revenue we receive to the subadvisor

Incentive Fees

We are entitled to receive a quarterly incentive fee on income from CCIF equal to 100% of quarterly net investment income, before incentive fee payments, in excess of 1.875% of CCIF's average adjusted capital up to a limit of 2.344%, plus 20% of net investment income, before incentive fee payments, in excess of 2.344% of average adjusted capital. We are also entitled to receive from CCIF an incentive fee on realized capital gains of 20%, net of (i) all realized capital losses and unrealized depreciation on a cumulative basis, and (ii) the aggregate amount, if any, of previously paid incentive fees on capital gains since inception.

Notes to Consolidated Financial Statements (Unaudited)

Structuring Revenue

Under the terms of the advisory agreements, we earn revenue for structuring and negotiating investments and related financing for the Managed REITs. We do not earn any structuring revenue from the Managed BDCs. The following table presents a summary of our structuring fee arrangements with the Managed REITs:

Managed Program	Rate	Payable	Description
CPA®:17 – Global	1% - 1.75%, 4.5%	In cash; for non net-lease investments, 1% - 1.75% upon completion; for net-lease investments, 2.5% upon completion, with 2% deferred and payable in three interest-bearing annual installments	Based on the total aggregate cost of the net-lease investments made; also based on the total aggregate cost of the non net-lease investments made; total limited to 6% of the contract prices in aggregate
CPA®:18 – Global	4.5%	In cash; for all investments other than readily marketable real estate securities for which we will not receive any acquisition fees, 2.5% upon completion, with 2% deferred and payable in three interest-bearing annual installments	Based on the total aggregate cost of the investments made; total limited to 6% of the contract prices in aggregate
CWI REITs	2.5%	In cash upon completion	Based on the total aggregate cost of the lodging investments made; loan refinancing transactions up to 1% of the principal amount; we are required to pay 20% and 25% to the subadvisor of CWI 1 and CWI 2, respectively; total limited to 6% of the contract prices in aggregate

Reimbursable Costs from Affiliates

The Managed Programs reimburse us for certain costs that we incur on their behalf, which consist primarily of broker-dealer commissions, marketing costs, an annual distribution and shareholder servicing fee, or Shareholder Servicing Fee, and certain personnel and overhead costs, as applicable. The following tables present summaries of such fee arrangements:

Broker-Dealer Selling Commissions

Managed Program	Rate	Payable	Description
CWI 2 Class A Shares	\$0.70	In cash upon share settlement; 100% re-allowed to broker-dealers	Per share sold
CPA®:18 – Global Class C Shares	\$0.14	In cash upon share settlement; 100% re-allowed to broker-dealers	Per share sold; this offering closed in April 2015
CWI 2 Class T Shares	\$0.19	In cash upon share settlement; 100% re-allowed to broker-dealers	Per share sold
CCIF Feeder Funds	0% - 3%	In cash upon share settlement; 100% re-allowed to broker-dealers	Based on the selling price of each share sold

Notes to Consolidated Financial Statements (Unaudited)

Dealer Manager Fees

Managed Program	Rate	Payable	Description
CWI 2 Class A Shares	\$0.30	Per share sold	In cash upon share settlement; a portion may be re-allowed to broker-dealers
CPA®:18 – Global Class C Shares	\$0.21	Per share sold	In cash upon share settlement; a portion may be re-allowed to broker-dealers; this offering closed in April 2015
CWI 2 Class T Shares	\$0.26	Per share sold	In cash upon share settlement; a portion may be re-allowed to broker-dealers
CCIF Feeder Funds	2.75% - 3.0%	Based on the selling price of each share sold	In cash upon share settlement; a portion may be re-allowed to broker-dealers

Annual Distribution and Shareholder Servicing Fee

Managed Program	Rate	Payable	Description
CPA®:18 – Global Class C Shares	1.0%	Accrued daily and payable quarterly in arrears in cash; a portion may be re-allowed to selected dealers	Based on the purchase price per share sold or, once reported, the net asset value per share; cease paying when underwriting compensation from all sources equals 10% of gross offering proceeds
CWI 2 Class T Shares	1.0%	Accrued daily and payable quarterly in arrears in cash; a portion may be re-allowed to selected dealers	Based on the purchase price per share sold or, once reported, the net asset value per share; cease paying on the earlier of six years or when underwriting compensation from all sources equals 10% of gross offering proceeds

Personnel and Overhead Costs

Managed Program	Payable	Description
CPA®:17 – Global and CPA®:18 – Global	In cash	Personnel and overhead costs, excluding those related to our legal transactions group, our senior management, and our investments team, are charged to the CPA® REITs based on the average of the trailing 12-month aggregate reported revenues of the Managed REITs and us, and are capped at 2.2% and 2.4% of each CPA® REIT's pro rata lease revenues for 2016 and 2015, respectively; for the legal transactions group, costs are charged according to a fee schedule
CWI 1	In cash	Actual expenses incurred; allocated between the CWI REITs based on the percentage of their total pro rata hotel revenues for the most recently completed quarter
CWI 2	In cash	Actual expenses incurred; allocated between the CWI REITs based on the percentage of their total pro rata hotel revenues for the most recently completed quarter
CCIF and CCIF Feeder Funds	In cash	Actual expenses incurred

Organization and Offering Costs

Managed Program	Payable	Description
CWI 2	In cash; within 60 days after the end of the quarter in which the offering terminates	Actual costs incurred from 1.5% through 4.0% of the gross offering proceeds, depending on the amount raised

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as the planned upgrades to the TWC systems permit the delivery of this much larger content library to customers.

To expand customers' options for viewing this extensive library of VOD content, Comcast continues to work with third-party device manufacturers, such as Samsung, TiVo, and Microsoft, to enable access to Xfinity On Demand content on a variety of devices. In fact, Comcast and TiVo plan to complete the integration of Xfinity On Demand service on TiVo DVRs for all Comcast markets by June of this year.178 In TiVo CEO Tom Rogers' view, this transaction may provide TiVo with the further opportunity to expand its connection to Comcast in more key markets, consistent with the Commission's goals of a retail market for navigation devices.179

Comcast also recently launched (in November 2013) the Xfinity TV Store, giving customers the ability to purchase movies and TV shows for downloading and streaming – often weeks before they are available to rent or purchase on Blu-Ray and DVD – and store them in the cloud. Customers can access their purchases anytime, anywhere, and on any device, without the hassle of managing files, switching devices, or remembering passwords. Comcast customers have already been actively using this robust new platform. Over 2 million movies, TV shows, and other content have been purchased since launch, and Comcast has been the leading seller of certain movies in certain time frames – ahead of iTunes.180 TWC does not currently offer such

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178 Jeff Baumgartner, TiVo Profits on New MSO Subscriber Record, Multichannel News, Feb. 26, 2014, available at http://www.multichannel.com/distribution/tivo-profits-new-mso-subscriber-record/148553.

179 Id.; see also 47 U.S.C. § 549.

180 See Joe Flint, Comcast's Digital Movie Sales Off to Solid Start, L.A. Times, Dec. 5, 2013, available at http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-comcast-digital-sell-through-20131205,0,1835629.story#axzz (noting that Comcast had been the number one seller of certain movies like "The Hunger Games" in recent weeks).

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an electronic sell-through service, so the transaction will bring this service as a new benefit to all of its customers.181

TV Everywhere Leader. Nearly five years ago, Comcast worked with TWC's then-parent, Time Warner Inc., to establish TV Everywhere principles to bring "significantly more television content to customers online in a manner that is consumer-friendly, pro-competitive and non-exclusive."182 Those principles have been made into reality, in significant part through Comcast's efforts to secure TV Everywhere rights from programmers (and through NBCUniversal's leading the industry in extending such rights to MVPDs).183 Led by Comcast's initiatives, TV Everywhere is gaining in popularity, doubling its usage in 2013.184

The popularity of TV Everywhere during the recent Winter Olympics demonstrates Comcast's deep commitment to this consumer-friendly and convenient platform:185

- NBC Sports delivered a massive 10.8 million hours of online video as part of its production of the 2014 Winter Olympic Games in Sochi, Russia.

- More than 8.5 million hours of video was consumed through TV Everywhere authenticated live streams on NBCOlympics.com and the NBC Sports Live Extra app.

181 As Drs. Rosston and Topper explain, both because of the combined company's expanded geographic scope and its ability to overcome technological differences and other challenges, the transaction will facilitate the rollout of such convenient video programming services to TWC's customers. See Rosston-Topper Decl. ¶¶ 102, 115.

182 Press Release, Comcast Corp., Time Warner Inc. Announces Widespread Distribution of Cable TV Content Online (June 24, 2009), http://corporate.comcast.com/news-information/news-feed/time-warner-inc-announces-widespread-distribution-of-cable-tv-cor

183 Press Release, HIS Inc., TV Everywhere Spreads Among US Television and Cable Networks; NBCUniversal Leads (Oct. 18, 2013), http://press.ihs.com/press-release/design-supply-chain-media/tv-everywhere-spreads-among-us-television-and-cable-networks.

184 Daisy Whitney, Study: TV Everywhere Doubles, Tablets Drive Usage, Online Video Insider (Feb. 6, 2014), http://www.mediapost.com/publications/article/219055/study-tv-everywhere-doubles-tablets-drive-usage.html.

185 Press Release, Comcast Corp., Sochi 2014: A TV Everywhere Success Story (Mar. 7, 2014), http://corporate.comcast.com/news-information/news-feed/sochi-2014-a-tv-everywhere-success-story.

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- In an unprecedented effort, 225 multichannel distributors offered verification for their customers, with more than 4.8M devices successfully verified.

- NBCOlympics.com and the NBC Sports Live Extra app saw 24.6 million video viewers (160 percent higher than the 2010 Vancouver Winter Games and 8 percent higher than the 2012 London Summer Games).

- And the February 21, 2014 verified live stream of the Olympic men's ice hockey semifinal between the United States and Canada generated more than 2.1 million unique users – believed to be the largest TV Everywhere verified streaming audience in U.S. history, and ranking No. 1 in unique users for any NBC Sports Digital stream, topping NBC's non-authenticated Super Bowl XLVI in February 2012.

Today, Comcast offers an industry-leading TV Everywhere experience to its customers. Comcast customers have access to 300,000-plus streaming choices, including over 50 live TV channels, on XfinityTV.com. These live channels and over 25,000 on-demand choices are also available on the Xfinity TV Go app, which also allows customers to download certain shows and movies to watch offline later.186 TWC's TV Everywhere offering is more limited; it provides less content and less flexibility for accessing this content outside the home, with up to just 29 live TV channels and 6,500 hours of video content.

The increased scale from the transaction will allow Comcast to improve the economics of investing in significant fixed-cost programming rights (such as SVOD and other digital rights) to provide greater value to customers. Greater scale and denser geographic coverage will also create marketing efficiencies that are particularly important for the roll-out of services like TV Everywhere that may require aggressive – and expensive – marketing campaigns to educate and attract consumers.187 For example, Comcast debuted a "Watchathon Week" in April 2013, during which Comcast customers were able to catch up on their favorite shows from more than

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186 See Press Release, Comcast Corp., Xfinity TV Go Network Roster Tops 50 with Latest Update (Mar. 19, 2014), http://corporate.comcast.com/news-information/news-feed/comcast-customers-can-now-stream-more-than-50-live-channels-an

187 Angelakis Decl. ¶ 19.

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30 programming networks at no additional charge. The promotion set new viewing records, including via Comcast's TV Everywhere platforms.188 Another Watchathon Week recently ended (this time with over 5,000 episodes from 48 networks), and early usage data indicate that it remains an immensely popular offering. With added scale, Comcast could make even more effective marketing efforts to inform subscribers across a larger region (or across the nation) about these valuable services. As Drs. Rosston and Topper explain, the combined company's added scale also will accelerate innovation by allowing Comcast to provide fully-featured apps for more third-party devices more quickly by spreading these fixed costs across a greater number of customers.189

While the transaction will clearly bring to the TWC systems more content and more convenient ways of accessing such content, it is conversely not clear that the transaction will significantly discipline the costs of such content. Programmers as a whole have significant bargaining power, as reflected in the fact that programming costs have far outstripped inflation and retail cable rate increases for many years.190 While Comcast is far from immune to these rising costs, Comcast's response has been to obtain from programmers added value for its customers in the form of the most robust suite of on-demand, TV Everywhere, and other digital

188 See Maggie McLean Suniewick, Watchathon Week Breaks Major Xfinity TV Records, Comcast Voices (Apr. 19, 2013), http://corporate.comcast.com/comcast-voices/watchathon-week-breaks-major-xfinity-tv-viewership-records.

189 See Rosston/Topper Decl. ¶ 89.

190 See, e.g., Ali Choukeir & Chris Young, Virtual Service Provider Space an Unfinished Puzzle, SNL Kagan, Feb. 6, 2014, http://www.snl.com/interactivex/article.aspx?id=26791052&KPLT=6 (noting that "programming costs continue to outpace the rate of inflation, especially [for] sports and retrans"); Tony Lenoir, Cost of Programming Jumps 54% in 5 years, SNL Kagan, Aug. 28, 2013, http://www.snl.com/InteractiveX/article.aspx?BeginDate=08/28/2013&ID=24720103&KPLT=2 (reporting that the top three cable operators (Comcast, TWC, and Charter) have seen programming costs per subscriber increase in the last five years by 54 percent – from $24.50 to $37.72); Robert Gessner, Programming Costs Drive Cable Bills Higher, TV NewsCheck (Mar. 14, 2014), http://www.tvnewscheck.com/article/74809/programming-costs-drive-cable-bills-higher.

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rights from programmers like Disney, Fox, AMC, and Viacom.[191] These benefits will ultimately redound to the benefit of TWC markets as well. And it is possible that the combined company may be able to realize some programming cost savings by combining contracts in certain cases. These cost savings will allow Comcast to provide even more programming options to meet its customers' demands.

c. The Benefits of the X1 Platform.

Comcast's launch of its X1 platform and successor X2 user interface is a key example of the video technology that Comcast has deployed to its customers and would extend to TWC customers in this transaction. Comcast's scale, as well as its commitment to innovation, research and development, and infrastructure investment led to the development and deployment of the X1 platform throughout Comcast's footprint. Comcast made an upfront investment of {{}} to develop this platform – and could have done even more, more quickly, with greater scale.[192] The combined company will bring that same commitment to the acquired TWC systems, and with greater scale and investment will be able to do even more.[193]

The X1 platform gives customers unmatched interactive TV functionality featuring a state-of-the-art user interface and other product features that revolutionize customers' viewing experiences:

- Integrated search (across TV, Xfinity On Demand, and DVR) with instant play;
- Access to the Internet and apps like Facebook and Pandora, as well as integrated TV apps like weather and traffic;
- Cross-product integration, including access to voicemail from the TV;

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191 See MoffettNathanson Research, Comcast and Time Warner Cable: Of White Knights and Brotherly Love 5 (Feb. 13, 2014) (noting that Comcast has secured more digital rights than TWC).

192 Angelakis Decl. ¶ 14; see Rosston/Topper Decl. ¶¶ 87-89.

193 Angelakis Decl. ¶ 16.

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- Enhanced personalization and recommendations;

- A "Last 9" feature that enables customers to easily access the last nine channels, VOD programs, and apps that were viewed or used;

- The X1 remote app, which offers a new remote control experience by letting customers use their smartphones and tablets to control their TVs with a simple gesture, or use voice commands to easily navigate the programming guide; and

- The X1's network-based user interface, which enables Comcast to implement upgrades without swapping out customer equipment, thereby leading to faster innovation cycles.

Comcast also has launched its new X1 DVR with cloud technology, enabling customers in certain markets to watch their DVR recordings on any X1-connected TV and on computers and mobile devices in the home, as well as download recorded content to mobile devices to take on-the-go. At the same time, Comcast has deployed its live in-home IP cable streaming feature, which allows customers on the X1 platform to stream practically their entire cable channel lineup, including must-carry stations and PEG channels, to computers, smartphones, and tablets in the home.

The value and innovation of the X1 platform and X2 user interface have been widely recognized:

- "Today, Comcast's X2 . . . is the video industry's best product."194

- "I have been testing this sleek black cable box for the past three weeks, but to call it a cable box really doesn't do it justice. It is a nice blend of Internet content, live television, apps, a multi-tuner DVR and on-demand programming, in one of the cleanest user interfaces that you'll find from a cable company."195

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194 MoffettNathanson Research, Comcast Q4 2013: Boardwalk Empire 2 (Jan. 28, 2014).

195 Todd Bishop, Xfinity X1: How Comcast Roped Me Back in to Cable, GeekWire, Aug. 22, 2013, http://www.geekwire.com/2013/xfinity-x1/.

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- "[X1] feels like a genuinely 21st-century way to use a widescreen television set – like a smart TV inside your cable box."196
- Netflix CEO Reed Hastings praised the X1, noting that it's a "great product."197

Without this transaction, TWC customers would likely not experience the benefits of this revolutionary video experience at all, or at least not as rapidly or pervasively. TWC by itself has not had the scale to allow it to invest in and deploy this technology.198 To be sure, Comcast has explored licensing arrangements to enable unaffiliated companies to use X1 technology, but those efforts are time-consuming and face challenges, such as infrastructure limitations of prospective partners, compensation issues, customization, and so on.199

In contrast, the combined company may be able to begin deploying Comcast's cutting-edge X1 entertainment operating system within the first year in certain TWC systems.200 And the transaction presents the opportunity for Comcast to spread the costs of developing and deploying the X1 platform among more Comcast-owned systems, which will in turn help facilitate future innovation.201 TWC also has developed certain video service technologies that may be deployed throughout the combined company as well. Notably, TWC offers StartOver

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196 Tim Carmody, Comcast's New X1 UI Integrates Real-time and Streaming TV with News and Social Apps, The Verge, May 21, 2012, http://www.theverge.com/2012/5/21/3033972/comcast-ui-platforms-video-news-social-apps.

197 John McDuling, The American Cable Industry's Cunning Plan to Save Itself: Make TV Work Like It Should, Quartz, Feb. 4, 2014, http://qz.com/172533/the-american-cable-industrys-cunning-plan-to-save-itself-make-tv-work-like-it-should/.

198 Although TWC is now conducting limited employee trials of a new cloud-based user interface, HNav – and plans to conduct a Beta customer trial later this year – it has no firm plans for a commercial launch yet.

199 See Rosston/Topper Decl. ¶¶ 112-13. The X1 platform currently comprises over 400 separate but to some extent interdependent subsystems. A licensee of the X1 platform might well need or want to swap in several dozens of its own subsystems to handle certain of the platform's functions, which would require additional design and development work and raise questions as to allocation of responsibility for performance issues that may result.

200 Angelakis Decl. ¶ 28.

201 The transaction also will enable Comcast to lower the per-customer costs of developing and deploying in-depth metadata tagging for its video programming, which allows for more efficient and more customer-friendly searching capabilities, thereby accelerating its deployment. See Rosston/Topper Decl. ¶ 93.

