

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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Joint Petition of	)	
	)	
<b>TIME WARNER CABLE INC.</b>	)	
	)	
and	)	
	)	Case 14-M-0183
<b>COMCAST CORPORATION</b>	)	
	)	
For Approval of a Holding Company Level	)	
Transfer of Control	)	
	)	

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**REPLY COMMENTS OF COMCAST CORPORATION  
AND TIME WARNER CABLE INC.**

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**REPLY COMMENTS OF COMCAST CORPORATION  
AND TIME WARNER CABLE INC.**

Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“TWC”) (collectively, “Petitioners” or the “Companies”) respectfully submit this reply to the comments filed in the above-captioned case.<sup>1</sup>

The record in this proceeding conclusively demonstrates that the proposed transaction will enhance consumer welfare and competition and deliver substantial public interest benefits to citizens and businesses in New York. These benefits include:

- improved competition and enhanced products for residential voice services;
- new and more robust competition for business services that will lower prices, improve service offerings, and promote job growth and economic development;
- accelerated deployment of advanced video technologies and development of next-generation video products and services, including Comcast’s groundbreaking X1 platform;
- increased programming choices for TWC video customers (e.g., greater on-demand and online video options);

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<sup>1</sup> Joint Petition of Time Warner Cable Inc. and Comcast Corporation For Approval of a Holding Company Level Transfer of Control, Case 14-M-0183 (filed May 15, 2014) (“Joint Petition”).

- more reliable and secure networks;
- faster broadband speeds;
- greater broadband access to consumers at all income levels;
- more robust and expansive Wi-Fi connections;
- improved customer service; and
- more attractive offerings to schools and libraries.

In the aggregate, properly valued, these benefits represent hundreds of millions of dollars of investment and value to New York and its citizens. In addition, no one reasonably questions that Comcast has the legal, financial, technical, and managerial qualifications to operate the acquired entities and to deliver these multiple benefits to New Yorkers.

The record further shows that the transaction will deliver these significant benefits without reducing competition or consumer choice in any part of New York. TWC and Comcast do not compete with one another today. No New Yorker will lose a choice of provider for any service anywhere. This transaction clearly satisfies the applicable standard of review.

Given these many concrete benefits, and the lack of any harm to competition or consumers, it should come as no surprise that the overwhelming majority of the substantive comments (approximately 110 out of a total of about 140 substantive comments) filed in this proceeding *support* Commission approval of the transaction. Supporters of the transaction span a wide range of groups and individuals, including governmental officials (e.g., mayors, town supervisors, county commissioners, city councils, state legislators, and school superintendents); businesses and non-profits; state and local organizations focused on economic development; community service, youth and family, and diversity organizations; arts and education groups; and others.

Most significantly, commenters *from New York* express a strong desire and enthusiasm for the improved and expanded voice, data, video, and broadband services that the transaction will bring to the State. In addition, many New York supporters cite Comcast's proven commitment to broadband adoption for low income families, through its acclaimed Internet Essentials program, and to promoting and investing in other important community service programs (e.g., "Comcast Cares Day"; support of Boys and Girls Clubs; the company's vast commitment to digital literacy programs; etc.) that will benefit and strengthen New York communities. Other New York supporters point to the significant steps that Comcast has made to promote diversity in its corporate governance, workforce, procurement, programming, and community investment. The transaction will extend this model diversity program to the combined company's activities in New York.

Transaction supporters from outside the state also filed comments, describing how Comcast has enriched their communities by offering innovative, high-quality services and providing strong corporate citizenship. Based on their direct experiences with Comcast, these commenters also urge the Commission to approve the transaction so that New Yorkers can receive similar benefits.

The minority of organizations and individuals who filed substantive comments opposing the transaction largely ignore the significant public interest benefits of the transaction. Instead, these detractors raise issues that are not relevant to the transaction and are factually inaccurate and speculative – such as unfounded concerns about Comcast's broadband management practices, misplaced criticisms of Internet Essentials, and general fears that "big is bad." None of these commenters identify any reasonable basis to reject or condition the Joint Petition.

Importantly, comments submitted by staff of the Department of Public Service ("Staff") acknowledge the many benefits the transaction will bring to New York residents and businesses,

while also recommending some additional public interest guarantees.<sup>2</sup> Staff further suggests that the Commission has flexibility to consider a variety of alternative actions and benefits to satisfy the public interest considerations.<sup>3</sup> Petitioners expect to be able to address constructively any reasonable concerns that the Commission and Staff may have regarding the need for quantifiable commitments to ensure delivery of the many public interest benefits this transaction promises. And Comcast looks forward to a cooperative relationship with the Commission and Staff post-transaction, as together we serve the interests and needs of New Yorkers.

Under well-established precedent for voice and video transactions (as opposed to more traditional public utility deals), the Commission has generally found a transaction (including major transactions affecting millions of New York consumers) to be in the public interest so long as there is no competitive harm and the acquiring provider has the legal, financial, technical, and managerial ability to operate the acquired systems. Comcast fully satisfies these qualifications here. Accordingly, and especially in light of the substantial public interest benefits the transaction will bring to New York with no corresponding harms, Petitioners respectfully urge the Commission to expeditiously approve this transaction.

## **I. THE PROPOSED TRANSACTION WILL PROVIDE SUBSTANTIAL PUBLIC INTEREST BENEFITS**

The proposed transaction will deliver substantial public interest benefits to New York residents, businesses, schools, libraries, students, and municipalities and will enhance the economic welfare of the Empire State. These benefits include:

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<sup>2</sup> Comments of the New York State Department of Public Service Staff, Case 14-M-0183 (Aug. 8, 2014) (“Staff Comments”). The City of New York also acknowledges that the transaction will be beneficial in important respects. *See generally* City of New York Comments (Aug. 6, 2014).

<sup>3</sup> Staff Comments at 39.

- improved competition and enhanced products for residential voice services;
- new and more robust competition for business services;
- accelerated deployment of advanced video technologies and development of new and innovative video products and services, including Comcast's groundbreaking X1 platform; and
- increased programming choices for TWC video customers.<sup>4</sup>

Beyond these core voice, video, and business competition benefits, the transaction will pay a variety of other public interest dividends – many of which may be beyond the scope of the Commission’s regulatory jurisdiction, yet are nevertheless important advantages offered by this deal. These include, among others, accelerated and expanded broadband adoption and increased competition in the broadband market; faster broadband speeds; expanded Wi-Fi hotspot deployment; increased availability of broadband to schools and libraries; active community involvement and corporate citizenship; improved energy efficiency; and improved customer experience.<sup>5</sup> In the aggregate, properly quantified, the complete set of public interest benefits that Comcast is delivering to New York represents hundreds of millions of dollars of investment and value.<sup>6</sup>

More than 100 government officials, youth and family groups, business groups, community service organizations, and other notable individuals filed fact-based comments in this case touting these and other benefits that will result from the transaction. Indeed, Staff, notwithstanding certain reservations, likewise recognizes that the transaction will deliver benefits to New York residents

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<sup>4</sup> See Joint Petition at 12-25.

<sup>5</sup> See generally Joint Petition at 25-30, Transcripts of Public Statement Hearings, Responses to Staff Information Requests, and fact-based Public Comments.

<sup>6</sup> See, e.g., Buffalo Niagara Partnership Comments at 1 (Aug. 8, 2014) (“Comcast has pledged to invest hundreds of millions of dollars annually to bring any system it acquires in this transaction up to these industry-leading standards. This means that in the near future, our state will benefit from a full-scale communications infrastructure upgrade at no cost to taxpayers or utility rate payers. In our view, this is far too good an opportunity to pass up.”).

and businesses, including the delivery of innovative services, faster broadband speeds, and enhanced competition.

Importantly, there is no dispute that Comcast has the requisite legal, financial, technical, and managerial qualifications not only to ensure that the TWC entities in New York continue to provide reliable service, but also to deliver the relevant technological and competitive advances described above and discussed further below.

The Commission-established process for this proceeding included many opportunities for public input, discovery, party comments, and a complete Staff evaluation.<sup>7</sup> Few parties actually intervened, reflective of the clear satisfaction of the applicable standard for Commission approval and the clear benefits of the transaction. Indeed, the record is uncontested that Comcast is a financially strong corporation with expert technological and service capabilities as a communications and video services provider, that it invests heavily in infrastructure to provide robust networks to meet today's needs, and that it is capable of evolving to meet tomorrow's consumer and business demands.<sup>8</sup>

In short, as demonstrated below, the Companies have met and far exceeded the Commission's well-established standard of review for transactions involving competitive telephone and cable providers.

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<sup>7</sup> See Notice Inviting Comments, Case 14-M-0183 (May 16, 2014), and Correspondence from Chad Hume, Director, Office of Telecommunications to Comcast Corporation and Time Warner Cable (May 21, 2014) ("Hume Letter"). The Staff Comments may have unintentionally implied (at page 12) that the Hume Letter bore some substantive relation to prior satisfaction of the public interest standard or that it created some presumption of harm, which would of course not be accurate given that the Hume Letter simply provided the statutory notice that "the Commission will review [the] petition and will issue a written response" and that as such the petition would not be automatically "deemed approved after ninety (90) days of filing." Hume Letter at 1.

<sup>8</sup> Joint Petition at 10-12.

## **A. The Transaction Will Generate Substantial Benefits in the Voice Services Market**

The record unequivocally demonstrates that the transaction will result in substantial benefits to the voice services marketplace. By permitting Comcast and TWC to combine the best aspects of their robust and innovative voice services, and by allowing Comcast to achieve greater economies of scale in its overall business that will encourage more network investment in New York, this transaction will leave the combined company better positioned to offer an array of advanced voice services in competition with incumbent local exchange carriers (“ILECs”) and other wireline, wireless, and IP voice providers.<sup>9</sup> As recognized by Staff and others, these benefits will accrue to New York consumers and businesses alike.<sup>10</sup>

### *1. The Transaction Will Improve Competition and Enhance Residential Voice Services*

The proposed transaction will provide New York customers with an enhanced voice services offering. Specifically, the transaction will allow Comcast to integrate the best features of its voice offerings with TWC’s best features, creating a best-in-class voice services offering.

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. As Staff highlights, Comcast’s advanced IP Multimedia Subsystem (“IMS”) network architecture enables customers to access service from different locations using a variety of methods and networks, including not only the wired connections provided by Comcast, but also Wi-Fi

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<sup>9</sup> See, e.g., Association for a Better New York Comments (Aug. 8, 2014) (“[T]here is no doubt that the combined entity’s scale and other efficiencies will free up capital to reinvest in infrastructure and otherwise benefit both enterprise and consumer customers.”).