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and LookBack, two tools that offer customers flexibility in viewing that Comcast does not have. Comcast will explore whether those capabilities can enhance the X1 platform or other technology in the combined company's footprint.

d. The Combined Company Will Continue to Advance the Transition to IP Cable.

Both Comcast and Time Warner Cable have made great strides in the transition to IP cable and have invested significant resources in these efforts. In 2013, Comcast spent approximately {{ }} on IP-delivered cable service and plans to invest another {{}} this year, and that does not include any expenditures for customer premises equipment like set-top boxes and gateways. Comcast has begun offering streaming IP cable services to universities, has delivered its VOD service in IP to the Xbox and the Samsung SmartTV, and, as noted, has launched a live in-home IP cable streaming feature in two regions. For its part, TWC also has invested in developing IP cable services and has created IP "simulcast" feeds of the company's linear networks, enabling customers to access such programming on a variety of retail devices.202

The combined company will continue to invest in and advance the IP cable transition, combining both companies' strengths and experience. Doing so will yield a number of consumer and public interest benefits. IP cable:

- Enables consumers to access their cable and advanced video services in their homes on a wide variety of IP-enabled retail devices – video game consoles, tablets, and other connected devices;203

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202 Glenn Britt, CEO, Time Warner Cable, Inc., Bank of America Merrill Lynch Global Telecom & Media Conference, Tr. at 9 (June 4, 2013).

203 See, e.g., Yaron Raz, Migrating to IP in the Cable TV Environment: Benefits, Challenges, and Resolutions, CED, Oct. 16, 2013, http://www.cedmagazine.com/articles/2013/10/migrating-to-ip-in-the-cable-tv-environment-benefits-challenges-and-resolution Cable Edges to an IP Future, Digital TV Europe (July 3, 2013),

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- Shifts more of the network intelligence to the cloud, thereby allowing the combined company to rapidly roll out new functionalities to consumers;
- Reduces costs by allowing the combined company to simplify its existing distribution networks by relying on IP technology to transport all of its services and relying on innovative off-the-shelf IP-based retail devices and reducing its home equipment and inventory costs; and
- Dramatically reduces energy consumption for consumer set-top boxes.

In short, like the parallel transition that is beginning to occur in the traditional phone system, the transition to IP cable will improve the "lives of millions of Americans . . . by the direct and spillover effects of the technology transitions, including innovations that cannot even be imagined today."204

3. The Transaction Will Promote the Deployment of Advanced Voice Services and Enhance Competition in the Voice Marketplace.

By permitting the companies to combine the best aspects of their robust and innovative voice services, approval of this transaction will leave the merged company even better suited to offer an array of advanced voice services in competition with ILECs and other providers. The Commission has long recognized the pro-competitive and pro-consumer impact of cable's offering of voice services.205 The combined company will build on this strong foundation, facilitating more advanced services and features and a more robust alternative for voice customers.206

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http://www.digitaltveurope.net/74622/cable-edges-to-an-ip-future ("IP is seen as a desirable platform for video services as it will enable them to deliver multiroom and multiscreen services much more economically.").

204 Technology Transitions, Order, Report and Order, and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, GN Docket No. 13-5, FCC No. 14-5 ¶ 2 (rel. Jan. 31, 2014).

205 See Press Release, FCC, FCC Approves Merger of AT&T Inc. and BellSouth Corp. (Dec. 29, 2006) (noting that "the rapid growth of intermodal competitors – particularly cable telephony providers . . . – is an increasingly significant competitive force in this market"); Connect America Fund, 26 FCC Rcd. 17663, App. I ¶ 5 n.11 (2011).

206 Angelakis Decl. ¶ 30.

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Comcast offers its Xfinity Voice customers several enhanced features, including traditional features such as call waiting, three-way calling, and voicemail, as well as newer offerings such as caller ID provided over a television, laptop, or mobile device, and Readable Voicemail. Comcast also offers customers the ability to send and receive unlimited text messages to and from their Xfinity Voice telephone numbers through an application that can be downloaded on a customer's mobile device or using Xfinity Connect on a customer's computer.

Recent network investments have expanded dramatically the features available to Xfinity Voice customers. Comcast has moved to a new advanced and flexible IP Multimedia Subsystem ("IMS") network architecture, in which a handful of geo-redundant switches serve all Comcast voice customers. This architecture enables customers to access the service from different locations using a variety of methods and networks, including not only the wired connections provided by Comcast, but also Wi-Fi connections and public Internet connections provided by third parties, whether wired or wireless. For example, it enables "Voice 2go," which allows users to place calls over a Wi-Fi or data connection from their Comcast-assigned telephone numbers using an app downloaded to a mobile device, and to receive calls to their home numbers at multiple locations and on multiple devices using the "Advanced Call Forwarding" feature.

The transaction will allow Comcast to integrate the best features of its voice offerings with the TWC's best features, creating best-in-class voice service offerings. For example, TWC's voice offering currently lacks many of Xfinity Voice's nomadic features, such as the ability to place calls over a third-party Wi-Fi network or through a mobile device.

Finally, both companies have increasingly expanded their international reach and calling options. For example, TWC recently launched free Mexico calling, and Comcast has implemented eight different international calling options (as compared to TWC's two), thereby

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allowing customers to select from a range of possibilities that best meet their family and/or business circumstances. Together, the combined company's scale and existing relationships will enable it to reach more countries for its customers, and for very reasonable rates.

C. Businesses of All Sizes Will Benefit from a Substantial Increase in Much-Needed Competition and the Accelerated Deployment of Advanced Services.

The transaction will produce significant public interest benefits by combining the two companies into a stronger, more cost-efficient competitor that can offer new options and aggressively priced services to small, medium, and enterprise businesses across most of the country, challenging the incumbents that have dominated this marketplace for decades. The competitive benefits for the medium-sized and enterprise markets will be particularly substantial and far-reaching.

Although definitions are not uniform across the industry, Applicants generally view the business services space in which they operate as comprised loosely of the following four segments:

- Small business – generally fewer than 20 employees;
- Medium-sized business – generally 20-500 employees often across multiple sites in different geographic locations (includes certain regional and super-regional businesses);
- Enterprise/national accounts – generally over 500 employees across many sites; and
- Cell backhaul service to wireless carriers.

All four segments will benefit from this transaction.

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1. Comcast's and TWC's Proven Track Records, Though Limited in Scope to Date, Demonstrate the Power of Competition in This Space.

The approximately 23 million small businesses in the United States are the largest source of employment in the country,207 and many of them, until recently, have been paying too much and receiving too little value from their communications service providers.208 For many small businesses, until Comcast, TWC, and other cable operators entered the market, the only data transport option available was too often an expensive T1 line (at 1.54 Mbps) from a legacy provider; for too many others, slower services were their only options.209

Comcast recognized this opportunity several years ago and, since 2006, has aggressively extended its network to enable it to offer small businesses a competitive alternative for their data, voice, and video needs. Comcast moved swiftly to develop business-class billing, provisioning, and customer interface systems. Comcast has built out its network to {{ }} of the estimated {{ }} premise-based (rather than home-based) small businesses in its footprint and continues to expand this investment. It has recruited an aggressive sales force and built the required service delivery and service assurance expertise and systems. And it has brought to thousands of pharmacies, barber shops, dry cleaners, and restaurants a value proposition that was far better than what was previously available.210

207 See Small Business Trends, U.S. Small Business Administration, http://www.sba.gov/content/small-business-trends (last visited Apr. 5, 2014).

208 See Letter from Jamie Belcore Saloom, Assistant Chief Counsel for Telecommunications, Small Business Administration, Office of Advocacy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (Dec. 5, 2013); Columbia Telecomms. Corp., The Impact of Broadband Speed and Price on Small Businesses 1-4 (Nov. 2010), http://www.sba.gov/content/impact-broadband-speed-and-price-small-business-1#.

209 See Charlie Reed, Comcast-TWC Merger to Create Fourth Largest Business Services Player, Telecom Reseller, Feb. 13, 2014, available at http://www.telecomreseller.com/2014/02/13/comcast-time-warner-cable-merger-to-create-fourth-largest-business-services-play

210 See J.T. Ramsey, Q&A with Bill Stemper, President of Comcast Business Services, Comcast Voices (Feb. 12, 2013) (describing evolution of Comcast's Business Services).

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Comcast's investments and innovations in this area have led to growing marketplace success. And the company has won several awards for its small business services, including the Leading Lights Award last year for Most Innovative SMB Service and the Hosted VoIP leader award in 2012 and 2013. In the last several years, Comcast has also entered the medium-sized market segment and has made some promising gains.

TWC also robustly serves the small business segment in its footprint. As in the case of Comcast, this market segment accounts for the majority of TWC's business services revenue. But TWC also has more experience providing advanced services to medium-sized and enterprise businesses because of its presence in the New York and Los Angeles markets, and had an earlier start. Despite the fact that both companies are gaining momentum in their respective segments, in 2013 Comcast and TWC together had only approximately 10-15 percent market share for small- and medium-sized businesses in their footprints, and a de minimis share of enterprise businesses.211

Even at these initial levels of service, however, Comcast and TWC have already had a substantial competitive impact in the business services area, driving legacy providers to drop prices and to upgrade their services and add value for customers. Analyst reports have underscored aggressive price competition by Comcast and TWC in the small- and medium-sized

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211 See Angelakis Decl. ¶ 32; Liana B. Baker, Comcast: Business services is sweet spot in Time Warner Cable deal, Wall St. J., Apr. 1, 2014, available at http://www.reuters.com/article/2014/04/01/us-comcast-twc-business-analysis-idUSBREA3022F20140401 ((""The higher you move upmarket, the tougher it's going to be. The combined company will have a bigger regional footprint than AT&T and Verizon but AT&T and Verizon have developed a national structure that'll be hard to crack . . . .'") (quoting IDC analyst Matt Davis)). In particular, Comcast has achieved penetration in an estimated 20 percent of the small-business segment in its footprint, see Doug Mitchelson & Brian Russo, Deutsche Bank, Pay TV Guide / 4Q13 Wrap 35 (Mar. 6, 2014), and TWC estimates that it serves 12 percent of small- and medium-sized businesses in its area. According to third party estimates, Comcast and TWC combined reportedly only had a 6.4 percent share of the market for retail business broadband Internet service customers in the United States in 2013. See Charlie Reed, Comcast-TWC Merger to Create Fourth Largest Business Services Player, Telecom Reseller, Feb. 13, 2014, available at
http://www.telecomreseller.com/2014/02/13/comcast-time-warner-cable-merger-to-create-fourth-largest-business-services-pla

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business segments,212 with a 2013 research report noting that new entry was decreasing Ethernet pricing for business by 10 percent or more a year.213 And cable competition has led incumbent competitors to respond with service enhancements and aggressive new investments as well. For example, AT&T and CenturyLink have intensified efforts to expand fiber to businesses and reduce cable's speed advantage, with AT&T pledging to extend fiber to one million businesses in its footprint and CenturyLink increasing the number of fiber-fed buildings by 17 percent between the third and fourth quarters of 2013.214 Legacy providers also have responded by improving their offerings to bundle new data and voice features with basic network features.215

Comcast and TWC customers have praised price and feature enhancements as compared to their previous options:

- A Chicago school district contracted with Comcast and noted that "the district will save about 42 percent over what we were spending with AT&T."216

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212 Rosston/Topper Decl. ¶ 119.

213 Insight Research Corp., US Carriers and Ethernet Services, 2013-2018, at 5 (Aug. 2013); see also Century Link Petition for Forbearance, WC Dkt. No. 14-9, at 15 n.52 (Dec. 13, 2013) (quoting TeleGeography, Global Enterprise Networks: Enterprise Service Pricing, at 16, 20 (Jan. 2013) ("Median Ethernet market prices remain volatile, fluctuating considerably year to year. . . . With this said however, the long-term price trend is clearly down. . . . As a growing number of carriers offer the service, [Virtual Private LAN Service] prices continue to decline."); Craig Galbraith, CableCos Gain Ground in Ethernet, But AT&T, Verizon Still Lead, Channel Partners, Feb. 12, 2014, http://www.channelpartnersonline.com/news/2014/02/cablecos-gain-ground-in-ethernet-but-at-t-verizon.aspx ("Cable companies have developed a winning formula for the U.S. business Ethernet market. They are successfully leveraging their on-net fiber footprints to offer aggressive pricing and rapid service provisioning.").

214 See Sean Buckley, AT&T's $14B Project VIP: Breaking Out the Business Service, U-verse Numbers, FierceTelecom, Sept. 24, 2013, http://www.fiercetelecom.com/special-reports/atts-14b-project-vip-breaking-out-business-service-u-verse-numbers; Glen Post, CEO, CenturyLink, Inc., Q4 2013 Earnings Call, Tr. at 5 (Feb. 12, 2014).

215 See Rosston/Topper Decl. ¶ 120; Israel Decl. ¶¶ 159-60. For example, Verizon has added Google Apps for Business for its business customers. Monte Beck, Vice President of Small Business Market, Verizon, Google Apps for Business Now Available for Verizon Customers, Google Official Enterprise Blog (Jan. 24, 2011), http://googleenterprise.blogspot.com/2011/01/google-apps-for-business-now-available.htm. Similarly, CenturyLink has enhanced is Core Connect product for business by adding website design and hosting, domain name registration, fax over email, and data backup services. See Century Link Business, Core Connect, http://www.centurylink.com/smallbusiness/products/bundles/core-connect/ (last visited Mar. 30, 2014).

216 Denys Bucksten, District 112 Will Have A Tenfold Increase in Bandwidth This Year To Improve Internet Access, Chi. Trib., Aug. 12, 2013, available at http://articles.chicagotribune.com/2013-08-12/news/ct-tl-lk-0815-highland-park-school-technology-20130812_1_north-shore-d

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- In Pennsylvania, Comcast was able to provide a number of school districts with connectivity to the PA IUnet, an online, statewide, private network that allows teachers and students to communicate, collaborate, and share resources. According to Jared Mader, director of education technology for the Lincoln Intermediate Unit, which helped facilitate the agreement, "Comcast has allowed many of our districts to increase their bandwidth exponentially – and in some cases for half the price – which has given them access to cloud computing, video conferencing, and other online educational tools that had previously been cost-prohibitive for them."217

- "Utz Quality Foods, Inc. is using Comcast Business Ethernet and Business Trunks to connect multiple office locations and distribution centers throughout the Eastern United States. . . . With its recent acquisitions of three major regional brands and distribution networks – Zapp's Potato Chips, Wachusett Potato Chip, and The Bachman Co. – within the past 24 months, Utz realized it needed to reassess its existing wide area voice and data networking infrastructure to replace its old T1 lines. . . . 'In aggregate, we realized a significant savings, while enjoying more bandwidth than what our T1 lines had given us,'" (quoting J. Ed Smith, chief information director).218

- In Florida, "Comcast has been aggressively pursuing business that traditionally might be handled by legacy phone companies such as AT&T . . . . 'We are saving money over what we were previously paying for our old phone system, and now we have a completely cloud-based solution that gives our team full freedom to work wherever they need to.'"219

- Union Bank in Ohio used T-1 broadband lines provided by five separate telecommunications carriers before switching to TWC. Switching to TWC has provided many benefits. For example, according to a TWC case study: "[T]he data transmission speed has doubled, having gone from 1.5 Mbps on the old T-1 lines to a blazing fast 3 Mbps bandwidth on [TWC]'s state-of-the-art fiber-optic network. As a result, the bank's data congestion problems are a thing of the past . . . [TWC] was able to fulfill the bank's most stringent network security needs through its managed security program, which includes filtering and around-the clock monitoring that Union Bank is required to maintain . . . the solution has

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217 School CIO, Back Office Business: Pennsylvania Districts Get Low-Cost Ethernet Service, Jan. 31, 2014, http://www.schoolcio.com/cio-feature-articles/0109/back-office-business/54654.

218 Utz Upgrades Connectivity for Offices, Distribution Centers, Evening Sun, Apr. 24, 2013, available at http://www.eveningsun.com/news/ci_23096622/utz-upgrades-connectivity-offices-distribution-centers-including-hanover.

219 Kevin Gale, Cutting Edge Phone System Helps Small Business Owners, Road Warriors, S. Fla. Bus. J., Sept. 23, 2013, available at http://www.bizjournals.com/southflorida/blog/2013/09/comcast-adds-mobile-feature-to.html (quoting Jordi Tejero, owner of CRS Technology Consultants).

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resulted in a tremendous reduction in the monthly cost of Union Bank's broadband service."220

- Switching to TWC has provided many benefits to the City of Colleyville, TX. For example, according to a TWC case study: "The [TWC] secure and fiber-rich [Ethernet Virtual Private Line] network, scalable up to 10 Gbps+, helps with routine government tasks . . . . It has also enabled . . . Colleyville to centralize servers, applications and terabytes of data storage from six to two data center facilities. The centralization has brought numerous enhancements to city administration, such as hardware and electricity cost savings, data synchronization across all its facilities, centralized sewage and water monitoring systems, enabling online training for firefighters and police officers and desktop virtualization."221

Nevertheless, Comcast and TWC have faced constraints in attempting to replicate their market success on a larger scale. As described below, and as explained by Drs. Rosston and Topper, and Dr. Israel, respectively, the added scale and geographic reach, as well as the complementary strengths afforded by the transaction, will enhance the combined company's ability to be a more significant player in the medium-sized business segment and beyond.222

2. The Transaction Will Enhance Competition for Medium-Sized, Regional, Super-Regional, and Enterprise Businesses.

    a. The Combined Company's Greater Scale, Scope, and Efficiency Will Overcome Key Constraints.

To date, geographic constraints have hindered Comcast, TWC, and other cable companies from competing effectively against incumbent providers with national scale and scope for larger business customers that have multiple office locations in various states.223

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220 Time Warner Cable, The Union Bank Company Cashes in on Blazing Fast Ethernet and Managed Security Services from Time Warner Business Class, Case Study, http://www.timewarnercable.com/en/business-home/resource-center/case-studies/union-bank-company.html.

221 Time Warner Cable, City of Colleyville Modernizes their Network with Time Warner Cable Business Class Fiber-Rich Ethernet Services, Case Study (Nov. 2013), http://www.timewarnercable.com/en/business-home/resource-center/case-studies/city-of-colleyville.html.

222 See Rosston/Topper Decl. ¶¶ 122-138; Israel Decl. ¶¶ 133-57.

223 See Rosston/Topper Decl. ¶ 125.

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Where a customer's business spans multiple areas, a cable company with a limited footprint is often not an option at all. And while Comcast and TWC could theoretically partner to serve customers that span both companies' footprints – and in fact have ongoing efforts to do so – such offerings are often difficult to arrange and manage for both the customer and for the providers. Although some customers are willing to work with an "aggregator" to cobble together multiple providers' offerings to serve their various sites, many customers refuse to use aggregators or are willing to consider such options only where one provider can serve a majority of the locations using its own network.224 And customers tend to prefer the higher level of reliability that results when a network is built to a common set of technical standards, is managed by a single network operations center, and offers a single point of contact for technical or other customer-service issues. As Dr. Israel explains, both Comcast and TWC now face significant "coordination problems associated with multiple firms serving a single customer," including differences in business practices between Comcast and TWC themselves. These coordination problems are often impossible to resolve via contracting.225

Another constraint currently faced by Comcast and TWC is "double marginalization" under which the price that Comcast provides to its customer reflects two profit margins: the margin that the other supplier (say, TWC or another provider) includes in its wholesale price to Comcast and the margin that Comcast includes in the retail price to the customer. Dr. Israel details how "lower margins make it less profitable for Comcast (or TWC) to bid on a project and increase the likelihood that a project will fail to meet Comcast's (or TWC's) internal hurdle

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224 Angelakis Decl. ¶¶ 35-36.

225 Israel Decl. ¶ 147; see also id.¶ 148; Rosston/Topper Decl. ¶ 141.

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rates. To the extent that the lower return arising from double marginalization prevents Comcast (or TWC) from bidding on a project, competition in the business services segment is reduced.”226

As a result of the foregoing constraints, Drs. Rosston and Topper observe, cable companies often are viewed as not being able to make a competitive offering in this market segment.227 The transaction will help change that by extending Comcast’s geographic reach and enhancing the combined company’s investment incentives.

Medium-Sized, Regional, and Super-Regional Businesses. Economies of scale will allow the combined company to drive fiber and other high-speed capacity technology deeper into the network, creating the broadband infrastructure that is needed to bring business locations “on-net.” 228 TWC already has 58,000 commercial buildings connected with fiber in its footprint, and Comcast has about [[   ]] on-net fiber-connected buildings in its footprint. Both Comcast and TWC provide dedicated Internet access to businesses over their fiber networks, offering speeds of up to 10 Gbps. Where fiber is not an option, Comcast has helped pioneer the offering of “Ethernet over HFC” (hybrid fiber/coax) that delivers Metro Ethernet at guaranteed speeds of up to 10 Mbps symmetrical and provides a cost-effective Ethernet option for many customers.229 The combined company will service a greater total number of on-net fiber and HFC buildings that can serve multi-site customers than either company does alone, and will have greater incentive to build out even more – making it a more viable competitive alternative to legacy providers. Furthermore, increasing the number of “on-net” sites the company serves will further

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226 Israel Decl. ¶ 151; see also Rosston/Topper Decl. ¶ 127.

227 See Rosston/Topper Decl. ¶ 120.

228 Angelakis Decl. ¶¶ 33-34.

229 With its Ethernet over HFC service, Comcast estimates that it makes Ethernet services available to approximately one million buildings.

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reduce the costs and operational barriers for businesses with multiple sites and facilitate the re-investment of operating cash flow in connecting additional sites to its networks.230

An expanded footprint will also enable the combined company to provide an attractive unified service to regional businesses and super-regional businesses with offices adjacent to or clustered around areas previously split between the Comcast and TWC markets. These opportunities may be greatest in:

- Northeast Corridor: Boston (Comcast) New York (TWC) New Jersey (Comcast) Philadelphia (Comcast) Baltimore (Comcast) Washington, DC (Comcast);
- Midwest: Pittsburgh (Comcast) Cleveland (TWC) Columbus (TWC) Detroit (Comcast) Chicago (Comcast);
- Midwest 2: Milwaukee (TWC) Green Bay (TWC) Chicago (Comcast) Indianapolis (Comcast) Kansas City (TWC) Lexington (TWC) Louisville (TWC);
- Texas: Houston (Comcast) Dallas/Fort Worth (TWC) Austin (TWC) San Antonio (TWC);
- Southeast: Greensboro (TWC) Charlotte (TWC) Columbia (TWC) Charleston (Comcast/TWC) Atlanta (Comcast) Mobile (Comcast) Tallahassee (Comcast) Jacksonville (Comcast) Miami (Comcast); and
- Pacific Coast: San Diego (TWC) Los Angeles (TWC) San Francisco (Comcast) Sacramento (Comcast) Portland (Comcast) Seattle (Comcast).

In addition to making it possible to reach and serve larger multi-site customers in a uniform fashion, the combined company's larger scale will enhance competition in other dimensions as well. Notably, it will allow the company to build super-regional Metro Ethernet clusters, thereby further consolidating key parts of the company's network and fostering more efficient delivery of services. Scale also will enable the combined company to spread its

230 Likewise, a reduction in "off network" sites will allow Comcast to spend fewer dollars on processes devoted to managing interconnection contracting, service delivery, and service assurance efforts.

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investments in product procurement and development over a larger potential base of customers, which will facilitate more investment and enhance the combined company's ability to compete with the incumbents (e.g., Comcast's Business Voice Edge Hosted PBX Service, described further below, is currently available to 6 million businesses, and post-transaction the service could be made available to 10 million prospects).

As Drs. Rosston and Topper explain, "the combined entity will be able to offer lower prices and will therefore be a stronger, more aggressive competitor, to the benefit of business customers," because "[t]he transaction will likely reduce prices for businesses whose locations span the Comcast and TWC networks by reducing or eliminating double marginalization and reducing the cost of underlying network services required for an out-of-footprint connection."231 Dr. Israel similarly concludes that "the transaction alleviates both the coordination issues and the double-marginalization problems and makes it more profitable for the combined firm to bid on (and win) contracts from super-regional businesses."232

All of these scale, integration, and operational efficiencies will mean the combined company will be better equipped than either company alone could be to develop, deploy, maintain, and consistently upgrade innovative products and services for larger business customers.

Enterprise Businesses. Delivering services to national enterprise customers requires substantial investment in network infrastructure, data centers, and other facilities.233 Comcast estimates that the cost of these network investments alone will exceed ${{ }} billion.234 The

231 Rosston/Topper Decl. ¶ 129; see also Israel Decl. ¶¶ 117-118, 142-144.

232 Israel Decl. ¶ 153.

233 See Rosston/Topper Decl. ¶ 136.

234 See id. ¶ 137.

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increased number of on-net fiber and HFC buildings that can serve multi-site customers, as well as the increased scale, integration, and operational efficiencies described above will also establish the combined company as a meaningful alternative for enterprise companies that have many locations throughout the expanded Comcast-TWC footprint.235 An enterprise customer may still need to rely on an aggregator for some of its locations to fill in the holes outside the combined company's footprint. However, with its greater footprint post-transaction, the company will be more likely to be a contender for the aggregator role because of its larger number of locations.236 And as the main provider, the company can play a bigger role in ensuring quality service and reducing cost by avoiding double marginalization.237

Even where Comcast and TWC have been able to win some of this enterprise business in the past, they have been able to do so only on a patchwork basis. For example, TWC currently provides business services to the Cleveland Clinic and is partnering with the clinic to provide an in-home health solution to reduce the rate of readmissions. The Cleveland Clinic has two large campuses in Florida in the Comcast footprint, so TWC has not been able to offer those campuses its services or extend the in-home health solution trial to patients of the Cleveland Clinic who live in Florida or are there from Cleveland for part of the year. Approval of the transaction would change that for the first time, allowing the company to offer a unified solution to the Clinic. In short, for that entity, and for many others like it, the transaction offers a new alternative solution for business communications, and the promise of lower prices and more innovation – benefits that will redound to the consumers those businesses serve.

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235 See Rosston/Topper Decl. ¶¶ 135-138.

236 Angelakis Decl. ¶ 37.

237 Israel Decl. ¶¶ 153-58.

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b. Combining Comcast's and TWC's Complementary Business Innovations Will Further Enhance Competition.

Beyond the significant benefits driven by larger scale, the combined company will be able to compete more effectively for medium-sized and enterprise business customers by combining Comcast's and TWC's respective product offerings into a "best of the best" service portfolio, thereby capitalizing on their complementary strengths and marketing expertise.238

For example, Comcast currently offers some services to business customers that TWC does not, including Comcast's Business VoiceEdge ("BVE"), which provides web-based PBX functionality with a host of nomadic features. This includes a "Be Anywhere" feature that allows customers to make and receive calls from any device at any location with one phone number, and to use 4-digit extensions to contact colleagues from their mobile phones. BVE also includes "Teleworker," which enables seamless integration of remote and work-at-home employees into a company's phone infrastructure. In 2013, Comcast was listed as a Leading Hosted VoIP Provider on the Infonetics Research 2013 North America Business VoIP Service Leadership Scorecard.239

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238 Comcast is currently listed as the 8th largest U.S. Metro Ethernet provider. TWC is 5th. See Press Release, Vertical Systems Group, 2013 U.S. Carrier Ethernet Leaderboard (Feb. 12, 2014), http://www.verticalsystems.com/vsglb/2013-u-s-carrier-ethernet-leaderboard/. Additionally, although Comcast only launched its efforts in the medium-sized business market segment in 2010, it has already been recognized for its innovative efforts, winning a variety of Carrier Ethernet awards, including 2013 Metro Ethernet Forum awards for Regional Service Provider of the Year, Best Marketing, and Best Carrier Ethernet Business Application, as well as a 2012 Best Practices Award from Frost & Sullivan for North American MSO Ethernet Services Competitive Strategy Leadership. See Press Release, Comcast Corp., Comcast Introduces New Metro Ethernet Services for Mid-Sized Businesses (May 16, 2011), http://corporate.comcast.com/news-information/news-feed/comcast-introduces-metro-ethernet-services-to-address-bandwidth-a
Bill Stemper, Comcast Wins Metro Ethernet Forum Service Provider of the Year Award, Comcast Voices (Nov. 22, 2013), http://corporate.comcast.com/comcast-voices/comcast-wins-metro-ethernet-forum-service-provider-of-the-year-award.

239 Press Release, Infonetics, Infonetics Scoreboard Ranks Comcast, Verizon, 8x8, XO Top N. American Business VoIP Providers, IP Connectivity Becoming Commodity (May 14, 2013), http://www.infonetics.com/pr/2013/North-America-Business-VoIP-Scorecard.asp.

Meanwhile, TWC, through its NaviSite subsidiary, provides a range of cloud-based solutions that appeal to medium-sized and enterprise businesses, including “Infrastructure as a Service” and “Desktop as a Service,” and customized managed hosting, managed application, and message solutions, along with other related IT solutions and professional services.240 TWC also offers Session Initial Protocol (“SIP”) trunking, data center services, and other high-end business services products, and has received a “Metro Ethernet Forum” 2.0 Certification in all eight Ethernet product categories.241 As Drs. Rosston and Topper conclude, “[c]ombining the complementary products and services offered by Comcast and TWC under a single company will enhance competition in business services” in a way neither company can do today.242

3. The Transaction Will Enhance Competition for Wireless Backhaul Services.

With mobile data traffic growing incredibly rapidly, wholesale wireless backhaul is also an emerging and significant national service that the combined company will be better positioned to provide in the years ahead.243 Comcast and TWC have both responded to the growing need for wireless carriers to transport wireless traffic from their cell towers on high-capacity fiber facilities to make the mobile broadband ecosystem work more efficiently and reliably. TWC has grown its business through strategic acquisitions – recently purchasing DukeNet, an 8,700-mile regional fiber-based network that provides wholesale wireless backhaul and other business

240 See Cloud Services, NaviSite, http://www.navisite.com/ (last visited Apr. 5, 2014).

241 See The MEF Certification Program, MEF, http://www.metroethernetforum.org/certification/mef-certification-programs (last visited Mar. 30, 2014). Comcast was the first service provider to receive CE2.0 certification. See Comcast Business Services is World’s First CE 2.0 Service Provider, Telecom Review, http://telecomreviewna.com/index.php?option=com_content&view=article&id=334:comcast-business-services-is-worlds-first- (last visited Apr. 2, 2014). Comcast is certified in six of the eight CE 2.0 categories.

242 Rosston/Topper Decl. ¶ 139.

243 Angelakis Decl. ¶ 38.

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services to customers in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia. TWC currently provides wireless backhaul to approximately 14,000 cell sites, while Comcast serves approximately 8,500 cell sites. Comcast's and TWC's current shares in this segment are small: the companies together had only an estimated 2.8 percent market share in 2013.244

As with the medium-sized and enterprise segments discussed above, the transaction will make the combined company a more effective wireless backhaul competitor to the ILECs due to:

- Improved network reach that will allow the company to serve a much higher proportion of a mobile operator's sites;

- Improved operations resulting from consistency in approach and technology on a larger fraction of a mobile operator's sites;

- Increased ability to build out fiber and invest in wireless backhaul infrastructure because of additional scope and scale; and

- Increased number of on-net locations, which will allow the operating cash flow from those sites to be re-invested in plant expansion to marginal sites.245

By utilizing not only TWC's assets, but also its knowledge and expertise of this business, Comcast will be better positioned to offer mobile operators the services they want in more locations.

4. The Transaction Will Inure to the Benefit of Small Businesses.

The combined investments and network upgrades that are necessary to serve medium-sized, enterprise, and wholesale wireless backhaul customers across the combined company

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244 Charlie Reed, Comcast-TWC Merger to Create Fourth Largest Business Services Player, Telecom Reseller, Feb. 13, 2014, available at http://www.telecomreseller.com/2014/02/13/comcast-time-warner-cable-merger-to-create-fourth-largest-business-services-play

245 See Angelakis Decl. ¶ 39.

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footprint will also inure to the benefit of small business (and residential customers as well) in a number of ways.

First, since products developed for the medium-sized or enterprise segments can often be offered to/repackaged for small businesses, new product development driven by greater competition for larger businesses will also benefit small business customers. Second, small businesses (and residential customers) will enjoy the "spillover effects" from investments and plant upgrades made to serve larger businesses.246 For example, consider a strip mall with 10 separate small business stores that previously did not have a competitive alternative to the ILECs for their broadband, voice, or video services, because it was cost-prohibitive for Comcast or TWC to build out its network for so few additional customers. If the combined company extends the last mile of its network to serve a medium-sized or enterprise customer with, say, five different sites, one of which is near the strip mall, those 10 stores may become serviceable from the same network extension. As Dr. Israel observes:

[T]hrough a forward-looking lens, every build-out Comcast does for a business customer in the future lays down more network infrastructure to serve more businesses and residential customers. Building out the network infrastructure in a way that creates excess capacity effectively reduces the marginal costs of connecting more business and residential customers near the build-out. All expansions of cable plant and investments in core network to serve newly profitable business customer opportunities directly benefit residential customers as well (through a faster core network and more homes passed). In a similar vein, the expansion of broadband to certain businesses within a footprint increases the likelihood of providing access to other business and residential customers in the future.247

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246 Israel Decl. ¶¶ 181-86; Rosston/Topper Decl. ¶ 63.

247 Israel Decl. ¶ 184.

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The FCC has recognized that cable entry “foster[s] facilities-based competition in the enterprise market,” and that this promotes “a long-standing goal.”248 As shown above, the transaction will increase competition in all business segments in multiple ways. This is an area of the communications marketplace that is in serious need of increased competition. The Commission can move the needle substantially in this regard by approving this transaction.

D. The Transaction Will Accelerate the Deployment and Adoption of Next-Generation Cable Advertising Technologies that Will Benefit Advertisers and Consumers.

The transaction will accelerate the expanded deployment and adoption of next-generation advertising technologies – notably (1) dynamic ad insertion for VOD and other platforms, and (2) addressable advertising – that will create new benefits for advertisers, content providers, and consumers alike.

Dynamic Ad Insertion. Traditionally, VOD advertising was static and often became stale. The ads were inserted in programming in advance and could not later be modified, regardless of how long the VOD asset was available to consumers. Dynamic ad insertion transforms this platform by separating the ads from the programming stream and dynamically inserting them into VOD segments, and ultimately into other platforms like TV Everywhere (and even cloud DVR).249 This technology thus allows advertisers to tailor their messages on this platform in a more timely manner, giving them more meaningful access to the increasingly large

248 Applications Filed for the Acquisition of Certain Assets of CIMCO Commc’ns, Inc. by Comcast Phone LLC, Comcast Phone of Mich., LLC and Comcast Business Commc’ns, LLC, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd. 3401 ¶ 4 (2010) (“Comcast’s acquisition of CIMCO’s assets and expertise will result in significant public interest benefits, in part because the transaction will foster facilities-based competition in the enterprise market, a long-standing goal of the Commission.”); Applications Filed for the Transfer of Control of Insight Commc’ns Co. to Time Warner Cable Inc., Memorandum Opinion and Order, 27 FCC Rcd. 497 ¶ 23 (WCB 2011) (“[T]he proposed transaction likely will provide benefits to residential and business customers through the combined companies’ increased ability to compete with the incumbent LEC in the provision of voice service and service bundles.”).

249 See Angelakis Decl. ¶ 41.

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segment of consumers who engage in time-shifted viewing or view content using devices other than a traditional television (e.g., a computer, tablet, or smartphone).250

Comcast and TWC have both been developing and deploying dynamic ad insertion in VOD, online, and other platforms.251 However, further investment and work is needed to make this platform more attractive to advertisers, by improving existing dynamic ad insertion technologies and unifying measurement metrics across platforms.252 The transaction will help address these challenges and unlock the real potential for this new technology for three reasons.253

First, being able to spread the costs for this new technology over an expanded customer base will allow for greater investment in enhancing and further deploying this technology across multiple platforms.

Second, the combined company's increased scale will likely spur advertisers and ratings agencies to unite around common audience measurement and effectiveness tools for these new platforms and ad technologies. This, in turn, will create greater momentum for their adoption

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250 See, e.g., Comcast Spotlight, Dynamic Ad Insertion: Unlocking the Value of Video on Demand, at 6, 9, http://www.comcastspotlight.com/takefive/assets/Take_Five_10_DAI_Webcast_FINAL.pdf. Nielsen estimates that between 2011 and 2013 the average time spent per adult per day watching time-shifted television has increased from 25 minutes to 32 minutes. Additionally, the time using the Internet, a smartphone, or a multimedia device has increased from 112 minutes to 130. See Nielsen Co., An Era of Growth: The Cross-Platform Report, at 9 (Mar. 5, 2014), http://www.nielsen.com/us/en/reports/2014/an-era-of-growth-the-cross-platform-report.html.

251 40 percent of Comcast's VOD viewing is in the C3 window. See Jeff Baumgartner, Advanced Ads: 40% of Comcast VOD Viewing Is in C3 Window, Multichannel News, Feb. 28, 2014, available at http://www.multichannel.com/distribution/advanced-ads-40-comcast-vod-viewing-c3-window/148580. Comcast had about 1 billion dynamic ad insertion impressions last year and expects to double this in 2014. Id.

252 See Leslie Ellis May, Dynamic Ad Insertion and the Upfronts, Multichannel News, May 19, 2013, available at http://www.multichannel.com/blogs/translation-please/dynamic-ad-insertion-and-upfronts.