<sup>10</sup> See, e.g., Staff Comments at 24-25; CFC Capital Comments at 1 (Aug. 7, 2014); Coalition for Queens Comments at 1 (Aug. 4, 2014).

connections and public Internet connections provided by third parties, whether wired or wireless.<sup>11</sup>

Comcast's IMS network architecture also 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 also to receive calls to their home numbers at multiple locations and on multiple devices using the "Advanced Call Forwarding" feature.<sup>12</sup>

By combining the best of the Companies' offerings, the combined company will be able to offer a more advanced and robust IP voice service. This improved offering – combined with continued build-out of network facilities – will enhance the competitive landscape in New York by providing a more meaningful alternative to incumbent wireline providers and incentivizing those providers to respond with their own innovations. As the Capital District Black Chamber of Commerce in Albany describes it, the transaction "would be instrumental in the accelerated d[e]livery of Comcast's technologically advanced products and services to Time Warner Cable's customers," and "would only strengt[h]en the abilities of both companies to provide innovative and cutting edge goods and services in technology based products to the multitude of consumers that depend on these services on a daily basis."<sup>13</sup> This will both enhance the service quality for customers of the combined company and further the Commission's longstanding interests in

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<sup>11</sup> Staff Comments at 24-25; *see also* Representative William Owens, 21<sup>st</sup> District, New York, Comments at 1 (Aug. 14, 2014) (noting that the transaction "will bring enhanced video, broadband, and voice services to millions of New Yorkers, while improving the reliability and security of the acquired networks"); Mark Frazer, Mayor, North Beach, MD, Comments (Aug. 7, 2014) ("Only a year after Comcast acquired our system, the company completed a thorough upgrade to the entire network. They added . . . a whole array of advanced, innovative programs like Digital Voice . . .").

<sup>12</sup> Joint Petition at 13-14; *see also* Staff Comments at 25. Comcast's XFINITY voice customers also have access to enhanced features such as caller identification provided over a television, laptop, or mobile device, and Readable Voicemail, as well as the ability to send and receive unlimited text messages to and from their XFINITY Voice telephone numbers. Joint Petition at 13; *see also* Staff Comments at 24.

<sup>13</sup> Capital District Black Chamber of Commerce Comments (Aug. 11, 2014).

promoting intermodal competition and universal service. Indeed, Staff “considers these enhancements to residential voice a benefit of the proposed transaction.”<sup>14</sup>

## *2. The Transaction Will Enhance Competition for Business Voice and Data Services*

This transaction will deliver substantial benefits to New York business customers through a much-needed increase in competition and the accelerated deployment of advanced services that are critical for economic development. As discussed in the Joint Petition, Comcast, TWC, and other cable companies have had difficulty competing effectively against incumbent providers that possess far broader scale and scope for larger business customers that have multiple office locations in various states and across multiple cable footprints.<sup>15</sup> Where a customer’s business spans multiple areas, a cable company with a limited geographic footprint is often not an option.<sup>16</sup>

The transaction will change this dynamic by creating a more cost-efficient competitor that can offer new options and competitively priced services to small, medium, and enterprise businesses across a wider area of New York and beyond, challenging the ILECs that have dominated this marketplace for decades and, as Buffalo Mayor Byron Brown notes, “enabl[ing] our businesses to be even more competitive” and to “increase productivity for companies of all sizes.”<sup>17</sup> Specifically, the combined company’s greater regional and national network footprint

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<sup>14</sup> Staff Comments at 25.

<sup>15</sup> Joint Petition at 15; Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc., FCC MB Docket No. 14-57 (Apr. 8, 2014) (“*Comcast/TWC Public Interest Statement*”), Exhibit 5, Declaration of Dr. Gregory L. Rosston and Dr. Michael D. Topper ¶¶ 120, 125 (“*Rosston/Topper Decl.*”).

<sup>16</sup> See *Comcast/TWC Public Interest Statement*, Exhibit 6, Declaration of Mark A. Israel ¶ 147 (“*Israel Decl.*”); see also *id.* ¶ 148; *Rosston/Topper Decl.* ¶ 141. See also, e.g., Frank S. Lucente, City Council, Waynesboro, VA, Comments at 1 (Aug. 14, 2014) (“[C]ommunications and record sharing slow down between multiple business locations when they must use different service providers. Having the option to use the same provider in multiple locations would be a big boost to business.”).

<sup>17</sup> Byron Brown Comments (Aug. 8, 2014); see also Statement of Michael J. Santorelli, Director, Advanced Communications Law & Policy Institute, New York Law School, New York City Public Statement Hearing, Tr. at 41 (June 19, 2014) (“Will the transaction bolster state efforts like Startup New York, help to fuel more startups

will make it a far more attractive option for businesses that previously could look only to the large incumbents when seeking a single provider across multiple offices and regions.<sup>18</sup> 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 business segment.<sup>19</sup> Indeed, the Business Council of New York State recognizes that the transaction "reflects a positive step for New York businesses because it will create an innovation company of sufficient scale to meet the needs of today's and tomorrow's innovation economy."<sup>20</sup>

As a result, many New York businesses will enjoy new or enhanced competition in pricing and service options – significantly advancing this important market segment.<sup>21</sup> Notably, for example:

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and attract new businesses to the state? Again, there's evidence to suggest that it would, that it would likely support efforts to improve network infrastructure for businesses of all sizes."); Statement of Mark E. Reilly, Senior Vice President of Government Affairs – Northeast Division, Comcast, Buffalo Public Statement Hearing, Tr. at 14-15 (June 16, 2014) ("[F]or business customers, the combination of Comcast and Time Warner Cable will create a stronger, more efficient provider for New York businesses of all sizes. Comcast has helped thousands of mom-and-pop businesses, from barber shops to delis, lower their monthly voice and data costs. This has enabled these small businesses to grow and add employees. And where Comcast has made in-roads in the business market, other providers have responded by lowering their prices and improving their services.").

<sup>18</sup> Joint Petition at 15-16; Staff Comments at 25; *see also* Representative William Owens, U.S. Congressman, 21<sup>st</sup> District, New York, Comments at 1 (Aug. 12, 2014) ("By expanding its geographic reach in New York, Comcast will . . . be able to offer competitive . . . voice services to businesses of all sizes, helping to drive economic growth and development throughout the State."); CFC Capital Comments at 1 (Aug. 7, 2014) ("Since we cater to the demands of a large client base, the service would be particularly useful as it allows users to connect at multiple points to a national fiber-optic network."); Delaware County Chamber of Commerce (Aug. 7, 2014) ("This merger creates a super-regional company that could offer businesses with locations up and down the Atlantic coastline the opportunity to synchronize their communications, data, storage, and other important IT functions.").

<sup>19</sup> *See Rosston/Topper Decl.* ¶¶ 122-38; *Israel Decl.* ¶¶ 133-57.

<sup>20</sup> The Business Council of New York State, Inc. Comments at 1 (July 29, 2014).

<sup>21</sup> *See, e.g.*, Albany-Colonie Regional Chamber Comments at 1 (Aug. 7, 2014) ("We are certain that Capital Region businesses will benefit since the combined company will have the scale to compete with regional and national providers like AT&T and Verizon. Most importantly, this should provide more choices, lower prices, and better service.").

- As various analysts have observed, Comcast and TWC have introduced aggressive price competition in the small and medium-sized business segments, with a 2013 research report noting that new entry decreased Ethernet pricing for business by 10 percent or more a year.<sup>22</sup> The combined company will be able to bring this same competitive pricing to many more businesses in New York.<sup>23</sup>
- Through the combination of the two Companies' innovative services, New York business customers will enjoy Comcast's Business VoiceEdge, 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 the ability to use 4-digit extensions to contact colleagues from their mobile phones, and a "Teleworker" feature that enables seamless integration of remote and work-at-home employees into a company's phone infrastructure.<sup>24</sup>
- Meanwhile, TWC, through its NaviSite subsidiary, provides a range of cloud-based solutions that appeal to medium-sized and enterprise businesses,<sup>25</sup> and it also offers Session Initial Protocol ("SIP") trunking, data center services, and other high-end business services products that will enhance Comcast's offerings.<sup>26</sup>

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<sup>22</sup> Insight Research Corp., *US Carriers and Ethernet Services, 2013-2018*, at 5 (Aug. 2013); *see also* TeleGeography, *Global Enterprise Networks: Enterprise Service Pricing*, at 16 (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."); *id.* at 20 ("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.channelpartneronline.com/news/2014/02/cablecos-gain-ground-in-ethernet-but-at-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.").

<sup>23</sup> *See, e.g.*, Manhattan Chamber of Commerce Written Testimony at 1 (June 19, 2014) ("Put in simple terms this means that thanks to Comcast's investment thousands of pharmacies, barber shops, dry cleaners and restaurants now have a value proposition that was far better than had previously been available when it comes to telecommunications - lower price, more attractive product offerings, and better customer service.").

<sup>24</sup> Joint Petition at 16; *see also* Staff Comments at 25.

<sup>25</sup> These include "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. *See* Cloud Services, NaviSite, <http://www.navisite.com/> (last visited Aug. 24, 2014).

<sup>26</sup> TWC has received a "Metro Ethernet Forum" 2.0 Certification in all eight Ethernet product categories. *See The MEF Certification Program*, MEF, <http://www.metroethernetforum.org/certification/mef-certification-programs> (last visited Aug. 24, 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-ce-20-service-provider&catid=1:latest-news&Itemid=62](http://telecomreviewna.com/index.php?option=com_content&view=article&id=334:comcast-business-services-is-worlds-first-ce-20-service-provider&catid=1:latest-news&Itemid=62) (last visited Aug. 24, 2014). Comcast is certified in six of the eight CE 2.0 categories.

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.”<sup>27</sup> 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.”<sup>28</sup>

Moreover, given its greater geographic scope, the combined company will be better positioned to provide wireless backhaul services throughout New York – another market segment where greater competition is needed and in which the Companies are relatively recent entrants.<sup>29</sup>

Finally, the investments and network upgrades that the combined company will undertake to serve larger businesses and wireless backhaul customers across the combined company’s footprint will also benefit small businesses and residential customers. For example, since products developed for the medium-sized or enterprise segments can often be offered to or repackaged for small businesses, new product development driven by greater competition for larger businesses will also benefit small business customers. In addition, small businesses and residential customers will benefit from investments and plant upgrades made to serve larger businesses.<sup>30</sup> For example, consider a mini-mall in New York with 10 separate small business stores that previously did not have a competitive alternative to the ILEC for their broadband, voice, or video services because it

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<sup>27</sup> *Rosston/Topper Decl.* ¶ 129; *see also Israel Decl.* ¶¶ 117-18, 142-44.

<sup>28</sup> *Israel Decl.* ¶ 153.

<sup>29</sup> See *Comcast/TWC Public Interest Statement* at 97-98; Response to Staff Information Request No. DPS-44.