253 See Jeff Baumgartner, Mega-Merger Could Be A Boon for Advanced Ads, Multichannel News, Feb. 24, 2014, available at http://www.multichannel.com/finance/mega-merger-could-be-boon-advanced-ads/148461 ("[T]he proposed Comcast-TWC deal could lead to seismic shifts in how programmers and operators buy and sell ads, and pave the way for a broader use of new technologies.").

and deployment.254 As Drs. Rosston and Topper point out, despite the technical capabilities, uptake by content providers and advertisers of dynamic ad insertion has been far short of its potential "because viewer measurement tools that include VOD and alternate devices and could accurately value dynamic ad insertion on those platforms are not fully developed." 255 They further explain:

With Comcast's increased scale and ability to offer more VOD advertising to more customers following the transaction, Comcast may be able to work more closely with ratings firms to accelerate development of measures that include VOD and alternate devices, which in turn would provide incentives for content providers and advertisers to take advantage of dynamic ad insertion in VOD content.256

Third, as discussed above, Comcast is a leader in VOD platforms and content. The transaction will extend Comcast's VOD and TV Everywhere platforms and digital rights to TWC's systems, particularly in the important markets of New York257 and Los Angeles, creating additional cable advertising options in these Direct Marketing Areas ("DMAs").258

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254 See Rosston/Topper Decl. ¶ 145.

255 Id.

256 Id.

257 In the New York market in particular, the integration of TWC with Comcast Spotlight may also help the company build on complementary strengths in managing local "interconnect" advertising arrangements. Interconnects allow MVPDs to pool their advertising avails in an area and then offer them to advertisers. For example, using an interconnect, a car dealer, in one transaction, can schedule a commercial to run at the same time on the same channel on all participating MVPDs. The largest television market in the country, New York, has one interconnect managed by Cablevision that includes Cablevision and Comcast, and a quasi-interconnect (a joint sales agreement that does not easily allow for simultaneous insertion) managed by TWC. Following the transaction, Comcast intends to combine the two interconnects to serve advertisers better. In particular, a single interconnect would create efficiencies for local advertisers by allowing them to target virtually all MVPD households in the greater New York market with a single buy. The combined interconnect would also facilitate hyper-local advertising. Manhattan currently contains two local zones. Comcast's philosophy is to create smaller, more discrete zones. This would increase the number of local zones in Manhattan and benefit advertisers who want to reach hyper-local audiences. In addition, consolidation of a large base of the advertising technologies discussed above into one interconnect may help galvanize other interconnect participants to accelerate adoption of these technologies.

258 See id. ¶ 152.

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While dynamic ad insertion will be of most interest to advertisers themselves, the increased deployment and uptake of this technology made possible by the transaction will yield benefits for content providers by allowing them to better monetize programming on VOD and other cable platforms, providing a new source of revenue to support high-quality programming and possibly even reducing pressure on license fees.259 This, in turn, should help consumers by making it more likely that programmers can and will make more popular programming available, including "banking" entire past seasons on VOD to allow consumers to catch up, as USA Networks recently did with Suits.260 As Drs. Rosston and Topper point out, if this proves successful and monetizable, "[a]dvanced advertising at the greater scale afforded by this transaction could result in consumers receiving discounted or free access to some of the same content they are purchasing elsewhere at a monthly out-of-pocket cost of $8-10/month."261

Addressable Advertising. Similar benefits may result with respect to addressable advertising technology.262 Addressable advertising allows marketers purchasing advertising spots on cable network programs to augment geographic zone targeting (i.e., advertising targeted at specific zip codes or neighborhoods) with advertising targeted to individual households based on demographics and other household-specific characteristics.263 The advertiser identifies the preferred demographics of its target audience, and then the cable operator targets ads to matching neighborhoods or households using various data, in compliance with the Cable Act's stringent

259 See id.¶ 147.

260 See Jon Lafayette, VOD Stunt Has Viewers Trying On USA's 'Suits', Broadcasting & Cable, Jan. 14, 2013, available at http://www.broadcastingcable.com/news/advertising-and-marketing/vod-stunt-has-viewers-trying-usas-suits/53067?nopaging=

261 Rosston/Topper Decl. ¶ 147.

262 See Ryan Joe, CES 2014: Advances in Addressable TV, Ad Exchanger, Jan. 14, 2014, http://www.adexchanger.com/digital-tv/ces-2014-advancements-in-addressable-tv/.

263 See Jeanine Poggi, The CMO's Guide to Addressable TV Advertising, Advertising Age, Feb. 19, 2014, available at http://adage.com/article/cmo-strategy/cmo-s-guide-addressable-tv-advertising/291728/.

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privacy protections.264 Addressable advertising offers important benefits to existing advertisers who can improve the efficiency and cost-effectiveness of their marketing efforts, and may provide a new option to advertisers that might not previously have considered the cable network ads because their products appeal to narrow, niche markets rather than a mass market.

The transaction will accelerate the deployment of addressable advertising not just due to the greater scale and investment potential discussed above,265 but also for two additional reasons.

First, while Comcast has addressable ad technology that it is planning to roll out more widely by the end of 2014, TWC has not deployed addressable advertising on its platform. Accordingly, the transaction will extend Comcast's addressable ad technology and plans to the TWC systems.

Second, the expanded geographic reach of the combined entity will create attractive new options for advertisers to reach cable network audiences efficiently. As Drs. Rosston and Topper explain, "[a]dvertisers who seek to advertise to a television audience today generally purchase advertising time from cable and broadcast networks and sometimes supplement those purchases with a handful of spot market advertising purchased from local broadcast stations and aggregator

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264 See 47 U.S.C. § 551.

265 The advertising success of other technology-focused companies – with an even more expansive reach (and earlier start) than the combined company would have – underscores the benefits of scale for developing next-generation advertising technologies that enable more precise audience targeting. For example, Google's advantage in targeted advertising technology is well documented; it is recognized as "far and away the biggest player in the ad-tech industry," serving over 300 billion ad impressions per month. See Alex Kantrowitz, Just Look At How Google Dominates Ad Tech: Rate New Data Shows Just How Big Google's Ad-Tech Advantage Is, Advertising Age, Oct. 18, 2013, available at http://adage.com/article/digital/google-dominates-ad-tech/244824/. And the once nascent mobile advertising space has now seen huge growth thanks to efforts by Facebook and Google. See Victor Luckerson, The Mobile Ad Market is Exploding Because of These Two Companies, Time, Mar. 19, 2014, available at http://time.com/#30517/the-mobile-ad-market-is-exploding-because-of-these-two-companies/. Google netted 49 percent of all mobile ad revenue in 2013, and is projected to $14.7 billion in mobile ad revenue this year. See Driven by Facebook and Google, Mobile Ad Market Soars 105% in 2013, eMarketer, Mar. 19, 2014, available at http://www.emarketer.com/Article/Driven-by-Facebook-Google-Mobile-Ad-Market-Soars-10537-2013/1010690#EhhmEWkZ
with 172 million users in the U.S. and Canada alone, earned 53 percent of its ad revenue, or $1.37 billion, from next-generation mobile ads. See id.

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NCC Media."266 The "spot" cable advertising267 available from NCC runs across a variety of MVPDs, many of which do not offer addressable advertising and other advanced capabilities. As such, "Comcast's greater geographic footprint and accelerated rollout of advanced advertising services resulting from this transaction will create an alternative for advertisers that want Comcast's targeted or addressable ad services in its markets and can accept the absence of full national reach."268 Further, if the addressable advertising technology becomes more standardized, as it may once Comcast has invested in and developed it, and spreads across the industry, it will be increasingly interesting to advertisers, since addressability is more valuable as the target audience grows – i.e., with a bigger starting audience, a larger number of "hits" is likely.269

And when addressable technology is combined with the dynamic ad insertion capability described above, the enhanced value and benefits are particularly significant.270 For the first time, advertisers of all types and sizes, including national advertisers, seeking to target customers with spot cable advertising in certain key markets across the country will be able to look to the

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266 Rosston/Topper Decl. ¶ 151. NCC Media, a joint venture owned by Comcast, TWC, and Cox Cable, represents national spot ad sales for MVPDs in all 210 U.S. markets and reaches more than 80 million households. See NCC Media – Local Hits the Spot, AdWeek, Apr. 22, 2013, available at http://www.adweek.com/sa-article/ncc-media-148715.

267 "Spot advertisers" are advertisers that buy advertising at a local Designated Market Area, zone, or subzone level. See, e.g., Spot Cable Advertising, Comcast Spotlight, http://www.comcastspotlight.com/advertising-solutions/on-air/spot-cable (last visited Apr. 3, 2014).

268 Rosston/Topper Decl. ¶ 152; see also Jeanine Poggi, What Comcast-Time Warner Cable Means for Advertising: A Better Alternative for National Advertisers, More Reach for Addressable Ads, Advertising Age, Feb. 14, 2014, available at http://adage.com/article/media/comcast-time-warner-cable-means-advertising/291713/ ("Acceleration of addressable advertising. One of the biggest obstacles to ad targeting at the household level has been a lack of broad reach, which makes running campaigns across multiple operators a clumsy and inefficient effort. The merger should eventually help expand the addressable universe to the kind of scale that advertisers desire and speed up advances in areas such as dynamic ad insertion.").

269 See Rosston/Topper Decl. ¶ 149.

270 Jeanine Poggi, NBC Universal to Start Selling Addressable Ads in Video on Demand: 'NBCU+ Powered By Comcast' Will Expand VOD Addressability," Advertising Age, Jan. 30, 2014, available at http://adage.com/article/media/nbcu-comcast-partner-advanced-advertising-product/291401/.

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combined company to insert their timely, dynamic, addressable ads in a VOD asset or other platform.271

Finally, consumers not only will be able to enjoy additional highly popular content on this convenient platform as described above, but they will also receive advertisements, promotions, and discounts that are more relevant to them and their families.272

E. The Transaction Will Generate Other Significant Public Interest Benefits.

1. Consumers Will Benefit from the Extension to the TWC Systems of Various Commitments and Obligations in the NBCUniversal Order, as Well as Comcast's Best-in-Class Community Investment and Diversity Programs.

Additional benefits and protections will arise from the extension to the acquired systems of (1) various pre-existing obligations and other commitments developed in connection with the NBCUniversal transaction and (2) Comcast's best-in-class diversity and community investment programs.

The NBCUniversal transaction contained more than 150 conditions, including substantive subparts. As demonstrated in the last three annual compliance reports, and as detailed in Exhibit 9, in over three years, Comcast has had only one instance where the FCC took issue with the company's compliance, which was fully addressed by a voluntary consent decree.273

271 Rosston/Topper Decl. ¶ 145; see Jon Lafayette, What a Comcast-TWC Merger Would Mean for the Rest of the TV Business, Broadcasting & Cable, Feb. 17, 2014, available at http://broadcastingcable.com/sites/default/files/public/CommFeb17.pdf ("[T]he merger hastens tech innovation on the advertising front, as it 'eventually harmonizes 30 million households on a common ad tech platform.' That could enable addressable advertising and dynamic ad insertion in VOD, something that industry consortium Canoe Venture could never do . . . .") (quoting Tim Hanlon, CEO, Vertere Group).

272 The transaction also will help support the development of interactive advertising, a technology which TWC has not previously prioritized due to the required investment. See Rosston/Topper Decl. ¶ 157. Bringing Comcast's efforts to develop interactive advertising technology to TWC systems will benefit both advertisers and consumers. See id.

273 See Comcast Corp., Order, 27 FCC Rcd. 6983 (EB 2012) ("Comcast EB Consent Decree"). Comcast promptly resolved the FCC's concern. Comcast had made a good faith effort to comply with the condition, but the FCC questioned the adequacy of the initial implementation of Comcast's standalone broadband obligation. In

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Comcast otherwise consistently has met, and often exceeded, all of its commitments and obligations. And no serious objections have been filed – either on these reports or otherwise – regarding Comcast's compliance track record. Comcast intends to build on that record to bring new benefits to customers in TWC markets. Indeed, even when no longer mandated or required, many of these conditions and commitments have become part of Comcast's core business ethics and operations. Key benefits that will be extended to the acquired systems include:

Open Internet Commitment. As noted above, this transaction will extend the protections of the Open Internet rules that were rejected by the D.C. Circuit to millions of TWC customers, providing greater certainty for consumers and edge companies as the FCC considers a new legal framework.274 Specifically, this Comcast commitment will extend the enforceable protections of the no-blocking and non-discrimination rules to millions of additional broadband customers.275

Standalone Broadband Commitment. Comcast is committed to offering consumers the option to procure their broadband service on a standalone basis. Indeed, this condition has become a core feature of Comcast's broadband business, with standalone broadband services vigorously marketed and selling well.276 Thus, customers will have faster speeds, as well as the

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resolving the issue, Comcast agreed to extend the commitment to offer standalone broadband service at a specific price point for one extra year. Other than this, there were two disputes involving the conditions, both relating to interpretative issues – one with Bloomberg, as to the parties' different views of the neighborhooding condition, and one with Project Concord, as to the terms of its requested deal – neither of which resulted in the Commission finding or even suggesting noncompliance. See Bloomberg v. Comcast Cable Commc'ns, LLC, Memorandum Opinion and Order, 28 FCC Rcd. 14346 (2013); Project Concord, Inc. v. NBCUniversal Media, LLC, Order on Review, 27 FCC Rcd. 15109 (MB 2012) ("Project Concord Order on Review") (Commission review pending). A copy of the Comcast-NBCUniversal conditions is attached as Exhibit 10.

274 See supra Sections IV.B.1.b, V.C.1.b.

275 See, e.g., Comcast-NBCUniversal Order ¶ 94. Further, this commitment is reinforced by Comcast's additional agreement not to offer "specialized services" for its own or a third party's content in TWC systems. Id. App. A § IV.E.

276 As of January 21, 2014, the aggregate number of standalone broadband lines Comcast provisioned was [[ ]] million, more than [[ ]] percent of Comcast's total residential broadband subscribers. Letter from Lynn R. Charytan, Senior Vice President, Legal Regulatory Affairs and Senior Deputy General Counsel, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56 (Feb. 21, 2014).

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assured flexibility to mix and match any speed of broadband with the services of Comcast, another video provider, or no traditional video service at all. Although TWC offers a standalone broadband option today, this commitment ensures that this option will continue to be offered and actively marketed in the TWC acquired systems.277

Program Access Commitment. NBCUniversal will continue to make its programming available to MVPDs at fair market value and on non-discriminatory terms. Notably, NBCUniversal has been able to successfully reach commercial agreements with multiple MVPD partners over the past three years; not a single MVPD has submitted a program access dispute to arbitration. As a safeguard, the NBCUniversal Conditions provide MVPDs the right to seek arbitration with respect to NBCUniversal networks in specific circumstances.278 While not necessitated by this transaction, which involves relatively little new content, this same commitment and approach will be extended to TWC's controlled programming networks as appropriate; for example, TWC's controlled RSNs will be subject to standalone arbitration.279

Online Video Commitment. NBCUniversal is committed to working with online video distributors ("OVDs"), and developing mutually advantageous distribution deals.280 The NBCUniversal Condition allowing OVDs to demand, and, if necessary, arbitrate over access to NBCUniversal programming networks in certain circumstances will apply to TWC's controlled programming assets as appropriate – though, again, nothing in this transaction creates any new issues in this regard. In addition, TWC's carriage agreements, to the extent they remain in place

277 This commitment has subsequently been reinforced – and, with respect to training, expanded. See Comcast EB Consent Decree.

278 See Comcast-NBCUniversal Order, App. A § II.

279 Id. App. A § VII; see also discussion infra Section V.C.3.

280 For example, NBCUniversal has entered into or renewed agreements with several OVDs, including, among others, Amazon, Drama Fever, Hoopa, Netflix, and Sensio. Third Annual Compliance Report, at 3-4; see also discussion infra Section V.D.2.

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following the transaction, would be subject to prohibitions against practices that unduly influence or unfairly limit the provision of the acquired programming to OVDs.281

Broadband Adoption Commitment. This condition will have expired prior to the consummation of this transaction. However, as discussed above, Comcast has already improved and committed to extend its very successful Internet Essentials program for broadband adoption, and will expand it to TWC territories, enhancing opportunities for low-income families across the combined company's footprint.282

Broadcast Commitment. Comcast is proud of its close relationships with affiliated and unaffiliated local broadcast stations, and the commitments captured by letter agreements with both the NBC Television Affiliates Association and the ABC/CBS/Fox Television Affiliates Associations.283 The concerns underlying many of those provisions have proved unfounded, as Comcast enjoys positive relationships on all sides in retransmission consent and affiliation agreement negotiations.284 Nevertheless, these commitments will continue to apply and will extend to the TWC markets. Specifically, Comcast maintains separation between its cable and broadcast businesses with respect to NBCUniversal's negotiation of retransmission consent agreements with MVPDs, NBCUniversal's negotiation of affiliation agreements with local broadcast stations, and Comcast's negotiations of retransmission consent agreements with broadcast stations. Moreover, Comcast Cable has committed not to import distant NBC

281 See Comcast-NBCUniversal Order, App. A § IV.A, G.

282 See id. App. A § XVI; see also supra Section IV.B.2.d.

283 See Comcast-NBCUniversal Order, App. F.

284 Indeed, over the past three years, Comcast has not been party to any retransmission consent disputes resulting in a blackout with respect to its cable or broadcast properties.

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broadcast network signals into an affiliate's market where retransmission consent negotiations have failed.

Other Programming Commitments. Comcast has dedicated considerable resources to expanding access to local programming and children's VOD content, and to empowering parents. And Comcast will approach the acquired systems with the same goals, though some of these may require more time and technological development to incorporate fully in TWC systems. These include:

- Making available broadcast content in the acquired TWC systems at no additional charge on Comcast's VOD.
- Expanding VOD programming choices that appeal to children and families.
- Providing improved on-screen program ratings icons.
- Restricting the use of "Interactive Advertising" in programming produced primarily for children.

Non-Commercial Educational ("NCE") Station Carriage Commitment. Comcast is obligated to continue carrying qualified NCE and local NCE stations that had must-carry rights as of December 31, 2010 and relinquish their broadcast spectrum. NCE stations in the acquired systems will enjoy this protection as well,[285] affording such broadcasters the opportunity to both participate in the FCC's upcoming incentive auction and to continue to deliver important local programming to their local communities.

Diversity Commitments. The transaction will promote significant diversity interests in the TWC markets, because Comcast will extend its best-in-class diversity program to the acquired systems and networks and will incorporate and build upon those TWC programs that would enhance Comcast's own diversity practices.

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285 See Comcast-NBCUniversal Order, App. A § XV.

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Diversity is part of Comcast's corporate DNA. As detailed in Exhibit 11, Comcast is recognized nationally for its commitment to promoting diversity.286 For the past several years, its diversity program has been enhanced by a variety of commitments memorialized in three Memoranda of Understanding ("MOUs") with diverse leadership organizations in 2010 in connection with the NBCUniversal transaction.287 Those voluntary undertakings span five key focus areas across all aspects of the company's business: (1) governance, (2) workforce recruitment and retention, (3) procurement, (4) programming, and (5) philanthropy and community investment. Comcast's progress and accomplishments in its diversity and inclusion programs are detailed in the company's annual Corporate Social Responsibility Report.288 The first report after consummation of the transaction will include TWC's operations.

Since approval of the NBCUniversal transaction, Comcast has made demonstrable progress toward these goals, in many cases exceeding its commitments and expanding upon them with new or modified initiatives. That focus and progress will continue with respect to the expanded, post-transaction company, bringing concrete benefits to the TWC markets.

a) Governance. Comcast's Board of Directors is one-third diverse, including representation of people of color and women. In addition, Comcast and NBCUniversal each have an executive Internal Diversity Council to provide oversight and guidance on development and implementation of diversity and inclusion strategies across the company. These executive councils meet separately and jointly; further, several business units within the company also have diversity councils or committees participating directly in diversity initiatives. In addition, for the past three years, Comcast has received advice and guidance

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286 See also Eric Lipton, Comcast's Web of Lobbying and Philanthropy, N.Y. Times, Feb. 20, 2014, available at http://www.nytimes.com/2014/02/21/business/media/comcasts-web-of-lobbying-and-philanthropy.html?_r=0; Awards & Recognitions, Comcast Corp., http://corporate.comcast.com/news-information/awards-and-recognition (last visited Apr. 3, 2014) (listing awards, recognitions, and honors received by Comcast and its leadership).

287 See Comcast-NBCUniversal Order, App. G.

288 2012 Corporate Social Responsibility Report, Comcast Corp., http://corporate.comcast.com/images/Comcast_NBCUniversal_CSR_2012.pdf ("2012 Corporate Social Responsibility Report").

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from the Joint Diversity Advisory Council ("Joint Council"), a unique external advisory group consisting of more than 40 nationally recognized advisors on diversity from business, community-based organizations, and the media/entertainment industry, representing a broad spectrum of diverse constituents and perspectives. The company ensures transparency and measurement of progress through rigorous benchmarking and reporting processes, including regular reports to the Board, Internal Diversity Councils, and external Joint Council.

Within 120 days of the close of the transaction, Comcast will develop a new master strategic plan that will set forth the vision and goals for the combined company's (including TWC's) diversity programs, similar to the plan adopted shortly after the NBCUniversal transaction closed. The new plan, like the existing plan, will be formulated with the advice of the Joint Council. This transaction will afford Comcast the opportunity to ensure that the best and most effective approaches to governance for diversity and inclusion are deployed throughout the combined company by extending Board, executive Internal Diversity Council, and Joint Council review to TWC systems.

b) Workforce Recruitment and Retention. Comcast approaches workforce diversity issues with a broad range of initiatives designed to increase diversity at all levels of the workforce, with a particular emphasis on hiring, promoting, and retaining diverse leaders. Since the closing of the NBCUniversal transaction, the numbers of people of color and women have increased among the Comcast's executive leadership, vice president and above ("VP+"), and director levels, and in the full-time US workforce overall. Of all the VP+ positions added to the workforce since year-end 2010 and year-end 2013, 40 percent were filled by people of color and 57 percent by women. More specifically, the number of people of color at the VP+ level increased by 111 (or 32 percent), which drove a corresponding increase in their proportional representation to 18 percent of the company's total VP+ population at year-end 2013. During the same time, the number of women at the company's VP+ level increased by 157 (or 21 percent), which also drove an increase in their proportional representation – to 36 percent of the VP+ population.

This has been accomplished through the company's multifaceted approach to recruitment, leadership training programs, and innovative engagement initiatives, all aimed at attracting and developing a diverse talent pipeline. In terms of senior leadership, the company requires at least one candidate of color on all hiring slates for positions at and above VP levels. And, to ensure accountability, progress on diversity initiatives is a component of Comcast's bonus determinations at the executive level.

Comcast is prepared to extend its workforce (and other) diversity commitments to TWC properties. As part of developing the TWC master strategic plan for the company's workforce, noted above, Comcast would, for example:

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- Analyze TWC's talent acquisition, development, and promotion, employee engagement practices and programs, and the overall workforce diversity metrics, and identify potential areas for action.

- Develop a plan to build on TWC's positive workforce initiatives and integrate them into Comcast's approach to practices and programs.

  - Identify specific initiatives and aspirational goals, with quantifiable steps, to increase diversity in the leadership ranks and overall employee base.

o These proven methods for creating a culture of inclusion and driving workforce diversity have been recognized time and again. While a complete list of awards is attached as Exhibit 11, it bears noting that Comcast tied for first among Women in Cable Telecommunications' 2013 Best Operators for Women in Cable (NBCUniversal was the top programmer in the same survey); has been named among the "Top 50 Companies for Diversity" by DiversityInc magazine; and has received the New York Urban League's 2013 "Champions of Diversity" Award; ranked third in the 2013 LATINA Style 50 Report; and earned a 100% score on the Human Rights Campaign's 2014 Corporate Equality Index.

  o In addition, Comcast is a leader in supporting and honoring the serving military and in hiring the nation's veterans. Over the last 12 months, Comcast has hired over 1,400 veterans company-wide and has supported their career development through our VetNet employee resource group. Comcast has been recognized as a 2012 G.I. Jobs Top 100 Military Friendly Employer and a 2013 US Veterans Magazine Top 100 Best of the Best Veteran Friendly company, and is a recipient of the 2012 U.S. Chamber of Commerce Foundation's Lee Anderson Award for its commitment to veteran employment and support as a key partner in their national "Hiring our Heroes" initiative.

The TWC systems, employees, and customers will benefit significantly from the extension of Comcast's comprehensive diversity program.

c) Procurement. Comcast's vendors will have more opportunity to do business with the combined company and increase prime vendors (i.e., Tier I) spend. In addition, the combined company will be able to expand opportunity for diverse subcontractors (i.e., Tier II). In the NBCUniversal transaction, Comcast committed to expand its supplier diversity program to increase the amount spent with Tier I and to expand its Tier II program. The company has demonstrated the seriousness of its resolve to create more opportunities for diverse suppliers, increasing its total Tier I spend with diverse suppliers to over $1.3 billion in 2013 alone – a 44 percent increase since the year before the NBCUniversal transaction.

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Over the course of three years, Comcast has spent almost $3.2 billion with diverse Tier I vendors. Since Comcast formally launched its Tier II program in 2012 and over the course of the two years ending 2013, prime suppliers have reported over $325 million in diverse Tier II subcontracting, including $186 million in 2013 alone. Comcast's supplier diversity program has been recognized by Black EOE Journal; Hispanic Network Magazine; Professional Women's Magazine; and U.S. Veterans Magazine.

TWC has a supplier diversity program as well, and Comcast will combine the best aspects of both companies' programs to drive increased opportunities for diverse vendors.

d) Programming. Since the NBCUniversal transaction, Comcast has met its commitment to expand minority-focused programming, increasing the amount, quality, and diversity of national and local programming for its customers across its platforms. For example, in the last three years, Comcast has launched four independent networks with Hispanic American or African American ownership or management. In addition, Comcast has expanded the distribution of diverse African American, Asian American and Hispanic content:

- Comcast expanded distribution of The Africa Channel in the Detroit, Chicago, and Washington, D.C. markets. Comcast also launched The Africa Channel in its Northern Santa Barbara County, Savannah, Charleston, and South Florida markets, growing the network's audience by more than 2 million homes.

- Comcast expanded carriage of TV One on its Xfinity TV lineup, making it available to over 600,000 additional customers in the Chicago and Miami markets.

- Comcast announced a significant new carriage agreement with Mnet, the only 24/7 English-language nationwide television network in the U.S. targeting Asian Americans and fans of Asian pop culture, and subsequently extended carriage of Mnet to millions of additional Comcast subscribers in the San Francisco, Chicago, Sacramento, Boston, Washington, D.C., and Philadelphia DMAs in 2012. Comcast also launched MYX TV, a channel made for and by Asian Americans, in Seattle and western Washington.

- Comcast extended distribution of seven Hispanic programming services (Azteca America, Galavisión, HITN, LATV, nuvoTV (formerly SíTV), Telefutura, and Univision) by more than 14 million subscribers. With this accomplishment, Comcast exceeded by more than 40% its commitment to expand carriage of three Hispanic networks by 10 million subscribers.

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- Comcast fulfilled its commitment to launch a package of 40 to 60 Spanish-language channels in all major Hispanic markets, including Northern California, Houston, South Florida, Chicago, Boston, Philadelphia, Washington, D.C., Denver, Salt Lake City, and Atlanta.

Comcast also has expanded the quality and quantity of diverse programming available through its VOD and online platforms – increasing the number of diverse VOD hours by more than 270 percent and the number of diverse online hours by nearly 170 percent over the past three years. These results are driven by the launch of new diverse-oriented VOD services, including Black Cinema On Demand, Hispanic Cinema On Demand, and Cinema Asian America, and the launch of first-of-their-kind, online destinations for entertainment and news for diverse audiences, such as Celebrate Black TV, Xfinity Latino, Xfinity Asia, and Xfinity TV LGBT.

With this transaction, Comcast will commit to use its VOD and Online platforms to feature Telemundo programming and increase the number of Telemundo and mun2 VOD choices, as well as other diverse VOD content, available to customers in the acquired TWC systems, as soon as TWC's VOD content and delivery platforms can be upgraded.

NBCUniversal has also undertaken initiatives intended to increase news, information, and entertainment choices for diverse viewers. The new NBCNews.com features a new microsite focused on original reporting and analysis relevant to the Latino community (www.nbcnews.com/news/latino), and will soon launch an additional microsite dedicated to serving the Asian Pacific Islander community. By integrating these microsites into the main site, that coverage will benefit from greater exposure to the broader NBCNews.com audience and the more significant promotion of the NBCNews.com site.

NBCUniversal has long been a leader in offering diversity development programs to improve the interest and presence of diverse writers, directors, journalists, and on-screen personalities. Under Comcast's leadership, NBCUniversal has added even more signature programs. Highlights include:

- Universal Pictures Emerging Writers Fellowship is designed to identify and cultivate new and unique voices with a passion for storytelling in the context of film. Emerging writers who are chosen to participate in the program will work within the studio to hone their skills and gain access and exposure to Universal executives, producers, and other key industry professionals.

- The Writers on the Verge program focuses on grooming diverse writers not just for NBCUniversal but for the entire television industry. More than 50% of Writers on the Verge alumni are currently staffed on television shows across the industry landscape (alumni write for NBC

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shows such as “The Blacklist”, “Dracula”, “Chicago Fire”, and “Chicago P.D.” Alumni write for USA Network series “Bur Notice & Suits” and for the Universal Television production “Brooklyn Nine Nine.”

- The Diverse Staff Writer Initiative gives writers from diverse backgrounds an entrée into the writers’ room. The program encompasses NBC’s late-night programs, in addition to prime-time scripted programs from NBC, USA and Syfy. Participants are selected and hired by the showrunners/producers of each show, with the guidance of the network and studios. The program has launched the careers of many talented writers in the past 13 years, including Mindy Kaling (“The Office,” “The Mindy Project”) and Donald Glover (writer on “30 Rock,” and later talent on “Community”).

- The Late Night Writers Workshop is designed for up-and-coming sketch and comedy writers to learn about NBCUniversal’s late night line-up, gain insight into the dynamics of a late night writers’ room, and provide insights on securing a staff writer position.

- The Casting Apprentice Program is a rotational program designed for individuals with diverse backgrounds who aspire to join a casting office.

- The Director Fellowship Program gives well-established directors from the worlds of music video, commercials, and theater and gives them a chance to shadow directors of episodic television, and learn the craft. In the last two years the program has seen three directors had their first episodic directing assignments on “Parenthood,” “Grimm,” and “Community” through the program.

- The NBC News Associates Program is dedicated to identifying outstanding aspiring journalists. In 2011, this program was extended to the newsrooms of NBC Owned Television Stations and CNBC. In keeping with NBCUniversal’s strong commitment to develop a diverse editorial staff across NBC News assets, the News Associates program is designed to attract candidates from diverse racial, ethnic, economic and geographical backgrounds, as well as candidates with disabilities.

- The Reporter Training Program is aimed at developing talented young on-air journalists from diverse backgrounds. Participants, who are selected annually, must hold a bachelor’s degree in Journalism, Communications, or a related field and have a minimum of one to two years of experience in the news room or on-air reporting television news.

- The News Summer Fellowship Program gives paid internships for nominees from the National Association of Black Journalists (NABJ), National Association of Hispanic Journalists (NAHJ), and Asian

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American Journalists Association (AAJA). Participants are college sophomores or above who are members of NABJ, NAHJ, or AAJA.

NBCUniversal has been recognized for its exemplary commitment to diverse programming. For example, MSNBC received a Diversity and Inclusion Award in the Media category; USA Network was honored with the American Association of People with Disabilities Image Award for its work to promote equal rights and opportunities for people with disabilities; on the National Latino Media Council 2011 Network Diversity Report Card, NBCUniversal earned an A+ for "Actors: On-Air Primetime Reality Shows" and an A in the "Entertainment Creative Executives" category; and the 25th Annual GLADD Media Awards included 16 NBCUniversal nominees.

e) Philanthropy and Community Investment. In 2010, Comcast and NBCUniversal committed to increase aggregate cash support to minority-led and minority-serving ("MLMS") organizations by ten percent per year in 2011, 2012, and 2013. The company significantly exceeded this commitment, increasing its cash spending to diverse communities MLMS organizations by more than 100 percent over the three-year period. Comcast achieved this unprecedented level of support for MLMS institutions, in part, through the extensive activities and programs of the Comcast Foundation, led by the corporate team, but extended throughout Comcast's footprint by the cable divisions and NBCUniversal's MLMS giving. This included extensive outreach to and work with the company's community partners, as well as the important work of its signature programs. In addition to Internet Essentials, discussed above, some other examples of our deep community roots include: 289

- Comcast Cares Day: This is the largest single-day corporate volunteer effort in the nation. In 2013, more than 85,000 volunteers participated in over 750 project sites, contributing their time and energy to clean up parks, make over schools, and landscape playgrounds.

- Comcast Leaders and Achievers: Now in its 13th year, the Comcast Leaders and Achievers® Scholarship Program recognizes high school seniors for their community service, academic achievement and leadership skills. Funded through the Comcast Foundation, the program recognizes high school seniors from Comcast communities for their commitment to community service, academics and demonstrated leadership. To acknowledge these accomplishments, Leaders and Achievers are awarded one-time scholarships, with a base award of $1,000. Since 2001, Comcast has awarded close to $20 million in scholarships to nearly 20,000 students. More than 950 scholarships awarded last year benefitted students from diverse backgrounds.

289 See 2012 Corporate Social Responsibility Report.

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- Digital Connectors: The Comcast Digital Connectors program trains youth from primarily diverse, low-income backgrounds in Internet and computer skills. Teens meet weekly after school, have the option to earn a Cisco IT Essentials certification of completion, and receive a complimentary laptop upon graduation from the program. Comcast Digital Connectors is also a community service program, as participants volunteer at senior centers, churches, local schools and other community organizations, spreading digital literacy in their communities. Since the program began, more than 2,000 Digital Connectors have participated, volunteering more than 100,000 hours to bridge the digital divide in their communities. Through training and service, Comcast Digital Connectors is preparing today's youth for the jobs of tomorrow.

- United Way: Each year, Comcast and NBCUniversal employees rally around our communities by supporting United Way. Through an annual employee giving campaign, company employees pledged nearly $6.4 million to United Way during the 2013 campaign. Not only did the company employees break the company record for dollars pledged, with year-over-year, double-digit growth, the campaign also had record-breaking employee participation. Combined with matching Comcast Foundation grants, the campaign will provide almost $8 million next year to local United Ways and affiliate organizations across the country – taking us beyond $50 million in total historic support to United Way.

- The company supported more than 50 teams around the country competing in the FIRST Robotics Competition and introduced the Comcast and NBCUniversal Media and Technology Innovation Award.

- The NBCUniversal Foundation partnered with our NBC Owned Television Stations division last year to launch 21st Century Solutions, a competitive grant program that supports innovative, high-impact social entrepreneurship projects. The company awards grants to nonprofit organizations in seven categories: arts and media, civic engagement, community development, education, environment, jobs and economic empowerment, and technology. The competition took place in ten major U.S. cities, with one winning organization and two runners-up in each market, for a total of $1.2 million shared among 30 organizations. Winners included a micro-savings initiative aimed at helping low-income working families develop strong financial habits and an employment program that helps expand work opportunities for disabled youth.

For the first time in 2013, The Civic 50 has recognized Comcast's community investment achievements. In addition, Comcast has received awards from the United States Hispanic Chamber of Commerce, United Way Worldwide, and the Congressional Black Caucus Foundation.

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Moreover, in 2011, Comcast Ventures established a $20 million venture capital "Catalyst Fund" for investments in early-stage ventures led by diverse entrepreneurs with innovative technology ideas and solutions that fit within its investment focus. The Fund's goal is to create the most diverse and valuable early stage portfolio in the venture industry.

The Catalyst Fund's first investment was in the startup accelerator DreamIt Ventures, which operates DreamIt Access, a concentrated effort to increase the number of high-value, minority-led tech startups. During this three-month program, participating startup companies receive seed funding and access to DreamIt Ventures' benefits and services, including business talent, legal and accounting services, mentoring, office space, guidance from leading business visionaries, and contacts to reach the next level of development. In addition, DreamIt Access offers mentors, special events, and advisors with a particular interest in increasing the number of successful minority-led startups.

Through its DreamIt Access partnership, the Catalyst Fund has sponsored 20 minority-led startups since 2011, sixteen of which are still operating. The majority of these companies are focused on web and mobile technologies. In January 2014, Comcast Ventures announced its commitment to support the DreamIt Access track for two more years, with the ability to support up to 20 minority-led companies over the course of four cycles.290–

In addition, the Catalyst Fund has made direct investments in seven minority-led startups:

- ElectNext, a political data analysis firm (Philadelphia Fall 2011 DreamIt participant) (August 2012);
- Quad Learning, an online two-year honors program for community and junior college students to enhance their college transfer options (January 2013);
- Reactor, Inc., a speech enabled news assistant for mobile devices firm (New York Summer 2012 DreamIt participant) (March 2013);
- Loverly, an online wedding discovery and inspiration site (May 2013);
- Viridis Learning, an educational and technology company combining workforce education and human capital solutions for the middle-class workforce (June 2013);

290 See Press Release, DreamIt Ventures, DreamIt Ventures & Comcast Ventures Sign Two-Year Partnership to Support Minority-Led Startups in New York & Philadelphia (Jan. 20, 2014), http://www.dreamitventures.com/nyc2014announcement/.

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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 (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

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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.

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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.

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).

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.

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

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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

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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.”).

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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.

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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-DirecTV 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-DirecTV 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-DirecTV 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-DirecTV 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.

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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.

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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.

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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.

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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.

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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

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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

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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

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(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.

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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.

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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).

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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.

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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

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.").

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.").

See supra note 307.

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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.

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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.

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.

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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.").

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

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.").

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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.

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

Whether the level of concentration in the MVPD industry creates competitive concerns vis-á-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.