<sup>30</sup> *See Israel Decl.* ¶¶ 181-86; *Rosston/Topper Decl.* ¶ 63.

was cost-prohibitive for 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 business customer with, say, five different sites, one of which is near the mini-mall, those 10 stores may become serviceable from the same network extension (and Comcast's business practice is to evaluate the best construction route so as to pass as many homes and businesses in extending lines).<sup>31</sup>

In short, the transaction injects much-needed intermodal competition as the combined company becomes a more viable alternative to legacy providers for business customers. Staff recognizes these enhancements to the business services market and "considers this one of the more important benefits of the proposed transaction because competition in the small and medium voice and data markets has not evolved at the same pace as the residential market and these services should serve to increase such competition."<sup>32</sup> To ensure that businesses in the State can count on enjoying these competitive benefits in concrete ways from day one and to facilitate small business migration from their legacy providers, Comcast is prepared to make commitments concerning its up-front installation charges.

## **B. The Transaction Will Result in Substantial Benefits in the Video Services Market**

The transaction will result in substantial benefits for the video services marketplace. Comcast will provide customers in New York with more programming choices and enhanced video service features than they enjoy as TWC customers today. The transaction will also benefit consumers through the accelerated deployment of advanced video technologies. In addition, the

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<sup>31</sup> See *Israel Decl.* ¶ 184.

<sup>32</sup> Staff Comments at 25-26.

deployment of these technologies, and the associated networks and equipment required to support them, will require a significant injection of investment dollars in New York State.

1. *The Transaction Will Accelerate the Transition of TWC’s Network to All-Digital*

Improving cable services for customers – e.g., adding programming choices, improving picture quality (i.e., HD), adding advanced features, offering faster broadband speeds – depends on opening up additional bandwidth. Cable operators have undertaken a number of strategies to do so, but the most successful by far to date has been to migrate to all-digital networks and reclaim bandwidth used for analog video, which is highly inefficient. While TWC has begun the transition to all-digital, only approximately 40 percent of New York TWC customers are served by all-digital networks today.<sup>33</sup>

The transaction will accelerate TWC’s transition to all-digital. Comcast completed its own transition to an all-digital platform across its entire network in 2012, ahead of its planned schedule.<sup>34</sup> Comcast’s substantial experience working through the various complexities of an all-digital transition will enable the digitization of the TWC systems in New York to take place more rapidly, more efficiently, and with less customer disruption than TWC could likely do on its own. Comcast’s past experience with acquired systems bears this out. Mayor Mark Frazer of North Beach, Maryland reports that within one year of acquiring his community’s cable system, Comcast “completed a thorough upgrade to the entire network” and “added 31 channels and a whole array of advanced, innovative programs like . . . on demand, high-speed broadband connections, high-definition television, and digital cable with over 250 channels.”<sup>35</sup>

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<sup>33</sup> Joint Petition at 21.

<sup>34</sup> See Comcast/TWC Public Interest Statement at 70.

<sup>35</sup> See Mark Frazer Comments (Aug. 7, 2014).

Once these upgrades are made, customers of TWC systems will enjoy more programming choices, more innovative video products on an accelerated basis, and enhanced network reliability and performance – as discussed below.<sup>36</sup> Many commenters recognize these benefits, welcoming the “enhanced video, broadband, and voice services to millions of New Yorkers” that an all-digital network will facilitate.<sup>37</sup> Staff, too, recognizes the potential for this benefit.<sup>38</sup> Staff, however, suggests specific scheduling commitments from Comcast in order to further demonstrate this potential benefit.<sup>39</sup> Comcast appreciates Staff’s suggestion and notes that Comcast already has committed to accelerate the transition of TWC’s network to all-digital ahead of TWC’s current plans to do so.<sup>40</sup> And Staff and the Commission can count on Comcast proceeding as expeditiously as possible, because there is significant competition in the New York market. The company will be best positioned to respond to that competition – and to fully realize the benefits of this transaction – only once the TWC systems are upgraded and the programming and technological enhancements that Comcast offers today are extended to the legacy TWC markets. However, until

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<sup>36</sup> *Comcast/TWC Public Interest Statement* at 71.

<sup>37</sup> See Representative William Owens, 21<sup>st</sup> District, New York, Comments at 1 (Aug. 14, 2014) (“As part of the proposed transfer of control, Comcast has committed to continue to invest heavily in New York, including accelerating the conversion of TWC systems to all-digital. This will bring enhanced video, broadband, and voice services to millions of New Yorkers . . .”). See also CFC Capital Comments at 1 ( Aug. 7, 2014) (“Thanks to Comcast’s commitment to creating an all-digital network, our work could be done with faster speeds and a greater amount of reliability.”).

<sup>38</sup> Staff Comments at 22.

<sup>39</sup> *Id.* at 22-23.

<sup>40</sup> *Comcast/TWC Public Interest Statement* at 70-71; *id.* at Exhibit 4, Declaration of Michael J. Angelakis ¶ 27 (“Angelakis Decl.”) (“Given Comcast’s demonstrated experience and expertise in deploying large-scale network upgrades, I am confident that Comcast’s transition of TWC’s systems to an all-digital platform will be accomplished with discipline and urgency. As a result, TWC’s systems will benefit from greater capacity for robust and innovative video products on an accelerated basis.”); Statement of Comcast Senior Vice President Mark E. Reilly, Buffalo Public Statement Hearing, Tr. at 9 (June 16, 2014) (“For residential customers, Comcast will invest heavily to upgrade Time Warner Cable systems across New York and transition them to all digital, more quickly than Time Warner Cable could do so on its own.”); see also *id.*, Tr. at 56 (discussing Comcast’s commitment to network investment following prior transactions).

Comcast controls TWC’s systems and can explore the specific steps and operational challenges that will be involved in upgrading them, specific scheduling commitments would be neither fair nor realistic.

## *2. The Transaction Will Provide Customers with More Programming Choices and Enhanced Video Technologies*

Following the transaction, Comcast will deliver enhanced programming choices and features to New York consumers.<sup>41</sup> Comcast’s investment in all-digital networks and a robust on-demand infrastructure has enabled it to substantially expand the amount of programming it offers. As a result, Comcast has negotiated far more extensive programming rights and a broader video-on-demand (“VOD”) and online catalog than TWC. Once the TWC systems are upgraded, the combined company will be able to provide customers in the TWC markets with access to substantially more programming choices, including many niche and diverse program offerings.<sup>42</sup>

For example, Comcast’s XFINITY On Demand platform today includes approximately 50,000 programming choices – compared to TWC’s 15,000 to 20,000 – and over 80 percent of those choices are free of charge. Comcast’s XFINITY TV Store gives customers the ability to purchase, download, and stream movies and TV shows – a capability TWC does not offer.<sup>43</sup> Comcast also offers its customers expansive online TV Everywhere offerings: 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 shows and movies to watch

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<sup>41</sup> Joint Petition at 23-24; *see also* Staff Comments at 22.

<sup>42</sup> 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.

<sup>43</sup> *See* Staff Comments at 22.

offline later.<sup>44</sup> 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. Staff and others acknowledge that "this expanded programming does represent an incremental benefit for New York customers."<sup>45</sup>

Comcast also has invested in new video technologies that it will bring to the New York market once the TWC systems are upgraded to support them. In particular, Comcast has developed the industry-leading X1 platform. The X1 platform provides a state-of-the-art cloud-based user interface that includes integrated search (across TV, XFINITY On Demand, and DVR) with instant play; access to the Internet and apps like Facebook and Pandora; cross-product integration, including access to voicemail from the TV; enhanced personalization and recommendations; and a "Last 9" feature that enables customers to easily access the last nine channels, VOD programs, and apps that they viewed or used. Comcast has also invested in IP streaming technology, which allows customers with the X1 platform to access their full cable linear line-up, including public, educational, and government access ("PEG") and must-carry channels, on personal computers and mobile devices throughout the home, allowing customers to avoid the expense of additional set-top boxes. And with the launch of the new X1 DVR with cloud technology, Comcast customers will be able to record more shows; access them in their homes on multiple TVs, computers, and

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<sup>44</sup> 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-anytime-anywhere>.

<sup>45</sup> Staff Comments at 22; see, e.g., Hope Community, Inc. Comments (Aug. 8, 2014) ("Hope believes the merger will expand the programming options as well as give existing Time Warner customers increasingly better equipment and service.").

other devices; and download their recordings to mobile devices for later viewing away from home.<sup>46</sup>

As Buffalo Mayor Byron Brown recognizes, this transaction will provide New York customers with “access to . . . a superior entertainment operating system in Comcast’s X1 platform, increased ‘On Demand’ programming, and more than double the current programming choices, including many minority and independent channels.”<sup>47</sup> These benefits will significantly enhance the video experience for New York customers.<sup>48</sup> They were made possible by Comcast’s scale and its commitment to innovation, research and development, and infrastructure investment.<sup>49</sup> The combined company will bring that same commitment to New York, and in time will thus be able to *expand* upon these developments, further advancing the video technologies and features New York customers can enjoy. This represents a significant net benefit for the State.

### **C. The Transaction Will Generate Other Significant Public Interest Benefits**

In addition to the significant benefits in the voice and video services markets, the Joint Petition and record identified benefits that will be generated in areas outside of the Commission’s regulatory jurisdiction. While these areas are outside the scope of the Commission’s jurisdiction, Comcast nonetheless is committed to bringing these public interest benefits to New York.

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<sup>46</sup> Joint Petition at 24-25; *Comcast/TWC Public Interest Statement* at 79-80. 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. *See Rosston/Topper Decl.* ¶ 93.

<sup>47</sup> Byron Brown Comments (Aug. 8, 2014).

<sup>48</sup> *See Steiner Studios Comments* (Aug. 8, 2014) (“Access to Comcast’s advanced video services with new, improved network consistencies and customer service innovations would greatly benefit our clients. . . . With Comcast’s commitment to creating an all-digital network, the work could be done with faster speeds and a greater amount of reliability.”).

<sup>49</sup> For example, 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. *See Rosston/Topper Decl.* ¶ 89.

## 1. Faster Broadband Speeds

“As a collateral benefit of an all-digital network, Staff believes there will be additional bandwidth for network services, including faster Internet speeds.”<sup>50</sup> With faster broadband speeds, New Yorkers will be able to use more bandwidth-intensive applications from multiple devices, other ISPs will be spurred to compete even more aggressively, and edge providers will benefit from an enhanced platform on which to build novel services.<sup>51</sup> Comcast has invested substantially in advanced broadband technology, and system upgrades,<sup>52</sup> and today delivers some of the industry’s fastest broadband speeds.<sup>53</sup> Comcast has increased Internet speeds 13 times in the past 12 years,<sup>54</sup> with Comcast’s top residential broadband speed increasing more than 30-fold over the past five years.<sup>55</sup> For example, Comcast recently increased several tiers of broadband speeds in a number of its regions, effectively doubling the download speed on its flagship tier of service from 25 Mbps to 50 Mbps, increasing the download speed for its Blast tier of service from 50 Mbps to 105 Mbps, and increasing its Extreme tier of service from 105 Mbps to 150 Mbps.<sup>56</sup>

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<sup>50</sup> Staff Comments at 22.