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reportedly exploring online video offerings. Growth in online video services has been impressive. By SNL Kagan's estimate, 45.2 million U.S. households subscribe to online video services in 2013, more than double the 19.8 million that did so in 2010.377 The number of hours Americans spend watching video over the Internet has grown 70 percent since June 2010.378 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 grew from 3 percent in 2011 to 13 percent in 2013.379 Approximately 53 million households used online video in 2013.380 As OVD providers continue to grow, they will give content providers even more ways to distribute their programming and limit Comcast's bargaining leverage in acquiring

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374 See Ryan Nakashima, Dish, Disney deal envisions Internet-delivered TV, Associated Press, Mar. 4, 2014, available athttp://entertainment.verizon.com/news/read/category/Top%20News/article/ap-dish_disney_deal_envisions_internetdeliv-ap-2 (describing deal between Dish Network and Disney that paves the way for Dish to offer live local broadcasts from ABC TV stations and programming from ABC Family, Disney Channel, ESPN and ESPN2 over mobile devices, set-top boxes and other means, similar to how Netflix's video streams are delivered today).

See Shalini Ramachandran, DirecTV Explores Online Video Service, Wall St. J., Dec. 12, 2013, available at http://online.wsj.com/news/articles/SB10001424052702304202204579254524162627610 (describing DirecTV's interest in creating a "'niche' online video service" targeting certain groups of consumers who have dropped traditional pay-TV service).

376 See Brian X. Chen & Quentin Hardy, Verizon Plans to Buy Intel Media Division to Expand Its Television Services, N.Y. Times, Jan. 21, 2014, available athttp://www.nytimes.com/2014/01/22/technology/verizon-to-expand-tv-services-with-intel-media-purchase.html?_r=0 (describing Verizon's plan to buy the intellectual property and assets of Intel Media, the digital TV division of Intel, which developed a solution to offer channels over the Internet to screens of different sizes, from smartphones to big-screen TVs).

377 See SNL Kagan, Internet Video-On-Demand Revenue Projections, 2009-2022 (Nov. 2012).

See FCC, Fact Sheet: Internet Growth and Investment (Feb. 19, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0219/DOC-325653A1.pdf. Compare Nielsen Co., An Era of Growth: The Cross-Platform Report, at 11 (Mar. 5, 2014), http://www.nielsen.com/us/en/reports/2014/an-era-of-growth-the-cross-platform-report.html (average of seven hours, 34 minutes per month spent watching video over the Internet in Q4 2013) and Nielsen Co., State of the Media: The Cross-Platform Report, at 5 (June 14, 2011), available at http://www.nielsen.com/us/en/reports/2011/cross-platform-report-q1-2011.html (four hours, 24 minutes in Q4 2010).

See Horowitz Associates, Inc., An In-Depth Look at Alternative Platform Capability and Usage (Nov. 2013).

See SNL Kagan, Online Video Buffets, But Does Not Break Multichannel Model (Oct. 1, 2013).

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programming.381 Indeed, OVDs are increasingly an outlet for original programming that is succeeding with millions of viewers on online platforms with no MVPD carriage at all.382

In other words, previous concerns about further cable consolidation and "monopsony" power are truly antiquated in light of today's marketplace realities. In order to compete effectively, Comcast will need to offer its customers the best programming available.383 Electing not to carry compelling programming would put Comcast at a competitive disadvantage.384 In fact, when addressing the topic of MVPD consolidation earlier this year, Charles G. Carey, President of 21st Century Fox, stated:

We honestly don't see any material consequences to our business. In fact, there may be some positive ones. First, unique content at scale in an expanding digital world has never held a stronger hand. . . . Furthermore, the real issue is how many choices an individual home has, not how big is the distributor. We already deal successfully with large distributors. Cable consolidation will not change the number of choices. Consumer choice is actually likely to increase, not decrease, as over-the-top digital platforms emerge. Finally, consolidation may spur innovation and improve customer experience, and new technologies like targeted ads as well as other enhancements that enlarge the pie for everyone.385

In any event, there is no economic basis for applying monopsony theory to this transaction.386 In the context of sales to MVPDs (which, unlike programming networks, do not

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381 See Rosston/Topper Decl. ¶ 188.

382 See Parks Associates, OTT in a Pay-TV World (Dec. 2013). OVDs have even begun to offer original and exclusive award-winning programming, such as Netflix's "House of Cards" series, or purchase exclusive windows of content from other traditional programming suppliers, such as Amazon Prime's exclusive SVOD rights to FX's "Justified." See Greg Satell, What Netflix's 'House of Cards' Means For The Future Of TV, Forbes, Mar. 4, 2013, http://www.forbes.com/sites/gregsatell/2013/03/04/what-netflixs-house-of-cards-means-for-the-future-of-tv/; Carl Franzen, Amazon Prime Instant Video gets exclusive rights to 'Justified', The Verge, Feb. 26, 2013, http://www.theverge.com/2013/2/26/4031472/amazon-prime-video-justified-exclusive-and-the-shield.

See Rosston/Topper Decl. ¶¶ 176-178 (explaining that the transaction will not give Comcast market power to change the demand for or supply of programming).

384 See Time Warner II, 240 F.3d at 1134 ("If an MVPD refuses to offer new programming, customers with access to an alternative MVPD may switch.").

21st Century Fox, Inc., Q2 2014 Earnings Call, Tr. at 6 (Feb. 6, 2014).

386 Rosston/Topper Decl. ¶ 179.

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generally license content exclusively), programming is what is called a "non-rivalrous" good, meaning that one firm's purchase of it has no effect on the amount of programming available for sale to other firms.387 Indeed, both the opportunity cost and the marginal cost of licensing the same programming to a distributor is essentially zero.388 Further, because Comcast and TWC do not compete for the same video customers, one firm's purchase of programming does not reduce the other firm's potential demand for programming. Under these circumstances, Comcast and TWC do not "compete" today to purchase video programming.389 And, in fact, greater concentration among cable operators has coincided with an enormous increase in the number of video programming channels – exactly the opposite of what a monopsony theory would predict. Between 1993 and 2013, the number of national programming networks increased more than fourfold.390 Drs. Rosston and Topper make clear that there are no monopsony video programming concerns in this transaction:

See id. 178. See generally Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992, Further Notice of Proposed Rulemaking, 16 FCC Rcd. 17312 15 (2002) ("Consumption of the programming of a video programming network . . . by one viewer does not reduce the amount of the good available for another viewer.").

388 See David Waterman, Local Monopsony and Free Riders, 8 Info. Econ. & Pol'y 337, 339 (Dec. 1996) (video programming is a non-rivalrous good in that the costs of production are incurred up-front; subsequent sales are essentially costless).

See generally Reply to Comments & Petitions to Deny Applications for Consent to Transfer of Control, MB Docket No. 02-70, App. 5 (Declaration of Prof. Janusz Ordover), 25-30 (May 21, 2002). In contrast, many of the classic monopsony cases involve agricultural commodities, like grain or rice, which are plainly "rivalrous" goods—i.e., the purchase of one unit reduces the supply available to other purchasers. See, e.g., United States v. Cargill, Inc., 2000-2 Trade Cas. (CCH) 72, at 967 (D.D.C. June 30, 2000) (grain); Beef Indus. Antitrust Litig., 907 F.2d 510 (5th Cir. 1990) (fed-cattle); United States v. Rice Growers Ass'n of Cal., 1986-2 Trade Cas. (CCH) 67, at 288 (E.D. Cal. Jan. 31, 1986) (rice).

390 Compare Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, First Report, 9 FCC Rcd. 7442 21 & App. C, tbl. 4 (1994) and Rosston/Topper Decl. ¶ 35 n.12. As Commissioner Pai stated in connection with the latest FCC Video Competition Report, "Today, more Americans have more choices when it comes to video programming than ever before. They can watch a greater variety of programming than ever before. They can view that programming on a wider array of devices than ever before. And they have a greater ability than ever before to watch that programming when they want to watch it." Fifteenth Annual Video Competition Report (Statement of Comm'r Ajit Pai).

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Because the transaction will not change the demand and supply conditions underlying program buying, it would not be profitable for Comcast to limit its output (i.e., the number of customers to whom it distributes certain programming) to depress what it pays a content provider – doing so would cost Comcast valuable programming and ultimately profits. In other words, the transaction will not give Comcast the incentive or ability to exercise market power (or "monopsony power") in purchasing video programming. The same economic factors also imply that the transaction will not reduce content providers' incentives to produce high-quality programming.391

Nor will the combined entity gain market power from the perspective of bargaining theory. 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. In the current transaction, this concern does not arise, because Comcast and TWC do not compete for customers. So the transaction does not change Comcast's incentives or next best alternatives to carrying a content provider's programming – Comcast will face the same risk post-transaction of losing subscribers to competitors if it does not carry the programming as it does today.392

Further, because programming providers will have the same distribution options in any given area post-transaction that they have today, the increase in Comcast's subscriber base is unlikely to have a meaningful impact on its bargaining power. With 22 million customers, Comcast is a significant MVPD in programming negotiations, and it seems unlikely – as a real-world matter – that the addition of 8 million (or even 11 million) more customers creates any truly new bargaining power that will somehow tip the scales in a dramatic fashion against either large or small programmers. To the contrary, programmers with valuable content have significant bargaining power of their own, as reflected in the fact that programming costs have

391 Rosston/Topper Decl. 179.

392 See id. 190-92.

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outstripped inflation.393 Programming costs of Comcast, TWC, and Charter have increased, on average, by 54 percent in the last five years.394 Indeed, over the period from 2004 to 2012, Comcast and TWC's programming costs have also significantly outpaced increases in average cable retail prices, further underscoring programmers' bargaining power.395

As for smaller independent programmers,396 Comcast is a recognized supporter of such voices, some of which have already spoken in support of this transaction based on Comcast's consistent support for independent programming voices.397 The company carries over 160 independent networks, including many small, diverse, and international networks. And it is well into the process of fulfilling the commitment it made in connection with the NBCUniversal transaction to launch 10 new independent networks, including at least eight owned or managed by minority groups.398

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393 See id. 193-94.

394 Tony Lenoir, Cost of Programming Jumps 54% in 5 years, SNL Kagan, Aug. 28, 2013, http://www.snl.com/InteractiveX/article.aspx?BeginDate=08/28/2013&ID=24720103&KPLT=2; see also Rosston/Topper Decl. 194.

Based on the cumulative changes in programming costs reported in Comcast's and TWC's annual public filings and the average expanded basic cable price in the FCC's Report on Cable Industry Prices from 2004 to 2012. See Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, Report on Cable Industry Prices, 28 FCC Rcd. 9857 (2013).

Independent programmer as used here means a programmer that is not an affiliate of Comcast or of a top 15 programming network, as measured by annual revenues. This is the definition used in the Comcast-NBCUniversal transaction. Comcast-NBCUniversal Order, App. A § III(3).

See, e.g., Charles Segars, CEO, Ovation, Letter to the Editor, L.A. Times, Feb. 16, 2014, available at http://www.latimes.com/opinion/la-le-0216-sunday-comcast-time-warner-20140216,0,6966395.story#axzz2vDweABRP ("Comcast has been a good friend and ally to the independent programming community, bringing unique content to an underserved audience. . . . This merger will be a boon for unique, independent programmers."); Carl Guardino, Op-Ed., The Benefits of Comcast's TWC Deal, Fin. Times, Mar. 28, 2014 ("Mark Cuban, who owns AXS TV and the Dallas Mavericks basketball team, argues that a more national Comcast would enhance competition – overall he calls it a 'huge positive.'"). Sean Combs, an owner of Revolt TV, tweeted: "Congrats to @Comcast on their merger with @TWC! I commend Comcast on their diversity program! Happy to be w/both!" Sean Combs, Twitter (Feb. 13, 2014, 8:08 AM), https://twitter.com/iamdiddy/status/433996221876015104.

398 Comcast-NBCUniversal Order, App. A § III(3); see also Third Annual Compliance Report, at 3.

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Nor is there merit to the claim that the combined company's presence in 19 of the top 20 DMAs creates a bottleneck for programmers. As noted above, DMAs are not relevant competitive markets for MVPD services; they are just Nielsen constructs for rating measurement purposes.399 Nevertheless, it bears noting that programmers have access in all DMAs to two nationwide DBS distributors, and, increasingly, online video distributors. And, as noted above, Comcast will face significant competition in all these DMAs. Indeed, as shown in the map below, there will be 11 or more MVPDs in most of these 19 DMAs where the combined company will have a presence and at least six MVPDs in all of them.400

399 See Rosston/Topper Decl. 181.

400 In all events, the transaction only adds a presence that Comcast did not previously have in three DMAs (Los Angeles, Dallas/Fort Worth, and Cleveland), since Comcast already had a presence in 16 of the top 20 DMAs at issue.

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A specific listing of the number of video providers by DMA is set out below:

Source: GeoResults

Finally, as Drs. Rosston and Topper explain, the transaction does not give Comcast any incremental ability or incentive to discriminate on the basis of affiliation in the carriage of RSN programming. Comcast would lose subscribers to other MVPDs if were to fail to carry RSNs its customers want to watch, and any existing or newly affiliated networks would gain little or no benefit from that strategy given the wide variety of unaffiliated viewing options.401

401 See id. 202-05.

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3. Combining Comcast's and TWC's Programming Assets Will Not Give Rise to Any Competitive Harm.

The programming marketplace is highly dynamic and competitive, with hundreds of national programming networks and dozens of regional programming networks competing for consumers' attention. Because TWC accounts for only a tiny percentage of the programming industry, the combination of Comcast and TWC will not materially change competition among programmers. Indeed, after the completion of the transaction, the combined company will rank as the fourth-largest owner of national programming networks (by revenue), after Disney/ABC, Time Warner, and Viacom – the same rank that Comcast has today.

There will be no change in the concentration of ownership of national networks as a result of this transaction. TWC does not have an ownership interest in any national broadcast network, and TWC does not have majority ownership of any national cable programming network. Instead, TWC has only small, non-controlling ownership interests in two national cable programming services (iN Demand and MLB Network) – services in which Comcast already has attributable interests. As shown in the chart below, by revenue, the combined entity's share of national cable programming networks will be less than 11 percent.402

402 See Rosston/Topper. Decl. 212.

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In fact, Comcast's share of national cable programming will be lower than immediately after the Comcast/NBCUniversal transaction. That is because, in 2012, Comcast sold its interest in 17 A&E television networks (counting six HD feeds as separate networks) to Disney and Hearst, a sale that the Commission called "the most significant change in the number of cable MVPD-affiliated national networks" since the last Video Competition Report.403

As to regional and local cable programming, Comcast and TWC do not own any regional or local cable networks that compete with each other. This is not surprising given the different

403 Fifteenth Annual Video Competition Report ¶ 39

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geographies served by Comcast's and TWC's cable systems.404 Therefore, the transaction will not reduce competition among cable networks in any regional or local market.405

There is equally no merit to the claim that, as a result of this transaction, the combined company will "control" any relevant market for sports programming.406 There are dozens of national sports networks or networks that show major league professional and other sports programming (including ESPN, Fox, CBS, and the Turner families of networks), and Comcast owns controlling interests in only two national sports networks (NBCSN and Golf Channel). By virtue of this transaction, Comcast will be gaining ownership of only one major additional English-language RSN that features major professional league sports.407 Fox will continue to control many more such RSNs across the country than does Comcast.408

In all events, this putative concern, not seriously raised by this transaction, is redressed by the NBCUniversal Conditions, which grant MVPD and OVD purchasers of programming defined rights to arbitrate for Comcast-controlled programming under specified circumstances,

404 Comcast and TWC each have a minority ownership interest in SportsNet New York, an RSN controlled by the New York Mets.

405 In any event, Comcast's increased scale from the transaction does not increase Comcast's incentive or ability to engage in a profitable strategy of withholding content from competing MVPDs. See Rosston/Topper Decl. ¶¶ 211-31 (explaining why the transaction does not give Comcast an increased incentive or ability to permanently or temporarily foreclose the combined company's programming – NBC O&Os, Telemundo O&Os, NBCUniversal national cable networks, and Comcast and TWC RSNs – from MVPD rivals).

406 Brooks Boliek, Big Score in Comcast Deal: Sports Programming, Politico Pro (Mar. 14, 2014).

Comcast, through the acquisition, will own Time Warner Cable SportsNet, which features the games of the Los Angeles Lakers. Comcast will assume TWC's rights and obligations as to Time Warner Cable SportsNet LA, which features the games of the Los Angeles Dodgers, and for which TWC provides affiliate sales, ad sales, and certain other production and technical services. The three other RSNs that carry major league sports are Spanish-language channels – Time Warner Cable Deportes (featuring the Lakers), Time Warner Cable Channel 858 (a local channel which shows a simulcast of certain Angels and Clippers games from the Fox feed), and Canal de Tejas (a local channel which shows a simulcast of certain Rangers, Mavericks, and Spurs games from the Fox feeds). TWC's other networks that qualify as "RSNs" are local-focused channels that show college and high-school sports programming.

Fox has controlling interests in 18 such RSNs. SNL Kagan (last visited Apr. 5, 2014).

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and provide MVPDs with standalone arbitration rights for RSNs.409 Notably, these arbitration rights have never been invoked by an MVPD in more than three years.

4. The Transaction Will Not Result in Any Competitive Harm to Advertising Markets.

Post-transaction, Comcast will not have the ability to act anticompetitively in the advertising market. Rather, this market is robustly competitive, and the transaction will help Comcast become a stronger competitor.

As to local advertising, New York is the only DMA where Comcast and TWC both sell cable spot advertising. But advertising on a Comcast system is not a substitute for advertising on a TWC system, since the systems serve different customers. Similarly, there are few DMAs – New York, Los Angeles, and Dallas/Fort Worth – where Comcast currently owns an NBC broadcast station and TWC owns a cable system. The Commission and DOJ have found that local spot advertising on a cable system is not a close substitute for advertising on a local broadcast station. Comcast's experience in advertising sales is consistent with this finding ––– the degree of substitutability is constrained by the limited supply of cable spot advertising space in comparison to local broadcast advertising space. In addition, an advertiser is able to target portions of a DMA through cable spot advertising, but must purchase local broadcast advertising on a DMA-wide basis. For those reasons, neither the Commission nor the DOJ considers cable advertising and broadcast advertising to be in the same product market.410

Regardless, in each DMA, advertisers will continue to enjoy a number of alternative outlets that compete vigorously for local advertising dollars, with varying degrees of

409 TWC licenses NY1 to Cablevision and Bright House Networks, but does not license any other local news channels to other MVPDs today. Thus, the only competitive effect of this transaction with respect to that programming is that it will be subject to arbitration remedies.

410 See infra Section V.B.6.

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substitutability. As Drs. Rosston and Topper explain, "[b]ecause [Comcast and TWC] 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."411 This includes other MVPDs, as well. In addition, the alternatives include radio, newspapers, outdoor display advertising, and the Internet. Thus, Drs. Rosston and Topper conclude:

Competition in the advertising industry is robust, and the current advertising services offered by Comcast and TWC compete with many other media. Moreover, the lack of overlap 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.412

D. There Is No Plausible Theory That the Transaction Will Facilitate "Foreclosure" or Other Exclusionary Conduct.

A transaction involving vertically integrated cable distributors may give rise to competitive concerns only if it results in the combined company having substantial market power in either upstream (programming) or downstream (distribution) markets. The Internet, video programming, and video distribution businesses are all highly competitive, and the proposed combination of Comcast and TWC will not have substantial market power in any of these markets.