<sup>51</sup> *Comcast/TWC Public Interest Statement* at 42-59.

<sup>52</sup> For example, Comcast invested over \$1 billion dollars to deploy DOCSIS 3.0 and migrate its systems to all-digital over two years ago, well ahead of any other cable operator.

<sup>53</sup> See *Comcast Broadband Performance*, Ookla Speedtest, <http://www.speedtest.net/isp/comcast> (last visited Aug. 24, 2014); FCC, Office of Eng’g & Tech. & Consumer & Governmental Affairs Bureau, *2014 Measuring Broadband America Fixed Broadband Report: A Report on Consumer Fixed Broadband Performance in the U.S.* (June 2014) (“2014 Broadband Speed Report”), <http://www.fcc.gov/measuring-broadband-america/2013/February#Chart1>; see also Statement of Comcast Senior Vice President Mark E. Reilly, New York City Public Statement Hearing, Tr. at 10-11 (June 19, 2014) (“as to the issue of speed, the FCC released yesterday its measuring broadband in America report, which found, again, that Comcast delivers more than its advertised speed every hour of the day, even in peak hours in the evening.”).

<sup>54</sup> Press Release, Comcast Corp., *Comcast Increases Internet Speeds for 13<sup>th</sup> Time in 12 Years* (Apr. 9, 2014), <http://corporate.comcast.com/news-information/news-feed/comcast-xfinity-internet-speed-increase>.

<sup>55</sup> As broadband speeds have increased again and again and again, Comcast has reduced the average price Comcast’s customers pay on a per-Megabit basis by 92 percent since 2002, even before adjusting for inflation.

<sup>56</sup> Press Release, Comcast Corp., *Comcast Revs Up Internet Speeds Across Four States* (July 31, 2014), <http://corporate.comcast.com/news-information/news-feed/comcast-increases-internet-speeds-in-california>.

Although TWC has invested in advanced broadband technologies like DOCSIS 3.0, and has upgraded some of its network to be able to offer faster speeds, its transition to all-digital is not close to complete in New York (or elsewhere), and it does not currently have sufficient bandwidth in most of its systems to provision the higher speeds Comcast offers.<sup>57</sup> TWC's most widely-subscribed speed tier is 15 Mbps downstream in most areas, whereas Comcast's most widely-subscribed speed tier is 25 Mbps downstream, with over one-third of all Comcast customers subscribing to speeds in excess of 50 Mbps.<sup>58</sup>

Comcast intends to make (and has the expertise and wherewithal to make) substantial upgrades to TWC's broadband service, in conjunction with the digital transition it is committed to accelerating and completing.<sup>59</sup> Indeed, Comcast is committed to surpassing TWC's announced plans to upgrade broadband speeds to 75 percent of its footprint over the next three years – and can achieve these goals more cost-efficiently than TWC could alone.<sup>60</sup> And beyond this, Comcast intends to deploy next-generation technologies like Converged Cable Access Platform and DOCSIS 3.1 throughout its service area, including the former TWC markets, further enhancing

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kansas-missouri-and-texas; Press Release, Comcast Corp., *Comcast Increases Internet Speeds for 13<sup>th</sup> Time in 12 Years* (Apr. 9, 2014), <http://corporate.comcast.com/news-information/news-feed/comcast-xfinity-internet-speed-increase>.

<sup>57</sup> See Ian Olgeirson, *Charter, Time Warner Cable Lag in All-Digital Push To Convert CapEx into Capacity*, SNL Kagan (Jan. 17, 2014).

<sup>58</sup> *Comcast/TWC Public Interest Statement* at 31-32. TWC bonds only 4 QAM channels in nearly half its systems (only a little over a third of the TWC systems bond 8 QAM channels), whereas Comcast typically bonds 8 QAM channels together in its systems (and is moving to 16 channels in certain systems). *Id.* at 32, 34. Moreover, even though TWC has deployed DOCSIS 3.0 throughout its systems, it has yet to replace a significant number of its customers' cable modems to receive the speeds DOCSIS 3.0 can deliver. *Id.* at 32-33.

<sup>59</sup> See Silvercup Studios Comments at 1 (Aug. 7, 2014) (noting that many New York businesses lack access to a network capable of reliably supporting advanced film editing services and recognizing that Comcast will change that by purchasing and upgrading TWC's systems, which will provide its studio with the kind of connectivity that it needs to best serve its clients.).

<sup>60</sup> Angelakis Decl. ¶¶ 21-23.

broadband speeds and service.<sup>61</sup> In addition, Comcast recently completed an upgrade of its broadband network to be compliant with IPv6, a critical new standard that is essential to facilitate the future growth and enhanced functionality of the Internet.<sup>62</sup> These will be real and material benefits to New York customers and businesses.<sup>63</sup>

## 2. *Expanded Broadband Adoption*

The transaction will have a specific, direct, and positive impact on as many as 570,000 households,<sup>64</sup> which could have access to Comcast's groundbreaking Internet Essentials program – the nation's largest and most comprehensive broadband adoption program – for the first time. As one commenter describes it, “[t]his merger presents a fantastic opportunity to increase broadband adoption in New York and to provide under privileged youth with a necessary and valuable instrument for success.”<sup>65</sup>

Internet Essentials was designed to meet the needs of a specific, significant population – low-income families with school-age children who are not currently connected to broadband Internet service at home. As various commenters note, this population has a great need for Internet

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<sup>61</sup> *Comcast/TWC Public Interest Statement* at 34-36.

<sup>62</sup> See Press Release, Comcast Corp. *Comcast Reaches Key Milestone in Launch of IPv6 Broadband Network* (July 22, 2014), <http://corporate.comcast.com/comcast-voices/comcast-reaches-key-milestone-in-launch-of-ipv6-broadband-network>. By contrast, TWC has implemented IPv6 to a much lower percentage of its network.

<sup>63</sup> Comcast Business recently upgraded its full portfolio of Ethernet services across 10 New York towns and villages in Putnam, Dutchess and Westchester counties. See Press Release, Comcast Corp., *Comcast Business Extends Fiber Network to Bring Multi-Gigabit Ethernet to 10 New York Communities* (Aug. 21, 2014), <http://corporate.comcast.com/news-information/news-feed/comcast-business-extends-fiber-network-to-bring-multi-gigabit-ethernet-to-10-new-york-communities>.

<sup>64</sup> This number is deduced from 2012 data provided by the National Center for Education Statistics. See National Center for Education Statistics, *Digest of Education Statistics*, tbl. 204.10 (2013), [http://nces.ed.gov/programs/digest/d13/tables/dt13\\_204.10.asp](http://nces.ed.gov/programs/digest/d13/tables/dt13_204.10.asp).

<sup>65</sup> Anthony K. Dungy Comments (Aug. 6, 2014); *id.* (“As a former NFL Coach I know what it takes to win and students today cannot win without the Internet. This incredible technology is impacting the ways we communicate, educate and conduct research in groundbreaking ways. Those without access to broadband Internet service are starting with their back to the goal line.”).

connectivity for critical educational purposes.<sup>66</sup> Internet Essentials offers qualified low-income families low-cost broadband service for \$9.95 per month, the option to purchase an Internet-ready computer for less than \$150.00, and multiple options to access free digital literacy training in print, online, and in person. There are no activation fees or installation charges and no monthly modem or other equipment fees.<sup>67</sup> Since Comcast launched Internet Essentials in 2011, more than 1.4 million low-income Americans, from 350,000 families, have been connected through this program to the Internet at home. Comcast also has sold more than 30,000 low-cost, subsidized computers to program families.<sup>68</sup> Over 70 percent of Internet Essentials customers are people of color, while more than 50 percent of Internet Essentials customers are Latino.<sup>69</sup>

Many commenters laud the tremendous benefits associated with Internet Essentials for their communities. For example, the Virginia Hispanic Chamber of Commerce explains that “[i]n the first two years of Internet Essentials in Virginia, more than 17,000 people were able to have a home broadband connection and buy a computer at drastically reduced prices. This kind of connectivity is very important to us in the Latino community.”<sup>70</sup> And the Hispanic Federation

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<sup>66</sup> See, e.g., Southern New Jersey Chamber of Commerce Comments (Aug. 21, 2014) (noting that Internet Essentials and related Comcast programs “assure[] that many more children can be exposed to the digital world, where so much learning now takes place”); Paul Dakin, Superintendent of Schools, Revere, MA, Comments (Aug. 8, 2014) (“Our district is very focused on staying connected to students when they leave the classroom. We do this by posting report cards, attendance records, homework and other important news and information on our website. We also have much of our digital curriculum that students use in school accessible from home computers. Of course, to benefit from this resource a family or student needs to be able to access the Internet readily.”).

<sup>67</sup> Joint Petition at 26.

<sup>68</sup> In March 2014, Comcast received the T. Howard Foundation’s Innovative Program Award honoring the success of Internet Essentials in helping close the Digital Divide for low-income families with children.

<sup>69</sup> John B. Horrigan, *The Essentials of Connectivity*, at 15 tbl.1 (Mar. 2014), [http://corporate.comcast.com/images/Final\\_IE\\_Research\\_Full\\_Paper.pdf](http://corporate.comcast.com/images/Final_IE_Research_Full_Paper.pdf) (“Horrigan Study”).

<sup>70</sup> Virginia Hispanic Chamber of Commerce Comments (Aug. 8, 2014).

expresses its belief that Internet Essentials “can provide opportunities to close the digital divide and help New York families acquire 21st century skills.”<sup>71</sup>

Although Internet Essentials was initially slated to run for three school years – a voluntary commitment in the Comcast-NBCUniversal transaction that has been fully satisfied – Comcast’s commitment to this cause is stronger than ever: Comcast announced in March of this year that it will extend the program *indefinitely*.

Comcast also made two major announcements recently to further expand participation in Internet Essentials. First, Comcast will include up to six months of complimentary service for any new family that is approved for Internet Essentials between August 4 and September 20, 2014. Comcast is doing this because there is no more important back-to-school supply than Internet service at home. As the LeMoyne Community Center in Pennsylvania explains, “[h]aving digital access has made a big difference in what our local families can now accomplish. The children can complete schoolwork at home. Their parents can also study online and, importantly, can apply for jobs, as most companies today require applicants to apply online.”<sup>72</sup> For families served by ASPIRA, Internet Essentials has “significantly enhanced their children’s education and their overall quality of life.”<sup>73</sup>

Second, Comcast announced an amnesty program for low-income families who could qualify for the Internet Essentials program, but have a past due balance with Comcast that is more than one year old. Notably, the City of New York “applauds Comcast’s recent efforts to increase

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<sup>71</sup> Hispanic Federation Comments at 1 (Aug. 8, 2014).

<sup>72</sup> LeMoyne Community Center Comments (Aug. 8, 2014).

<sup>73</sup> ASPIRA Association, Inc. and ASPIRA of New York, Inc. Comments at 1 (Aug. 6, 2014).

enrollment levels and address the concerns of those who have been critical of Internet Essentials' design and implementation.”<sup>74</sup>

These enhancements follow numerous improvements to the program since its inception to make it easier to enroll and deliver more and better services to eligible families and Internet Essentials customers.<sup>75</sup> These enhancements include:

- Barriers to entry reduced – Comcast waived the credit check requirement for Internet Essentials families and empowered customer service representatives to work with families on a case-by-case basis to address past credit issues, arrange flexible payment plans, and work out myriad other issues.
- Eligibility criteria expanded – Comcast expanded the original eligibility criteria for Internet Essentials twice, first by extending it to families with children eligible to receive reduced price school lunches, and then by offering it to parochial, private, cyberschool, and homeschooled students. As a result, nearly 2.6 million additional families nationwide are now eligible for Internet Essentials, an increase of approximately 30 percent from the original eligible base.
- Instant approval process expanded – Comcast expanded its instant approval process for families with students who attend schools with 70 percent or more National School Lunch Program participation (previously, the threshold was 80 percent), which further enhanced participation rates.
- Increased speeds – Comcast increased the broadband speeds for Internet Essentials customers twice in less than two years. Internet Essentials now offers download speeds up to 5 Mbps, more than triple the speed offered at the beginning of the program.
- Partner support facilitated – Comcast’s community partners now may help connect low-income families to the Internet by purchasing “Opportunity Cards” that help defray the cost of the service. And Comcast launched a program that gives third parties such as schools and community-based organizations the ability to purchase Internet Essentials service and equipment in bulk for families in their community.

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<sup>74</sup> City of New York Comments at 2 (Aug. 6, 2014); *id.* at 2-3 (highlighting the amnesty program and the six months of free service).

<sup>75</sup> Statement of Comcast Senior Vice President Mark E. Reilly, New York City Public Statement Hearing, Tr. at 51-52 (June 19, 2014) (discussing Comcast’s enhancements to the Internet Essentials program).

- Learning Centers enhanced – Comcast launched an expanded version of its online Learning Center to provide families with enhanced and dynamic content, including new interactive content in Spanish.
- Access to Khan Academy – Comcast established a multi-year, multi-million dollar partnership with Khan Academy that will combine the free, world-class educational content of Khan Academy’s award-winning website with the transformative potential of Internet Essentials. The commitment includes hundreds of thousands of public service announcements (“PSAs”), significant digital promotion in both English and Spanish, and multiple joint promotion opportunities around the country over the next few years.

Moreover, Comcast invests tremendous resources in its efforts to reach eligible consumers and enroll them in the program, including distributing nearly 37 million Internet Essentials brochures in a variety of languages, broadcasting nearly 4 million PSAs in English and Spanish (valued at more than \$51 million); forging thousands of partnerships with community-based organizations, government agencies and federal, state, and local elected officials; staffing a dedicated Internet Essentials call center that has fielded more than 2.3 million calls; creating an online application tool to make it easier to apply; conducting on-site registration events; and allowing customers to move accounts to a new home address in a Comcast service area without having to reapply. In addition, Comcast has created “Internet Essential Learning Zones” in 15 communities with significant low-income populations that have done the most to close the Digital Divide. Comcast has made direct grants of more than \$1 million to these communities (including non-profits and schools) to create a continuum of connectivity during the day, after school, and at home.

Comcast also regularly reevaluates and refocuses its outreach efforts to increase enrollment. Comcast has done significant research to confirm that Internet Essentials is achieving its intended results. Recent results from a broad survey Comcast commissioned indicate that this program is making a real difference in the lives of many underserved families:

- 90 percent said they are “highly satisfied” with the service.

- 98 percent said they would recommend Internet Essentials to others, and 84 percent said they have already done so.
- 97 percent said their children needed it for school work.
- 84 percent said that either they or others in the household use the Internet at home using their Internet Essentials service at least occasionally, and 63 percent said they use it every day.<sup>76</sup>

As the Coalition for Queens notes, “[r]esearch shows that nearly 75 percent of New York’s school children would be eligible for Internet Essentials program – we clearly need all the help we can get.”<sup>77</sup>

In addition, Comcast will partner with local organizations in New York to roll out Internet Essentials here, including Computers for Youth, which describes its belief that “Comcast’s Internet Essentials program offers tremendous potential to support low income families.”<sup>78</sup> As it does with all of its community partners, Comcast will solicit feedback and suggestions about the process and the program. Education Partnership in Pittsburgh, Pennsylvania comments that “Comcast has partnered with our organization to provide school supply kits to low-income students . . . , equipping them with the materials they need for classroom success” and that New York will benefit from Comcast’s efforts to serve its communities.<sup>79</sup> And the Buffalo Urban League notes that

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<sup>76</sup> *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, FCC MB Docket No. 10-56, Third Annual Compliance Report on Internet Essentials the Comcast Broadband Opportunity Program, at 3 (July 31, 2014). Last year, Comcast hired Dr. John B. Horrigan, head of research for the FCC’s National Broadband Plan and a former research director with Pew Research Center’s Internet and American Life Project, to write a playbook for success for anyone to use if they want to create and implement a program like Internet Essentials.

<sup>77</sup> Coalition for Queens Comments at 1 (Aug. 4, 2014).

<sup>78</sup> Statement of Mark Malaspina, President, Computers for Youth, New York City Public Statement Hearing, Tr. at 26-27, 33 (June 19, 2014). Another likely partner is Computers for Children, which reports that it is “looking forward to Comcast” to help with its goal of promoting digital literacy and access to New York youth. Statement of Kristine Carr, Executive Director, Computers for Children, Buffalo Public Statement Hearing, Tr. at 29-31 (June 16, 2014).

<sup>79</sup> Education Partnership Comments (Aug. 7, 2014).

“Comcast’s community investment work, including Internet Essentials, reflects our shared values and we look forward to working with Comcast to ensure that eligible schoolchildren take advantage of their broadband adoption program.”<sup>80</sup>

Comcast’s ability to offer these children and their families the opportunity to play on the same field as those who have broadband access today is a significant public interest benefit of the transaction. As the City of New York notes, Internet Essentials “is a meaningful program and the City applauds Comcast for creating it.”<sup>81</sup> New York local officials and representatives, business groups, and community-based organizations wholeheartedly agree. For example, New York Assemblyman Robert Rodriguez, Buffalo Mayor Byron Brown, and Rochester Council Member Adam McFadden explain that extending Internet Essentials to low-income families in New York will help their communities by providing essential and affordable Internet services, closing the Digital Divide, and opening opportunities and partnerships that will strengthen their residents’ education and economic futures.<sup>82</sup>

Similarly, organizations like the Coalition for Queens, the Partnership for New York City, ASPIRA of New York, Inc., the Sports Foundation Inc., and the Hispanic Federation describe how bringing Internet Essentials to New York will promote digital literacy and provide families access to life-changing materials on education, healthcare, and government resources.<sup>83</sup> As Acacia

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<sup>80</sup> Buffalo Urban League Comments at 1 (Aug. 12, 2014).

<sup>81</sup> City of New York Comments at 2 (Aug. 6, 2014).

<sup>82</sup> Robert J. Rodriguez, 68<sup>th</sup> District, Manhattan, Comments at 1 (Aug. 8, 2014); Bryon Brown Comments (Aug. 8, 2014); Adam McFadden Comments (Aug. 11, 2014).

<sup>83</sup> Coalition for Queens Comments at 1 (Aug. 4, 2014); Partnership for New York City Comments 1-2 (Aug. 7, 2014); ASPIRA Association, Inc. and ASPIRA of New York, Inc. Comments at 1 (Aug. 6, 2014); Sports Foundation, Inc. Comments (Aug. 7, 2014); Hispanic Federation Comments at 1 (Aug. 8, 2014).

Network, a Bronx-based organization, states, Internet Essentials will increase the availability of Internet access to school children throughout New York City, which benefits all New Yorkers.<sup>84</sup>

In addition, Comcast is continuing to look for ways to build on the success of Internet Essentials, and is considering potential programs to connect other communities in need. With respect to seniors, for example, Comcast has conducted pilot adoption initiatives through the AARP Foundation and the Project to Get Older Adults Online (Project GOAL) to promote the adoption of broadband services by older adults. Older Adults Technology Services (“OATS”), located in Brooklyn, describes its strong working relationship with Comcast and TWC, and notes that the combined company will bolster New York’s rapidly emerging broadband ecosystem and ability to assist OATS and other organizations in connecting customers of all ages and income levels to the Internet.<sup>85</sup> For the program to remain successful, expansions of the program involve more than just announcing its availability; Comcast continues to work through a network of community partnerships to ensure that potential new customers obtain the support they need to benefit from the program.

Staff recognizes Internet Essentials as a “laudable program” that “appears to be a positive program to introduce broadband service and the Internet to households in New York that do not have home Internet service due to affordability.”<sup>86</sup> Although Staff notes that concerns have been

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<sup>84</sup> Acacia Network Comments at 1 (Aug. 8, 2014); *see also* Statement of Professor Santorelli, New York City Public Statement Hearing, Tr. at 42 (June 19, 2014) (“In having studied and written about the [Internet Essentials] program in isolation and as part of sort of analyses of other adoption programs, I truly believe that it could have an enormous impact in New York, and especially here in New York City, which has some of the largest school districts in the nation[.]”).

<sup>85</sup> OATS Comments at 1-2 (Aug. 11, 2014).

<sup>86</sup> Staff Comments at 23.

expressed by certain members of the public about eligibility requirements,<sup>87</sup> these concerns are neither justified nor compelling.

As a preliminary matter, these arguments are procedurally deficient, even if they were substantively accurate – which they are not. Fundamentally, there can be no real argument disputing the fact that bringing Internet Essentials to more New Yorkers is a benefit – a huge benefit. Whether or not the program could be improved, or other, theoretically “better” programs could be crafted, the fact remains that Internet Essentials is a program unparalleled in this country, and there is nothing close to it available to New Yorkers today. Comcast has done more to encourage broadband adoption by low-income families than any other entity in the nation, private or governmental. Accordingly, there is simply no basis to argue that Internet Essentials is *not* a transactional benefit.

And in all events, the substantive critiques of the program are inaccurate and unavailing.<sup>88</sup> Specific criticisms, and why they fail to raise a legitimate basis to question the benefits of Internet Essentials or to support conditions, are as follows:

- **A low adoption rate shows that the program is flawed.** Critics of the program complain that only 12 percent of the eligible low-income population has been connected through Internet Essentials, but experts agree that the success of Internet Essentials has exceeded all reasonable expectations.<sup>89</sup> The unconnected population is difficult to reach, and closing

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<sup>87</sup> Staff proposes that Comcast revise the eligibility requirements for Internet Essentials, and offer a supplemental “New York Essentials” product. Staff also proposes that the merger be conditioned on a requirement that Comcast commit to offer a “more robust standalone broadband offering” subject to unspecified speed and pricing requirements. *Id.* at 23-24, 43-46; *see also* City of New York Comments at 2-4 (Aug. 6, 2014).