1. No Threat of Competitive Harm from Potential Foreclosure of Last-Mile Internet Access.

The combined company will not have the incentive or ability to degrade or otherwise be a "bottleneck" for access to its broadband customers, for at least five reasons.

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411 Rosston/Topper Decl. ¶ 240; see also id. ¶¶ 241-46 (explaining why the combination of local cable, broadcast, and regional programming assets do not reduce competition in the sale of local or regional video advertising).

Id. ¶ 237.

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First, the services that edge providers offer are complementary to Comcast's broadband business, whose value is enhanced by edge providers' offerings. Comcast needs edge providers to offer attractive content, applications, and services so that existing Internet customers continue to demand Comcast's broadband service and new Internet consumers choose Comcast.413 Indeed, as Dr. Israel explains:

The value of an ISP's broadband service is largely defined by the quality of the edge services that are available when using the service and whether the speed and reliability of the broadband service permits full utilization of those services. Hence, attractive products from edge providers increase demand for broadband service.414

Therefore, any action that the combined firm might undertake to harm edge providers would degrade its broadband service and reduce the profits it could earn.415 For example, if Comcast were to impair its customers' access to popular content such as online video, it would quickly pay a steep price – both economically in terms of lost subscribers or reduced demand for broadband services, and in the court of public opinion.416 Providing high-quality broadband service provides Comcast with the significant percentage of its revenue and an even higher percentage of Comcast's and TWC's operating cash flow,417 which is why Comcast has invested substantially in upgrading its networks to deploy faster speeds and more reliable performance.418

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413 See Israel Decl. ¶ 36.

414 See. id.

415 Id. ¶ 37.

416 See AT&T-BellSouth Order ¶ 117 ("[T]here is substantial competition in the provision of Internet access services. Broadband penetration has increased rapidly over the last year . . . . Increased penetration has been accompanied by more vigorous competition. Greater competition limits the ability of providers to engage in anticompetitive conduct since subscribers would have the option of switching to alternative providers if their access to content were blocked or degraded.") (internal citations omitted).

417 Israel Decl. ¶ 38.

418 See supra Section IV.A.

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Thus, any strategy that reduces demand for broadband services would be costly to the combined firm's profits.419 As Dr. Israel describes it:

[G]iven the importance of broadband to the combined firm's bottom line, . . . a strategy of harming broadband to help video is likely less attractive than a pro-competitive alternative, in which Comcast invests to offer high quality video services (including online video services). Such efforts are pro-competitive, as they are likely to induce competitive responses from edge providers, which will have an incentive to improve their own online offerings. And because they stimulate demand for Comcast's broadband product, such improvements by other edge providers further benefit Comcast's broadband business. In contrast, the anti-competitive alternative of attempting to harm OTT edge providers by erecting "tollbooths" or otherwise foreclosing access to Comcast's broadband subscribers—were it even feasible (which it is not . . .)—would harm Comcast's broadband business. Thus, such an approach is likely less economically attractive than the pro-competitive strategy [through] which Comcast both expands its video business and benefits its broadband business.420

Second, as detailed earlier, the combined company will face substantial competition in the provision of broadband services from a variety of sources – from providers of DSL (including FTTN), FTTP, wireless, and other types of broadband service (including cable overbuilders, satellite, and fixed wireless).421 Broadband service is sold on a local basis, and individual customers have ample and increasing choice. For this reason, as Dr. Israel explains, the combined company's static share of the national universe of broadband subscribers (from 20 to less than 40 percent, depending on the calculation) is irrelevant to whether the combined company could act as a bottleneck or harm edge providers:

These competitive alternatives provide consumers with other ways to receive an edge provider's content or service should Comcast limit its customers' access to that edge provider. Edge providers (or their agents) can negotiate advantageous deals with those alternative providers (or at least threaten to do so when negotiating with the combined firm) if useful. Hence, any attempt by the

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419 See SBC-AT&T Order ¶ 142 (noting the merged entity's strong incentives to provide competing VoIP services to retain customers because of their demand for such services).

420 Israel Decl. ¶ 39.

421 Id. ¶¶ 43-47; see also supra Section IV.B.1.

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combined firm to impede or condition edge providers' access to its customers would risk loss of those customers to other broadband providers.422

Third, it is a misconception that Comcast or TWC serves as a "gatekeeper" controlling access to its own last mile and to end users. Rather, edge providers have multiple avenues for reaching Comcast's broadband subscribers, undermining Comcast's ability to deny access or degrade service to such providers (even if it wished to, which it does not, and even if Comcast's customers had no other options, which they do).

The hyper-interconnectedness of the Internet backbone means that any major player, such as Comcast or TWC, has dozens of paths into its network on which huge volumes of undifferentiated traffic from millions of sources travels at any given moment. Comcast and TWC have each worked cooperatively together and with other companies to interconnect their networks in mutually beneficial ways through peering and transit arrangements. Comcast itself has over 40 settlement-free routes into its network and TWC has approximately [[]], and both have many other substantial commercial peering and transit connections with CDNs, ISPs, and larger edge providers, among others. Any edge provider therefore can reach either company's last mile-network through a third party without having any "permission" or direct relationship (paid or otherwise) with Comcast or TWC. And, Dr. Israel explains, no peer or transit provider or CDN allows Comcast or TWC to decide which edge provider's traffic it will accept from among the millions of bits being transmitted on any individual route:

[I]f Comcast were to close other providers' access to its network, Comcast's customers would lose access to content. Indeed, even if Comcast were inclined to attempt to foreclose access to its network or increase prices for access on some links, edge providers (or their agents) would likely simply shift content to other transit options. This effect arises because content providers (and their agents) can multi-home across many interconnection alternatives, so closing off a single link

Id. ¶ 40.

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or even several links does not prevent the edge provider from accessing the Comcast network. Hence, to prevent a particular edge provider's content from reaching its network, Comcast would potentially have to close off a substantial portion of the links into its network (including links to peers and CDNs). In doing so, Comcast would potentially deny its customers access to a substantial amount of content, thus significantly harming its broadband offering by inducing consumers to downgrade their broadband service or switch to other broadband options due to the loss of valuable content.423

Maintaining a wide variety of open routes into its networks is critical to Comcast's business: Comcast needs to maintain connectivity to many Internet end points that it does not serve directly, both to deliver its customers' traffic to others (since Comcast not only serves residential "eyeball" customers, but also serves businesses, content providers, CDNs, and others as a transit provider, and sends such traffic off-net to other providers)424 and to receive traffic from other Internet end points destined for its customers.425 Its business is offering this ubiquitous Internet connectivity to its customers; otherwise it will lose customers.426 Thus, there will always, necessarily, be many "open" routes into Comcast's network provided by third parties – which ensures that the overwhelming majority of edge providers' traffic flows into Comcast's last-mile network without the edge provider having to interact with Comcast directly.

This is not unique to Comcast: It is how the Internet works. The Internet is a network of networks that depends on a web of transit providers and directly connected peers and others, all maintaining diverse flows of traffic. As the Commission concluded in approving Level 3's acquisition of Global Crossing, transit and peering can readily be obtained from any of dozens of

423 Id. ¶¶ 82-83.

424 Id. ¶ 83.

425 Contrary to what many believe, Comcast has a rough balance of traffic into and out of its network.

426 See id. ¶¶ 81-88; see also Level 3-Global Crossing Order ¶ 27 (noting that merged entity would "lack incentives to selectively de-peer or degrade its connections for anticompetitive reasons" because if it did so, it "would lose customers to its remaining peers, because those entities would still enjoy ubiquitous Internet connectivity and, hence, would be more attractive to customers").

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providers on a nationwide basis: "[W]e note that the number of Tier 1 ISPs appears to have grown since 2005. . . . [I]f we were to consider the role of non-Tier ISPs in the marketplace, there may be as many as 38 providers that sell transit or offer peering on a nationwide basis."427 At the same time, the Commission acknowledged, that "there have been changes in how Internet traffic is transported," with specific reference to the growing role of CDNs in the marketplace.428 And given the proliferation of transit, prices for that service have dropped precipitously over the past decade – which in turn has forced down the prices for direct peering as well.429

Thus, for low, competitive prices, edge providers can purchase transit from any of these companies that peer with Comcast or they can use a CDN service from a multitude of providers (e.g., Akamai, Limelight, Level 3, and many others), all of which have interconnection agreements with Comcast.430 Or a provider can opt to interconnect directly with Comcast under a market-based economic arrangement that offers an economically attractive alternative to indirect transit – as the recent and much discussed Netflix-Comcast agreement illustrates.431 In fact, Comcast has thousands of business transit connections to its network, including dozens of substantial commercial peering and transit arrangements, for large entities that do not meet its

427 See Level 3-Global Crossing Order ¶¶ 28-29 (concluding that the merger of two "Tier 1" ISPs would not result in public interest harm and that the Tier 1 ISP market was competitive); see also SBC-AT&T Order ¶¶ 108-39.

428 Level 3-Global Crossing Order ¶¶ 16 n.58, 20 n.69 ("CDNs have taken advantage of the rise of bandwidth-intensive content and have been able to provide service to content providers that historically would have purchased transit.") (internal citations omitted)).

429 See William B. Norton, The Internet Peering Playbook 33 (2013) (estimating that transit prices have fallen from $1200/Mbps in 1998 to $0.94 Mbps in 2014).

430 Israel Decl. ¶¶ 77, 79.

Dan Rayburn, Here's How the Comcast & Netflix Deal is Structured, With Data & Numbers, StreamingMedia.com (Feb. 27, 2013), http://blog.streamingmedia.com/2014/02/heres-comcast-netflix-deal-structured-numbers.html; see also Richard Bennett, Paid Peering and the Internet of Video Things, High Tech Forum (Mar. 28, 2014), http://www.hightechforum.org/paid-peering-the-internet-of-video-things/.

settlement-free peering terms.432 As Dr. Israel explains: "[T]he combined firm (like any ISP) will have strong incentives to keep the wide array of paths into its network open post-transaction, thus greatly limiting any alleged power over edge providers (or their agents). The value of broadband services depends on network effects and interconnectivity. Content comes from, and must be sent to, many networks that Comcast does not reach directly."433 Thus, Dr. Israel concludes that "the combined firm will lack the incentive and ability to close off or substantially limit these access points into its network."434

Fourth, the transaction will not shift bargaining power in a way that would prevent edge providers from competing effectively, harm consumers, or reduce welfare. Concerns about increased bargaining power typically arise in the context of transactions in which the merging parties are horizontal substitutes for each other, but Comcast and TWC do not compete with one another and are therefore not substitutes.435 Indeed, the transaction may actually reduce the combined entity's bargaining power because, among other reasons, counterparties will have an increased incentive to resist concessions that would apply over a greater number of consumers.436 As Dr. Israel explains:

There is no economic basis to conclude that the transaction will shift bargaining power in a way that will prevent edge providers from competing effectively or harm consumers or reduce welfare. . . . [T]he established literature shows that if a buyer becomes "pivotal" for a supplier's survival, that buyer may end up with less incentive and ability to negotiate aggressively against that supplier. For example, a rational buyer will recognize that, given its pivotal role, aggressive

432 Israel Decl. ¶ 78.

433 Id. ¶ 81.

434 Id.

435 Id. ¶¶ 90-97.

436 Id. ¶¶ 101-02.

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negotiation may harm the supplier and thus lessen its ability to produce high-quality inputs to the buyer's own product.437

Fifth, the only "last-mile" control Comcast or TWC has is when traffic is, finally, delivered to its network, and it is at this point – on the last-mile network – that the Open Internet prohibitions apply.438 Those rules were adopted to address broadband providers' incentives to: (1) "block or otherwise disadvantage specific edge providers or classes of edge providers"; (2) "increase revenues by charging edge providers, who already pay for their own connections to the Internet, for access or prioritized access to end users"; and (3) "degrade or decline to increase the quality of the service they provide to non-prioritized traffic," if they were permitted to charge edge providers for prioritization.439 In particular, the rules prohibit blocking and unreasonable discrimination of lawful network traffic and require that Comcast disclose certain information about its broadband Internet service, including network management practices, service characteristics, and commercial terms.440

Comcast's obligation to abide by all of the Open Internet rules, therefore, protects against any anticompetitive concerns arising from the transaction regarding the provision of high-speed Internet access services. Comcast is currently the only broadband provider legally bound by the now-vacated prohibitions on blocking and unreasonable discrimination, and the transaction will extend those protections to TWC's broadband customers. Thus, a significant number of

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437 Id. ¶ 14.

438 See generally Open Internet Order; see also Comcast-NBCUniversal Order ¶¶ 94, 285 n.732 ("Comcast and Comcast-NBCU shall also comply with all relevant FCC rules, including the rules adopted by the Commission in GN Docket No. 09-191, and, in the event of any judicial challenge affecting the latter, Comcast-NBCU's voluntary commitments concerning adherence to those rules will be in effect."); Modified Final Judgment § V.G, United States v. Comcast Corp., No. 11-cv-00106 (D.D.C. Aug. 21, 2013), available at http://www.justice.gov/atr/cases/f300100/300146.pdf ("Comcast-NBCU Modified Consent Decree").

439 Open Internet Order ¶¶ 21, 24, 29.

440 Id. ¶ 54.

additional broadband customers will benefit from the Open Internet rules as a result of this transaction. Comcast's original commitment, made in the NBCUniversal transaction, was intended to provide the Commission a fail-safe – assuring that Comcast would abide by the Open Internet rules even if they were overturned by a court. The obligation that Comcast undertook in 2011 will thus serve as a bridge to the day new Open Internet rules that apply to all ISPs are in place, and this transaction makes that bridge much wider.441

2. No Increased Incentive or Ability to Pursue Anticompetitive Foreclosure Strategies Against Rival MVPDs or Unaffiliated OVDs.

Another theory of raising rivals' costs that the Commission has considered in prior transactions is that a vertically integrated MVPD that owns key "must-have" programming might refuse to sell/license that programming to competing MVPDs or OVDs. By denying competitors or potential competitors access to popular programming, the argument goes, a vertically integrated MVPD might gain a competitive advantage over its rivals. The Commission has considered both whether an MVPD might permanently foreclose access to programming or whether it might engage in temporary foreclosure (or a threat of foreclosure) either to induce customers to switch video providers or as a negotiating tactic to obtain higher license fees.442 In addition, the Commission has assessed whether a vertically integrated MVPD might restrict an OVD's access to affiliated content to forestall potential online competition.443 In prior

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441 There have been many who have tried already, in the press, to use this transaction as an opportunity to pursue their views of the "right" economic framework for peering and transit arrangements. But, as shown above, this transaction raises no unique issues in that regard and thus is not the appropriate context for that debate. Thus, the peering-related concerns that have been suggested are not only factually inaccurate, but are not transaction-specific and are applicable to the marketplace generally. If there is a need to address these issues at all, it should be done in an industry-wide context.

442 Comcast-NBCUniversal Order ¶ 34; News Corp.-Hughes Order ¶ 79; Adelphia Order ¶ 121.

443 Comcast-NBCUniversal Order ¶ 86.

transactions, the Commission has evaluated potential foreclosure strategies with respect to national cable networks, local broadcast programming, and regional sports networks.444

As a preliminary matter, this issue is not transaction specific, because the bulk of Comcast's valuable content was acquired in the NBCUniversal transaction, and those concerns were addressed by conditions adopted in that proceeding. The acquisition of TWC's small amount of programming and the acquisition of approximately eight million more subscribers is simply not sufficient to require reopening of that analysis, or to garner renewed or greater concern, especially in the absence of any issues under the existing conditions (as noted above, no MVPD has ever employed these conditions). That said, as shown here and by Drs. Rosston and Topper, post-transaction, Comcast will have neither the incentive nor the ability to engage in such a withholding strategy with respect to any category of programming following this transaction for several independent reasons.

First, Comcast lacks market power as a seller of national programming content, and this transaction will have no effect on either Comcast's share of national programming networks or local broadcast stations. Comcast already has an attributable interest in the only two national programming networks (MLB Network and iN Demand) in which TWC also has an ownership interest. Comcast's current share of national cable programming networks is less than 11 percent by revenue and will not increase as a result of this transaction.445

Similarly, if RSNs are added to the national programming network mix, Comcast has a share of 11.61 percent by revenue and TWC has a share of 0.25 percent by revenue.446 Adding

444 News Corp.-Hughes Order ¶ 60.

445 See Rosston/Topper Decl. ¶¶ 212-13.

Id. ¶ 212. This figure does not include SportsNet LA because that network just launched on February 25, 2014 and has yet to generate any appreciable revenue.

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TWC's programming interests to Comcast's interests results in a de minimis increase in share to 11.86 percent by revenue. And because TWC has no ownership interest in any local broadcast stations, Comcast's share of that programming segment will remain unchanged, and there is no basis to conclude that this transaction will in any way change Comcast's incentives or ability to foreclose broadcast programming.447

Following the transaction, networks affiliated with Comcast will represent only a small portion of the total market for cable programming. In fact, Comcast's share of national programming networks has declined since the NBCUniversal transaction. Moreover, the programming market is highly dynamic and competitive, and Comcast's affiliated programming networks face significant competition.448 Indeed, if consumers are denied access to NBCUniversal content through their MVPD, many customers might instead watch substitute programming networks (e.g., TNT instead of USA Network) rather than switch video providers – or obtain NBCUniversal content through alternative non-subscription outlets – thus frustrating the foreclosure strategy. As Drs. Rosston and Topper explain, "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 subscribers of other MVPDs switching to Comcast."449 As a result, Comcast lacks the necessary market power to implement a successful temporary or permanent foreclosure strategy.

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447 See id.. ¶¶ 219-22.

448 See id. ¶ 223. See News Corp.-Hughes Order ¶ 129 ("general entertainment and news cable programming networks," like much of Comcast's affiliate programming networks, "participate in a highly competitive segment of [the] programming market with available reasonably close programming substitutes"). As noted above, in each relevant area in which the combined entity's cable systems and affiliated O&Os "overlap," consumers would enjoy many alternatives, including at least [seven] non-NBCUniversal broadcast stations as well as other media.

449 Rosston/Topper Decl. ¶ 223.

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Second, Comcast lacks the incentive to pursue any temporary or permanent foreclosure strategy because its costs would outweigh any potential benefits. To begin with, refusing to license content to other MVPDs would undermine the business model of Comcast's affiliated programming networks, resulting in substantial lost licensing fees and advertising revenues to the combined company. That is especially true now that NBCUniversal has begun to collect retransmission consent fees.450 In addition, Comcast would stand to capture only a portion of any diverted MVPD subscribers, as diverted customers may choose to subscribe to another competing MVPD rather than Comcast. If Comcast were to attempt to foreclose national or regional programming from all competing MVPDs, that would have an extremely destructive effect on the business of the affiliated cable networks. In sum, any effort to withhold affiliated programming from competing MVPDs would not be in the combined company's overall economic interest.