<sup>88</sup> See, e.g., Gale Brewer, Manhattan Borough President, Comments at 3 (Aug. 8, 2014); Scott Stringer, Comptroller, City of New York, Comments at 3 (July 21, 2014); Common Cause New York Comments at 11 (Aug. 8, 2014); Stop the Cap! Comments at 25-26 (Aug. 6, 2014); Writers Guild of America, West, Inc. (“WGAW”) Comments at 23-25 (Aug. 8, 2014); City of New York Comments at 3 (Aug. 6, 2014); New York City Council Comments at 1 (June 19, 2014); Utility Intervention Unit, New York Division of Consumer Protection (“UIU”) Comments at 4 (Aug. 8, 2014); Public Utility Law Project of New York, Inc. Comments at 6-7 (June 19, 2014); Assemblyman Brad Hoylman, 27<sup>th</sup> District, Manhattan, and Senator Richard Gottfried, 75<sup>th</sup> District, Manhattan, Comments at 2 (Aug. 1, 2014).

<sup>89</sup> See, e.g., Marguerite Reardon, *Comcast Extends ‘Internet Essentials’ Program Indefinitely*, CNET (March 3, 2014 8:58 AM PST), <http://www.cnet.com/news/comcast-extends-internet-essentials-program-indefinitely/>

the Digital Divide is a long-term project that will benefit from approval of this transaction. Connecting more than 10 percent of difficult-to-reach eligible low-income users in just three years is a remarkable accomplishment by any reasonable measure. To put this achievement in proper perspective, after almost *twenty years* of offering and intensely marketing Internet access service, Comcast has only achieved about 35 percent penetration of the service across its footprint.<sup>90</sup>

- ***Program outreach efforts must be expanded, and Comcast must partner with community-based groups.*** As described above, Comcast has invested, and will continue to do so, vast resources into its outreach efforts, which include working with a wide range of community organizations and partners. As noted above, Comcast has distributed nearly 37 million Internet Essentials brochures, broadcast nearly 4 million PSAs about Internet Essentials in English and Spanish (valued at over \$51 million), and spent millions of dollars on paid advertising for the program. Further, as noted above, Comcast will partner and work closely with local organizations in New York to ensure the successful roll out of Internet Essentials.
- ***Eligibility requirements are too restrictive, even with recent enhancements, and eligibility should be expanded to all low-income groups and others who could benefit, such the elderly and those with disabilities.*** As noted above, the program is intended to benefit low-income consumers with school-age children, and its eligibility rules reflect this. The limitations on eligibility flow from the reliance on National School Lunch program eligibility. Expanding the program to other groups will require the identification of alternative program-based or other eligibility criteria that are practically workable. Within the current parameters, Comcast has managed nevertheless to significantly facilitate the enrollment process and continues to make improvements all the time. Indeed, as noted above, it has taken steps to reduce barriers to entering the program and already has expanded the eligibility criteria three times. Comcast continues to consider ways to expand its program, including to older adults.
- ***The actual enrollment process is too difficult.*** As described above, Comcast goes to great lengths to ensure eligible customers can enroll in the program by working with local partners to facilitate the process, distributing program materials in a wide variety of languages, staffing a call center that is dedicated to the program, conducting on-site registrations, and other measures. Comcast's addition of the auto-enrollment process has further facilitated enrollment, and a significant percentage of families are now taking advantage of it. Comcast also continually reevaluates the program to help ensure it is achieving its intended goals.

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(“Comcast is not the only company that is working toward more Internet adoption. . . . But so far, Comcast’s program is the largest such effort. According to new research, it’s also been among the most successful.”), *citing* Horrigan Study.

<sup>90</sup> Petitioners also note that all other companies that have launched low-cost broadband adoption programs have achieved far fewer subscribers after several years than the substantial number of Internet Essential subscribers that Comcast is now serving.

- ***Broadband speed under the program should be increased.*** As noted above, Comcast has increased broadband speeds twice in less than two years for program customers. Internet Essentials currently provides speeds of 5 Mbps, which exceeds the FCC's current definition of broadband (3 Mbps/768 Kbps).<sup>91</sup> These speeds are more than ample for families to do the things they need to do on the Internet, such as homework, research, shopping, and job applications.
- ***Comcast should be required to track and report on the number and location of enrolling households so impact can be assessed.*** As described above, Comcast reviews and evaluates the program on a continual basis, including collecting data on the program which is publicly available.<sup>92</sup> No further data collection or reporting requirements are necessary to evaluate the impact of Internet Essentials.

In short, none of these criticisms reflect problems with the implementation of or even the design of Internet Essentials, or detract from its impressive results. They simply advocate a different broadband adoption program – one that no company has ever implemented, that has never been attempted or even analyzed, and that may not be equally sustainable or popular or easy to publicize.

Comcast is the only company to offer a program of this kind, and it has continually and voluntarily expanded the scope, breadth, and eligibility for and benefits of the program. While Comcast will continue to explore new adoption measures and programs, and remains open to discussing them, there is no basis whatsoever in the record to reject Internet Essentials as a substantial benefit or to condition the transaction's approval on amending that program or adopting a different – and unproven – broadband adoption program.<sup>93</sup> Nonetheless, Comcast remains committed to constantly improving Internet Essentials, and it therefore looks forward to

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<sup>91</sup> As the FCC reports, 5 Mbps is sufficient for high-demand applications like streaming video, video conferencing, or online gaming. See Household Broadband Guide, FCC, <http://www.fcc.gov/guides/household-broadband-guide> (last visited Aug. 24, 2014).

<sup>92</sup> See, e.g., Press Release, Comcast Corp., *Comcast to Offer Six Months of Free Internet Essentials Service and Announces Amnesty Plan for Back Due Balances* (Aug. 4, 2014), <http://corporate.comcast.com/comcast-voices/comcast-to-offer-six-months-of-free-internet-essentials-service-and-announces-debt-forgiveness-plan>.

<sup>93</sup> As noted above and as further explained in Section II.B. below, the imposition of broadband-related conditions is beyond the scope of the Commission's regulatory jurisdiction in this case.

constructive engagement with the Commission and Staff concerning the best ways to ensure that the enormous benefits of the Internet Essentials program are realized in New York.

### 3. Enhanced Wi-Fi Hotspot Deployment

Comcast is also a leader in the deployment of Wi-Fi hotspots, and has a demonstrated commitment to mobility and responsiveness to customer demand.<sup>94</sup> Comcast's in-home Wi-Fi gateways, which are now deployed in more than eight million households across Comcast's footprint, give customers the nation's fastest Wi-Fi speeds and excellent performance over their home network.<sup>95</sup> In contrast, TWC only recently announced plans to begin deploying advanced in-home Wi-Fi gateways. This, in part, reflects the fact that scale is important in purchasing and deploying such equipment – and even more so for investing in the next generation of the technology. Comcast intends to bring these in-home gateways to the combined company's systems.

In addition, the substantial broadband infrastructure investment made possible by this transaction will lead to deployment of more *public* Wi-Fi hotspots – a substantial consumer benefit.<sup>96</sup> In less than three years, Comcast has deployed over one million XFINITY Wi-Fi access points in its footprint, giving its broadband customers more flexibility and mobility, including Wi-Fi access at public venues like sports arenas. And Comcast is on track to deploy eight million Wi-Fi hotspots by the end of 2014. A Wi-Fi network becomes much more valuable as coverage

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<sup>94</sup> Joint Petition at 27.

<sup>95</sup> See Rob Slinkard, *Newest Xfinity Wireless Gateway Powers Connected Home with the Fastest WiFi in the Nation*, Comcast Voices (Apr. 26, 2013), <http://corporate.comcast.com/comcast-voices/newest-xfinity-wireless-gateway-powers-connected-home-with-fastest-wifi-in-the-nation>. These gateways are capable of speeds of up to 270 Mbps as compared to speeds of 85 Mbps from the prior generation devices.

<sup>96</sup> See Israel Decl. ¶¶ 191-92; Rosston/Topper Decl. ¶¶ 96-99.

becomes ubiquitous, and this transaction will enable Comcast to more rapidly expand upon the 29,000 access points TWC has deployed across certain of its markets.<sup>97</sup>

The record of public comments demonstrates that New Yorkers will receive substantial benefits from Comcast's leadership in this area. For example, Philadelphia City Council President Darrell Clarke notes that Comcast's substantial investments in the city's infrastructure led to "the rapid deployment of the Xfinity public Wifi hotspot coverage network (which we enjoy greatly throughout Philadelphia especially on our public rail lines)."<sup>98</sup> The Partnership for New York City welcomes Comcast as an industry leader in expanding Wi-Fi accessibility and in improving speeds for home and business customers through billions of dollars in investments across the country – a trend that will continue in New York.<sup>99</sup> And Philadelphia Councilman Mark Squilla points out that the widespread deployment of Wi-Fi hotspots is among the types of services that up-and-coming neighborhoods need to thrive.<sup>100</sup>

Staff does not analyze the full extent to which Comcast's Wi-Fi deployment or its commitment to aggressively expand Wi-Fi hotspots in New York represents a benefit of the transaction, but suggests there be an annual estimate for Wi-Fi hotspot deployments.<sup>101</sup> The fact of the matter is that the broader and faster deployment of Wi-Fi hotspots by Comcast will impart a meaningful economic benefit to the people of New York by expanding options to access the

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<sup>97</sup> See Jeff Baumgartner, *Comcast Marches Towards 1 Million Wi-Fi Hotspots*, Multichannel News (Mar. 5, 2014 9:10 AM ET), <http://www.multichannel.com/distribution/comcast-marches-toward-1-million-wi-fi-hotspots/148678>. The fact that Comcast's current Wi-Fi hotspot total has increased to this level from just 43,000 hotspots one year ago underscores the substantial investments and commitment Comcast has made to its Wi-Fi initiatives.

<sup>98</sup> Darrell Clarke Comments (Aug. 7, 2014).

<sup>99</sup> Partnership for New York City Comments at 1 (Aug. 7, 2014).

<sup>100</sup> Mark Squilla Comments at 1 (Aug. 14, 2014).

<sup>101</sup> Staff Comments at 47-48.