Third, even if there were any concern here, the Commission's existing program access regulations451 and the NBCUniversal Conditions would fully mitigate it. In particular, the Comcast-NBCUniversal Order provides that MVPDs "may choose to submit a dispute with Comcast-NBCU over the terms and conditions of carriage of Comcast-NBCU affiliated programming to commercial arbitration"452 Notably, this protection has never been invoked.

The Comcast-NBCUniversal Order also provides that OVDs must receive "non-discriminatory access to Comcast-NBCU video programming," either on the same terms and conditions that are made available to MVPDs or on terms comparable to those offered to OVDs

450 Id. ¶ 219.

451 See generally 47 C.F.R. §§ 76.1000-1004.

452 Comcast-NBCUniversal Order ¶ 50.

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by Comcast's non-vertically integrated peers (as defined by the Order).453 Like MVPDs, OVDs also have the ability to arbitrate disputes in defined circumstances.454 In addition, the conditions also provide for arbitration regarding retransmission consent disputes regarding O&Os.455

It is important to highlight that, to date, the NBCUniversal Conditions have almost never been invoked precisely because Comcast and NBCUniversal are licensing programming to willing buyers through marketplace negotiations. Indeed, since the NBCUniversal transaction closed, there have been no major disputes with any MVPDs regarding access to affiliated NBCUniversal programming on fair and reasonable terms. Since 2011, NBCUniversal has successfully reached comprehensive renewal agreements with, among others, Verizon, Cablevision, Charter, Dish Network, Suddenlink, Mediacom, and NCTC without resort to arbitration.456

Likewise, NBCUniversal has successfully licensed or renewed programming content to numerous OVDs, including Amazon, Netflix, and YouTube. Only one OVD has elected to proceed to arbitration, and those proceedings have unfolded as intended by the Comcast-

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453 Id. ¶¶ 87-88.

454 Id. ¶ 89.

455 Id. ¶ 52.

See, e.g., Press Release, NBCUniversal, NBCUniversal and Cablevision Sign Comprehensive Content Affiliation Agreement (Nov. 5, 2012), http://stage.nbcuni.com/corporate/newsroom/nbcuniversal-and-cablevision-sign-comprehensive-content-affiliation-agreement/; Mike Farrell, NBCUniversal, Suddenlink Reach Carriage Agreement, Multichannel News (Nov. 20, 2012), available at http://www.multichannel.com/cable-operators/nbc-universal-suddenlink-reach-carriage-agreement/140373; Press Release, NBCUniversal, NBCUniversal and Verizon Offer TV Everywhere Rights for Top Sports, News and Entertainment Programming to Verizon FiOS TV Customers Beginning Early Next Year (Nov. 26, 2012), http://stage.nbcuni.com/corporate/newsroom/nbcuniversal-and-verizon-offer-tv-everywhere-rights-for-top-sports-news-and-ent Press Release, NBCUniversal, NBCUniversal and Mediacom Communications Announce Wide-Ranging, Multi-Year TV Everywhere Distribution Agreement (Dec. 19, 2012), http://stage.nbcuni.com/corporate/newsroom/nbcuniversal-and-mediacom-communications-announce-wide-ranging-multi-year Press Release, NBCUniversal, NBCUniversal Signs Multi-Year Carriage Deal With NCTC (Dec. 31, 2012), http://stage.nbcuni.com/corporate/newsroom/nbcuniversal-signs-multi-year-carriage-deal-with-nctc/.

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NBCUniversal Order.457 Real-world evidence, therefore, powerfully refutes the suggestion that Comcast has, or will have, the incentive or ability to discriminate against MVPDs or OVDs.

3. No Increased Incentive or Ability to Pursue Anticompetitive Foreclosure Strategies Against Unaffiliated Programmers.

The combined company would have no enhanced ability or incentive to pursue anticompetitive foreclosure strategies as a "buyer" of programming by withholding distribution from competing "unaffiliated" content providers (e.g., "independent" cable networks or unaffiliated providers of online video content).458 The anticompetitive theory of harm is that an MVPD that owns cable networks may refuse to carry at least some unaffiliated cable networks in order to reduce the ability of the latter to compete for viewers, advertising, and programming. According to this theory, unaffiliated networks would be weaker competitors if a denial of carriage by a large MVPD prevented them from achieving substantial economies of scale.459 Again, this concern is not related to the present transaction, but instead was already raised and addressed in the Comcast-NBCUniversal proceeding, and is simply not presented anew here.

First, as shown above, and as the courts have repeatedly found, a 30 percent market share does not give rise to buyer power concerns in today's highly competitive MVPD market.

Second, the additional TWC programming at issue here will not create incentive for Comcast to pursue a programming foreclosure strategy. Comcast has no ownership interest in the overwhelming majority of content that it distributes, and this will not change post-

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457 That arbitration involved fundamental issues concerning obligations to other licensees – issues on which the Media Bureau fully agreed with NBCUniversal (the Commission's review of two applications for review is still pending). Both the arbitrator and the Media Bureau rejected claims that NBCUniversal acted unreasonably in the arbitration. See Project Concord Order on Review ¶¶ 63, 65 (Commission review pending).

See Rosston/Topper Decl. ¶¶ 199-208 (explaining that the combined company will have no incremental incentive or ability to discriminate on the basis of affiliation against unaffiliated programmers).

459 Steven C. Salop & David T. Scheffman, Raising Rivals' Costs, 73 Am. Econ. Rev. 267, 267-68 (1983).

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transaction. Since the NBCUniversal transaction closed, the percentage of affiliated content carried by Comcast has declined. Meanwhile, Comcast has launched several new independent networks, including BBC World News, ASPiRE, Baby First Americas, Revolt, and El Rey – and as noted above, it carries over 160 fully independent networks including many that are small, diverse, and international.460 The MVPD market is more competitive than ever, and refusing to carry unaffiliated programming content that customers demand would critically damage Comcast's core subscription business and drive customers to competing MVPDs.

Third, the Commission's existing comprehensive regulatory scheme already addresses anticompetitive denial of program carriage. In particular, the program carriage regulations prohibit MVPDs from "engag[ing] in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating . . . on the basis of affiliation or non-affiliation of vendors in the selection, terms or conditions for carriage of video programming provided by such vendors."461 Notably, recent program carriage rulings make clear that Applicants do not and have not discriminated against independent programmers on the basis of affiliation.462

Fourth, real-world experience demonstrates that Comcast has no interest in refusing to carry unaffiliated content. Since the NBCUniversal transaction closed, Comcast (unlike some MVPDs) has not dropped any major cable programming network over an inability to reach a

460 See Third Annual Compliance Report, at 3.

47 C.F.R. § 76.1301(c).

462 See Comcast Cable Commc'ns, LLC v. FCC, 717 F.3d 982 (D.C. Cir. 2013), cert. denied sub nom. Tennis Channel, Inc. v. Comcast Cable Commc'ns, LLC, 134 S. Ct. 1287 (2014) (determining that Comcast did not discriminate against Tennis Channel) (petition for further proceedings pending); Herring Broad., Inc. v. FCC, 515 F. App'x 655 (9th Cir. 2013) (affirming FCC determination that Comcast and TWC, inter alia, did not discriminate against WealthTV); TCR Sports Broad. Holding, L.L.P. v. FCC, 679 F.3d 269 (4th Cir. 2012) (affirming FCC determination that TWC did not discriminate against MASN).

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carriage agreement. Likewise, Comcast has not lost the signal of any major broadcaster in connection with a retransmission consent dispute. There is no evidence that Comcast has sought to engage in programming foreclosure.

VI. THE TRANSACTION WILL NOT RESULT IN ANY VIOLATION OF THE COMMUNICATIONS ACT OR THE COMMISSION'S RULES.

The transaction will not result in the violation of any provisions of the Communications Act or the Commission's rules.

A. Cross-Ownership and Other Ownership Limits

Comcast's acquisition of TWC will be in full compliance with the Commission's various cross-ownership and multiple ownership rules. TWC owns no TV or radio broadcast stations, or newspaper interests, so the transaction creates no new combination that implicates the radio/television cross-ownership rule, the local TV duopoly rule, the national TV broadcast audience cap, or the newspaper/broadcast cross-ownership prohibition.

Moreover, neither Comcast nor TWC owns any attributable interest in a broadband radio service ("BRS") system or satellite master antenna television ("SMATV") system that would implicate the Commission's cable/BRS or cable/SMATV cross-ownership restrictions.463

The Commission has forborne from applying the LEC buyout restriction464 to acquisitions of CLECs by cable operators, and the TWC subsidiaries that provide telecommunications services are all CLECs.465 Therefore, the LEC buyout restriction does not apply to this transaction.

See generally 47 C.F.R. § 73.3555 (broadcast multiple ownership limits); id. § 27.1202 (cable/BRS cross-ownership limit); id. § 76.501(d) (cable/SMATV cross-ownership limit).

See id. § 76.505(b) (LEC-cable buyout prohibition); see also 47 U.S.C. § 572(b) (statutory prohibition).

See Conditional Petition for Forbearance from Section 652 of the Communications Act for Transactions Between Competitive Local Exchange Carriers and Cable Operators, Order, 27 FCC Rcd. 11532 ¶ 2 (2012) ("[W]e forbear from applying section 652(b) to acquisitions of competitive LECs. By granting limited forbearance from section 652(b), we harmonize the rules that apply to transactions between competitive LECs and cable operators regardless of which entity acquires the other.").

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B. Channel Occupancy Limit

The Commission's "channel occupancy" rule requires that no more than 40 percent of the first 75 channels of a cable system be used to carry affiliated national programming services. The Commission has clarified that this means that, for cable systems with 75 or more channels, at least 45 channels of that system must be unaffiliated with the system owner.466

To verify compliance with this rule, Comcast and TWC surveyed each of their respective cable systems and individual channel line-ups within systems that have multiple channel line-ups. For each channel line-up that included more than 45 unaffiliated channels,467 compliance with the rule was assured and no further analysis was required. For systems with fewer than 45 unaffiliated channels, individual channel line-ups were examined and the percentage of unaffiliated channels was determined. In every case, the percentage of unaffiliated channels exceeded the requisite 60 percent. In short, Comcast and TWC confirmed that all of Comcast's cable systems and all of TWC's cable systems are and will be in compliance with the 40 percent channel occupancy limit post-closing of the transaction. Indeed, Comcast verified in the

466 See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Second Report and Order, 8 FCC Rcd. 8565 ¶ 84 n.107 (1993) ("The channel occupancy limits need not necessarily apply to the first 75 channels. . . . On a system with 100 channels at least 45 channels would still be required to be devoted to the carriage of unaffiliated programming services, however, these 45 channels could be any of the system's 100 channels."); see also Adelphia Order ¶ 36 & n.134. Although the D.C. Circuit reversed and remanded the Commission's channel occupancy rule twelve years ago, and a decision about what to do on remand remains pending, the Commission continues to enforce the rule. See Time Warner II, 240 F.3d at 1139 (reversing and remanding the rule); Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992, Further Notice of Proposed Rulemaking, 16 FCC Rcd. 17312 ¶ 83 (2001) (inviting comment on whether "the Commission may relax, exempt specific cable operators from, or even forego imposing, vertical limits if the Commission determines that such a course of action would be justified given the prevailing market conditions"); Adelphia Order ¶ 38 (noting that "Comcast will be expected to comply with any revised limits that the Commission may adopt in the pending rulemaking proceeding."); Comcast-NBCUniversal Order ¶ 259 ("Comcast-NBCU will be expected to comply with any revised limits that the Commission adopts in these proceedings.").

467 For purposes of this analysis, "unaffiliated" channels are those in which none of Comcast, NBCUniversal, or TWC holds an attributable interest.

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NBCUniversal transaction that, after that transaction, six out of seven channels that Comcast carries would be unaffiliated. And, since then, Comcast divested its interest in the family of A&E networks, thereby increasing the percentage of carried channels that are unaffiliated.

VII. PROCEDURAL MATTERS

The subsidiaries and affiliates of TWC hold a number of licenses and authorizations issued by the FCC, including domestic and international Section 214 authorizations, transmit/receive satellite earth station licenses, receive-only satellite earth station registrations, private wireless licenses, and cable television relay service licenses. The transaction will result in the transfer of control of all of these licenses and authorizations.468

Given the ongoing regulatory activity of TWC and its subsidiaries, including the need for those entities to file applications with the Commission during the period in which the instant

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468 In addition to the Applications seeking consent to transfer control of TWC's licenses and authorizations to Comcast, Time Warner Entertainment–Advance/Newhouse Partnership ("TWE-A/N") and Comcast have submitted applications for the pro forma transfer of TWE-A/N's interest in the licenses and authorizations held by Bright House Networks, LLC ("Bright House"). TWC holds 66.67 percent of TWE -A/N, which in turn is the sole member of Bright House. TWC also provides certain services to Bright House for an annual fee, including programming and technology support; however, TWC does not share in any of the profits and losses from the operation of the Bright House systems. Advance-Newhouse Partnership (an entity in which TWC holds no legal or economic interest) holds the remaining 33.33 percent of TWE-A/N, but has exclusive day-to-day management responsibility for and de facto control over the operation of the Bright House systems. Advance/Newhouse Partnership's interest in TWE-A/N tracks exclusively the economic performance of the Bright House systems and, as a result, TWC's financial statements do not include the results of the Bright House systems. While the Comcast-TWC transaction therefore will technically effect a transfer of TWC's indirect legal interest in Bright House to Comcast, the transaction will not result in any actual change of control over the Bright House licenses and authorizations, because Advance/Newhouse Partnership (not TWC) currently has and will post-transaction retain all day-to-day managerial control over, and all economic interest in, all of the licenses and authorizations held by Bright House. See, e.g.,
2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules , Notice of Proposed Rulemaking, 15 FCC Rcd. 24264 ¶ 15 n.33 (2000) (citing Teléfonos de México, S.A. de C.V., Public Notice, 15 FCC Rcd. 1227 (WTB & IB 1999)) (stating that the acquisition by Telmex of a 50 percent de jure controlling interest in a CMRS subsidiary of SBC was pro forma because specific facts showed there was no change in de facto control);
Applications of Softbank Corp, Starburst II, Inc., Sprint Nextel Corp., & Clearwire Corp. for Consent to Transfer Control of Licenses & Authorizations, Memorandum Opinion and Order, 28 FCC Rcd. 9642 ¶ 144 (2013) (rejecting two petitions for reconsideration of the pro forma processing of a transaction in which Sprint acquired a small additional equity interest in Clearwire, thereby effecting a transfer of de jure control, and finding that Sprint's acquisition of the additional interest was a pro forma transfer of control because it did not give Sprint de facto control over Clearwire). This pro forma transfer of TWC's indirect interest in Bright House will thus have no competitive significance.

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transfer of control will remain pending at the Commission, the Applicants request that the Commission's grant of its consent to the transfer of control of these licenses and authorizations include the authority for Comcast to acquire control of: (1) any licenses and authorizations issued to TWC or to its subsidiaries or affiliates during the Commission's consideration of the transfer of control applications and the period required for the consummation of the proposed transaction following approval; and (2) applications that will have been filed by TWC or its subsidiaries or affiliates and that are pending at the time of the consummation of the proposed transaction. Such action would be consistent with prior decisions of the Commission.469

VIII. CONCLUSION

For the foregoing reasons, the proposed transaction between Comcast Corporation and Time Warner Cable Inc. serves the public interest, convenience, and necessity. Applicants, therefore, respectfully request that the Commission grant these applications promptly and provide for any other authority that the Commission deems necessary or appropriate to enable the Applicants to consummate the proposed transaction.

469 See, e.g., AT&T-MediaOne Order ¶ 185;AT&T-TCI Order ¶ 156; Adelphia Order ¶ 312; AT&T Broadband-Comcast Order ¶ 224; Comcast-NBCUniversal Order ¶ 291.

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Important Information For Investors And Shareholders

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. In connection with the proposed transaction between Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“Time Warner Cable”), on March 20, 2014, Comcast filed with the Securities and Exchange Commission (the “SEC”) a registration statement on Form S-4 containing a preliminary joint proxy statement of Comcast and Time Warner Cable that also constitutes a preliminary prospectus of Comcast. The registration statement has not yet become effective. After the reg-istration statement is declared effective by the SEC, a definitive joint proxy statement/prospectus will be mailed to shareholders of Comcast and Time Warner Cable. INVESTORS AND SECURITY HOLDERS OF COMCAST AND TIME WARNER CABLE ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORT-ANT INFORMATION. Investors and security holders may obtain free copies of the registration statement and the joint proxy statement/prospectus and other documents filed with the SEC by Comcast or Time Warner Cable through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by Comcast are available free of charge on Comcast’s website at http://cmcsa.com or by contacting Comcast’s Investor Relations Department at 866-281-2100. Copies of the documents filed with the SEC by Time Warner Cable will be available free of charge on Time Warner Cable’s website at http://ir.timewarnercable.com or by contacting Time Warner Cable’s Investor Relations Department at 877-446-3689.

Comcast, Time Warner Cable, their respective directors and certain of their respective executive officers may be considered participants in the solicitation of proxies in connection with the proposed transaction. Information about the directors and executive officers of Time Warner Cable is set forth in its Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 18, 2014, its proxy statement for its 2013 annual meeting of stockholders, which was filed with the SEC on April 4, 2013, and its Current Reports on Form 8-K filed with the SEC on April 30, 2013, July 29, 2013 and December 6, 2013. Information about the directors and executive officers of Comcast is set forth in its Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 12, 2014, its proxy statement for its 2013 annual meeting of stockholders, which was filed with the SEC on April 5, 2013, and its Current Reports on Form 8-K filed with the SEC on July 24, 2013, August 16, 2013 and February 14, 2014. These documents can be obtained free of charge from the sources indicated above. Additional information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, are contained in the preliminary joint proxy statement/prospectus filed with the SEC and will be contained in the definitive joint proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

Cautionary Statement Regarding Forward-Looking Statements

Certain statements in this communication regarding the proposed acquisition of Time Warner Cable by Comcast, including any statements regarding the expected timetable for completing the transaction, benefits and synergies of the transaction, future opportunities for the combined company and products, and any other statements regarding Comcast’s and Time Warner Cable’s future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not his-torical facts are “forward-looking” statements made within the meaning of Section 27A of the Securities Act of 1933, as amend-ed, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements are often, but not always, made through the use of words or phrases such as “may”, “believe,” “anticipate,” “could”, “should,” “intend,” “plan,” “will,” “expect(s),” “estimate(s),” “project(s),” “forecast(s)”, “positioned,” “s and similar expressions. All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed in the statements. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are the following: the timing to consummate the pro-posed transaction; the risk that a condition to closing of the proposed transaction may not be satisfied; the risk that a regulatory approval that may be required for the proposed transaction is not obtained or is obtained subject to conditions that are not anticipated; Comcast's ability to achieve the synergies and value creation contemplated by the proposed transaction; Comcast's ability to promptly, efficiently and effectively integrate Time Warner Cable's operations into those of Comcast; and the diversion of management time on transaction-related issues. Additional information concerning these and other factors can be found in Comcast's and Time Warner Cable's respective filings with the SEC, including Comcast's and Time Warner Cable's most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Comcast and Time Warner Cable assume no obligation to update any forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.