Internet for New Yorkers while they are on the move.<sup>102</sup> Broader Wi-Fi hotspot availability means that customers can use advanced devices in more places, more conveniently.<sup>103</sup> In addition, ubiquitous and robust Wi-Fi has direct and tangible benefits for public safety, as was demonstrated by the key role Wi-Fi access played during the Boston Marathon bombing and after Superstorm Sandy.<sup>104</sup> The extension and expansion of the combined company's Wi-Fi network will provide a broader platform for the "innovation and decentralized investment that has been a hallmark of the Wi-Fi boom" across the Internet ecosystem.<sup>105</sup> As FCC Commissioner Rosenworcel has recognized, "Wi-Fi is an essential onramp to the Internet" that "contribute[s] between \$16-37 billion to our economy annually."<sup>106</sup>

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<sup>102</sup> Non-XFINITY Internet customers can also take advantage of greater Wi-Fi availability outside the home. Comcast offers hourly, daily, and weekly XFINITY Wi-Fi access passes for non-customers. *Xfinity WiFi*, Comcast Corp., <http://www.comcast.com/wifi/default.htm?SCRedirect=true> (last visited Aug. 24, 2014).

<sup>103</sup> In addition, policymakers have acknowledged that unlicensed spectrum technologies like Wi-Fi are "vital to our economy . . . [,] have transformed the personal electronics industry, and are poised to make substantial contributions to the retail, manufacturing, and other sectors." White House Office of Science and Technology Policy & The National Economic Council, *Four Years of Broadband Growth*, at 20 (June 2013); see City of New York Comments at 6 (Aug. 6, 2014) (regarding the City's efforts to promote "universal, affordable broadband").

<sup>104</sup> After the Boston Marathon attack, cellular networks were overloaded. In response, "Comcast opened its network to anyone – including non-Comcast subscribers – with a Wi-Fi-enabled device to establish communications with loved ones, leading to significantly increased usage of our Xfinity WiFi network in Boston and the surrounding communities." *Hearing on State of Wireless Communications Before the S. Comm. on Commerce, Sci., and Transp.*, 113th Cong. (2013) (written testimony of Thomas E. Nagel, Senior Vice President, Comcast Corp., at 6, [http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=8cacdc0b-d691-4ee3-bba4-bff7f3d004dc](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=8cacdc0b-d691-4ee3-bba4-bff7f3d004dc)). See also City of New York Comments at 7 (Aug. 6, 2014) (referencing importance of cooperation with emergency providers during natural disasters and emergencies); Adam Schneider, Mayor, Long Branch, NJ, Comments at 2 (noting that Comcast opened its Wi-Fi network to the public in the wake of Superstorm Sandy enabling first responders and victims to communicate after traditional communications networks were wiped out).

<sup>105</sup> Comments of Open Technology Institute at the New America Foundation and Public Knowledge, FCC GN Docket No. 12-354, at 9 (Dec. 5, 2013); Michael Calabrese, New America Foundation, *Solving the "Spectrum Crunch: Unlicensed Spectrum on a High-Fiber Diet*, at 4 (Fall 2013), [http://www.twcresearchprogram.com/pdf/TWC\\_Calabrese.pdf](http://www.twcresearchprogram.com/pdf/TWC_Calabrese.pdf).

<sup>106</sup> Remarks of FCC Commissioner Jessica Rosenworcel, *Wi-Fi in the 5 GHz Fast Lane*, The National Press Club (Mar. 7, 2014), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0307/DOC-325938A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0307/DOC-325938A1.pdf).

#### *4. Increased Availability of Broadband to Schools and Libraries*

As Staff implicitly recognizes, the transaction will generate benefits by increasing the availability of services for schools and libraries.<sup>107</sup> Comcast competes aggressively for E-rate business and expects to be an even stronger, more cost-efficient competitor following the transaction. In addition, most of the fiber connections that Comcast currently deploys to serve schools and libraries are scalable to 10 Gbps – which reflects Comcast’s commitment to being able to meet improvements in speed and service that a school or library may require going forward.<sup>108</sup> Comcast intends to bring this same approach to New York State.

The record in this proceeding demonstrates the benefits New York should expect from the transaction in this regard. New York State Assemblyman Robert Rodriguez states, for example, that “Comcast’s potential arrival in our community promises to open opportunity and partnerships that can strengthen our residents’ economic and education futures.”<sup>109</sup> Acacia Network notes that Comcast’s commitment to invest substantially in upgrading TWC’s broadband networks “will provide the necessary tools for community-based organizations, such as ours, to prosper and further their missions to aid Latinos and other members of our community.”<sup>110</sup> Indeed, schools and libraries and other community institutions can expect better services and technologies as Comcast upgrades the TWC systems and makes those same offerings available to all its customers. And the network deployments to businesses throughout the State that the combined company’s

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<sup>107</sup> See Staff Comments at 46-48 (noting the tie-in between an “infrastructure investment program” and expansion of service to community anchor institutions such as schools and libraries).

<sup>108</sup> See Response to Staff Information Request No. DPS-12.

<sup>109</sup> Robert J. Rodriguez, 68<sup>th</sup> District, Manhattan, Comments at 1 (Aug. 8, 2014).

<sup>110</sup> Acacia Network Comments at 1 (Aug. 8, 2014); see also Statement of Bernard Margolis, State Librarian, Albany Public Statement Hearing, Tr. at 24-25 (June 18, 2014) (“I’m thrilled to hear [Comcast] share some of the things that [the] company has already deployed to maximize how broadband can be used [to improve learning].”).

increased scale and scope will support may likewise inure to the benefit of schools and libraries and other community institutions in the same areas.

Staff proposes that the combined company commit to a timetable for annual school and library deployments through 2017.<sup>111</sup> However, services to schools and libraries funded under the federal E-rate program are subject to competitive bidding rules, and services under an E-rate funded contract cannot be unilaterally modified. Nonetheless, Comcast is committed to the provision of such services and to a dialogue to determine how that can best be achieved.

##### *5. Active Community Involvement and Citizenship*

Community involvement and corporate citizenship are Comcast hallmarks.<sup>112</sup> As U.S. Representative William Owens states, “Comcast has a long-established record of investing in the local communities in which it operates.”<sup>113</sup> Dozens of other commenters echo his sentiment. The New York Urban League, for example, notes that:

Non-profit agencies such as the New York Urban League rely on corporate partners to bring critically-needed services to communities. Comcast’s track record of giving back to the communities in which it operates precedes it. My colleagues across the county speak not only to Comcast’s financial support, but of board service, access to technology and expertise for their members and programs, and community volunteer efforts.<sup>114</sup>

The company, through extensive employee volunteer activities, the Comcast Foundation, partnerships with local organizations and groups, and its signature programs like Internet Essentials, sinks deep roots and works to help the towns and neighborhoods it serves. Comcast

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<sup>111</sup> Staff Comments at 47-48.

<sup>112</sup> See, e.g., Joint Petition at 27, and Appendix B – Selected Comcast-NBCUniversal Community Investment Awards, 2010-2014.

<sup>113</sup> Representative William Owens, 21<sup>st</sup> District, New York, Comments at 1 (Aug. 14, 2014).

<sup>114</sup> New York Urban League Comments at 1 (Aug. 11, 2014).

looks forward to bringing more of these opportunities and relationships to New York. Comcast's community initiatives include:

- Comcast Cares Day. Comcast Cares Day is Comcast and NBCUniversal's signature celebration of service and the largest single-day corporate volunteer effort in the nation. Last year, more than 85,000 volunteers "rolled up their sleeves"<sup>115</sup> and participated in over 750 project sites, contributing their time and energy to clean up parks, make over schools, and landscape playgrounds. In 2014, a record 95,000 volunteers contributed 570,000 hours to improve more than 820 parks, schools, beaches, senior centers, and other vital community sites around the world.<sup>116</sup> This dedication is reflected in the record, such as by Philadelphia City Council President Darrell Clarke who states, "Comcast is also invested in old-fashioned community partnerships," with over 10,000 volunteers and helping with hundreds of projects in Pennsylvania last year through Comcast Cares Day.<sup>117</sup> Similar support is expressed by a range of other public officials and community groups.<sup>118</sup>
- Comcast Leaders and Achievers® Scholarship Program. Now in its 13th year, the Comcast Leaders and Achievers® Scholarship Program, funded through the Comcast Foundation, recognizes high school seniors for their community service, academic achievement, and leadership skills. Comcast has awarded more than \$21.6 million in scholarships to about 21,000 students through this program since 2011. Charles Lyons, Superintendent-Director of Shawsheen Valley Technical High School District in Billerica, Massachusetts, describes how "Comcast singles out some of our most stand-out students each year . . . and due to the fact that most of our student body comes from single headed families, these scholarships make a significant impact for their futures."<sup>119</sup>
- Comcast 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. This is also a community service program, as participants volunteer at senior centers, churches, local schools, and other community organizations. 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. Based on a survey conducted by an

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<sup>115</sup> Ability Beyond Comments at 1 (Aug. 8, 2014).

<sup>116</sup> Comcast Community Service, <http://corporate.comcast.com/our-values/community-investment/community-service#accordion-0> (last visited Aug. 24, 2014).

<sup>117</sup> Darrell Clarke Comments (Aug. 7, 2014).

<sup>118</sup> See, e.g., Latin American Economic Development Association Comments (Aug. 5, 2014); Donnalee Lozeau, Mayor, Nashua, NH, Comments at 1 (Aug. 8, 2014); Harry J. Parrish II, Mayor, Manassas, VA, Comments (Aug. 11, 2014); Karin Tome, Mayor, Brunswick, MD, Comments (Aug. 8, 2014); City of Marlborough, MA Comments (Aug. 8, 2014); Marcia A. LeClerc, Mayor, East Hartford, CT, Comments at 1 (Aug. 7, 2014).

<sup>119</sup> Charles Lyons Comments at 1 (Aug. 15, 2014).

independent research firm, program participants scored higher than the school district average in English and Math, and more than 54 percent of those surveyed agreed or strongly agreed that they have gotten better grades since starting Comcast Digital Connectors. The majority of participants surveyed responded that they agree or strongly agree that doing well in school is more important to them than before starting Comcast Digital Connectors (64 percent), or it has made them feel that going to college is important to their future (61 percent). And 66 percent of those surveyed agreed or strongly agreed that Comcast Digital Connectors will help them achieve their future goals. Of alumni from the program years 2010-2011 and 2011-2012 program, 51 percent are in high school, 19 percent have graduated from high school and are working, and 30 percent are in college.<sup>120</sup> The benefits of this and other similar efforts are clear, giving “young people the technical skills they need to succeed both in school and beyond.”<sup>121</sup>

- **Big Brothers Big Sisters, Boys & Girls Clubs.** Comcast runs the nation’s largest workplace mentoring program in partnership with Big Brothers Big Sisters of America (“BBBS”). “Beyond School Walls” is a one-to-one youth mentoring program through which children from local schools meet with an employee volunteer mentor every other week during the school year. The program introduces children to jobs at an early age, allowing them to experience what it means to work for a corporation and the educational requirements needed to achieve professional success. In 2013, Comcast celebrated its fifth anniversary of Beyond School Walls with a total of 305 matches in 13 cities, including its newest site in Chicago. All of Comcast’s current school assignments are located in diverse communities. And compared to national BBBS metrics, Comcast’s matches on the whole are more diverse (77% non-white vs. 69%); serve more male “Littles” (52% vs. 44%); and have a higher 12-month retention rate than the national BBBS average (66% vs. 44%). These metrics exemplify the high quality of the matches made in the program.

Comcast has supported local Boys & Girls Clubs for more than a decade, providing more than \$88 million in cash and in-kind contributions. In 2010, Comcast took its support to the next level to sponsor Club Tech, a program incorporating digital literacy into local Clubs’ curriculum, providing children and teens with technology training to equip them with the skills needed to succeed in the 21<sup>st</sup> century. Through its support of Club Tech and other programs, Comcast supports half the nation’s Boys & Girls Clubs serving nearly 900,000 young people annually.

As Broadway Stages explains, “[t]he magnitude of their service work is highly commendable and we look forward to the possibility of partnering with Comcast on

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<sup>120</sup> See Rockman et al, *Comcast Digital Connectors: 2012-2013* (July 17, 2014), <http://bit.ly/DigitalConnectorsPresentation>.

<sup>121</sup> Boys & Girls Club of Greater Holyoke Comments (Aug. 6, 2014); *see also* Boys & Girls Clubs of Western Pennsylvania Comments (Aug. 6, 2014) (“Through Comcast’s support we have opened computer labs at two of our Club sites allowing us to offer digital literacy lessons and training, which are vital to our communities.”); Urban League of Greater Pittsburgh Comments (Aug. 6, 2014) (“The company also enabled our ‘Techno Teens’ program, which introduces hundreds of urban youth STEM-oriented careers, and it provides our students with experiential learning opportunities at its local call center.”).

neighborhood projects in the future.”<sup>122</sup> Michael Flaherty, Boston City Councilor-At-Large, also describes how Comcast has “reinvigorated local youth centers and fostered new relationships throughout Boston’s non-profit world” through its commitment to Big Brothers Big Sisters, as well as the United Way.<sup>123</sup> Many Boys and Girls Club organizations describe their long-term partnerships with Comcast, which have helped give children and at-risk youth educational, mentoring, leadership, and other opportunities to succeed.<sup>124</sup>

- United Way. Through an annual employee giving campaign, company employees pledged nearly \$6.4 million to United Way during the 2013 campaign. 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, and more than \$50 million in total historic support to United Way.
- Other Groups. OATS expressed its excitement about continuing to work with Comcast to ensure all residents have equal opportunity to benefit from the transformative power of broadband.<sup>125</sup> And, the Putnam Humane Society noted that the efforts of Comcast and its employees allow the group to continue to provide services to the community.<sup>126</sup>

The record includes strong support for the transaction from organizations that have benefited from Comcast’s substantial community investment and partnering.<sup>127</sup> While TWC of

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<sup>122</sup> Broadway Stages Comments (Aug. 7, 2014).

<sup>123</sup> Michael F. Flaherty Comments (Aug. 8, 2014).

<sup>124</sup> See, e.g., Boys & Girls Club of Greater Holyoke Comments (Aug. 6, 2014); Boys & Girls Clubs of Western Pennsylvania Comments (Aug. 6, 2014); Boys & Girls Club of Harrisburg Comments (Aug. 7, 2014).

<sup>125</sup> OATS Comments at 1-2 (Aug. 11, 2014).

<sup>126</sup> Putnam Humane Society Comments (Aug. 8, 2014).

<sup>127</sup> See, e.g., Greater Pittsburgh Community Food Bank Comments (July 27, 2014) (describing how Comcast has partnered with the food bank for the past 11 years, providing financial support as well as “to mobilize the public to eliminate hunger”); Opportunities Industrialization Center, Inc. Comments (Aug. 8, 2014) (“In partnership with Comcast, OIC has delivered free digital literacy training to low income residents of North and West Philadelphia where digital literacy and broadband adoption rates are among the lowest in the City of Philadelphia. To date, this partnership has produced 145 free training sessions that were attended by more than 2300 Philadelphians.”); Big Sister Association of Greater Boston Comments (July 24, 2014) (“Comcast is a committed community sponsor. They support Big Sister’s mission by giving girls the chance to reach their full potential through annual community service projects, a leadership development program for our high school students and by giving us financial support.”); Harry J. Parrish II, Mayor, Manassas, VA, Comments (Aug. 11, 2014) (“Giving definitely is a Comcast strong suit. Many know this through the massive outpouring of volunteer labor during annual Comcast Cares Days across the country in communities where Comcast is a provider. . . . And Comcast is also a strong supporter of endless youth clubs, education and training programs and community and cultural events. Thanks to partnerships it has formed with such groups as the Boys and Girls Club of Manassas, our children are being equipped with skills they can take right into the workforce.”); Statement of Frankie Miranda, Senior Vice President, Hispanic Federation Service, New York City Public Statement Hearing, Tr. at 93 (June

course has its own strong history of community investment, the record demonstrates that combining this with Comcast's broad and deep commitments in this area will deliver important public interest benefits to organizations and individuals throughout New York.

## 6. *Diversity*

Comcast is strongly committed to diversity and inclusion. Comcast believes that promoting diversity and inclusion enhances efficiency, innovation, and competition, and provides additional value to customers, while contributing to the creation of jobs and building wealth within diverse communities. Comcast is recognized nationally for its comprehensive commitment to promoting diversity, and has received over 100 awards in the past three years for its leadership in this area from a wide array of organizations.<sup>128</sup> Comcast's progress and accomplishments in this important area are detailed in a recently-released Comcast-NBCUniversal Diversity and Inclusion Progress Report,<sup>129</sup> and include the following:

- Corporate Governance. One-third of the members of Comcast's Board of Directors reflect diversity, including representation of people of color and women. 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. The company has also established an external Joint Diversity Council ("JDC") to advise on diversity and inclusion efforts. The JDC consists of four, nine-member Diversity Advisory Councils representing the interests of African Americans, Asian Americans, Hispanics, and Women. There are also At Large Members representing Native Americans, people with disabilities, veterans, and the

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19, 2014) ("I'm here to speak about extraordinary efforts that Comcast had provided to the Hispanic residents of the State of New York through its support to the Hispanic Federation programs. For almost a decade now Comcast has partnered with the Hispanic Federation in numerous efforts that have -- that have improved the quality of life of thousands of New York residents, especially those of Latino descent.").

<sup>128</sup> *Comcast/TWC Public Interest Statement* at 111; see also Appendix A (updated version of the list of "Select Comcast-NBCUniversal Diversity Awards (2010-2014)" that was included as Exhibit 11 to the *Comcast/TWC Public Interest Statement*).

<sup>129</sup> Comcast Corp., *Comcast-NBCUniversal Diversity and Inclusion Progress Report*, at 3 (June 2, 2013), [http://corporate.comcast.com/images/Comcast\\_Diversity\\_Report\\_060214.pdf](http://corporate.comcast.com/images/Comcast_Diversity_Report_060214.pdf) ("Our Master Strategic Plan for Diversity and Inclusion is our comprehensive road map for achieving optimal diversity and inclusion across our organization. On the very first page of that plan, we assert: 'At Comcast and NBCUniversal, our goal is to be the model company for diversity and inclusion.'").

lesbian/gay/bisexual/transgender (“LGBT”) community. The JDC participates in formal meetings attended by Comcast and NBCUniversal executive leadership, and regularly interacts with the company’s Internal Diversity Councils and corporate-level Diversity and Inclusion Groups to share information and consult about ideas for achieving diversity and inclusion goals.

Comcast’s internal Diversity Councils were recently selected for the 2014 “Top 25 List” of the Association of Diversity Councils (a practice group of the diversity and inclusion training firm PRISM International, Inc.), marking the sixth consecutive year the company has received this recognition (rankings will be announced in October 2014).

- Workforce Diversity. At the heart of Comcast’s workforce culture is a tangible and visible commitment to diversity and inclusion. At year-end 2013, the company’s total workforce was 59 percent diverse. And this commitment and progress is evident at every level of the company – from entry level, to mid-management, to directors, to the VP level. For example, at year-end 2013, the company’s workforce was more than 50 percent diverse at the director level and 46 percent diverse at the VP+ level, and every level of the company saw an increase in people of color.

One of Comcast’s proudest achievements to date is the increase in women leaders across the company. As of year-end 2013, women accounted for about 40 percent of all directors and 36 of all executives at the VP+ level. In addition, women accounted for 44 percent of all promotions and 35 percent of all new hires at the VP+ level in 2013 alone. Between year-end 2010 and year-end 2013, women accounted for the highest percentage of net hires and promotions into VP+ positions with 57%, while people of color accounted for 40%. This has resulted in a workforce that is 46% diverse at our most senior executive levels.

This commitment to workforce diversity also extends to employees in front of the camera and behind the camera. For example, the NBC Owned Television Stations division – which owns and operates WNBC in New York – has one of the highest percentages of on-air news and primetime ethnic diversity across NBCUniversal’s programming units, with 47 percent diversity in front of the camera and 35 percent behind the camera. At local NBC owned stations, between year-end 2010 and year-end 2013, ethnically diverse anchors and reporters achieved nearly three times the growth rate of white anchors and reporters. The owned stations’ longstanding leadership in promoting diversity in front of and behind the camera has been validated by peer surveys, including National Association of Black Journalists’ census of diversity among television newsroom managers, which in 2012 concluded that NBC-owned stations’ “total diversity percentage is the best of all companies in the report,” including the percentages reported by the ABC, CBS, and Fox owned television stations.<sup>130</sup>

Comcast has also long recognized that veterans bring exceptional strengths to its business. The company is proud to actively recruit prospective employees with military backgrounds

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<sup>130</sup> See 2012 NABJ Diversity Census: An Examination of Television Newsroom Management, [www.nabj.org/resource/resmgr/onrmore.2012\\_nabj\\_diversity.pdf](http://www.nabj.org/resource/resmgr/onrmore.2012_nabj_diversity.pdf).

and provide an array of networking and professional development resources to help them succeed. Comcast deepened this commitment in 2012 by becoming a corporate sponsor of “Hiring Our Heroes,” a U.S. Chamber of Commerce Foundation campaign that helps veterans and military spouses find meaningful employment. By August 2014, the company had successfully hired more than 3,000 veterans into its Comcast and NBCUniversal workforce, far outpacing both the company’s original goal to hire 1,000 veterans, and its expanded goal to hire 2,000, by 2015.

- Supplier Diversity. Comcast also embraces diversity within the supply chain, which enhances efficiency, innovation, and competition, provides additional value to customers, and contributes to job creation and wealth building within diverse communities across the country. Supplier diversity includes Comcast’s primary (Tier I) suppliers and subcontractor (Tier II) vendors. Over the course of three years, Comcast has spent almost \$3.2 billion with diverse Tier I vendors. Since Comcast’s launch of its Tier II program in 2012, prime suppliers have reported over \$325 million in diverse Tier II subcontracting.

Other supplier diversity initiatives include: (i) partnering with diverse chambers of commerce and business organizations at the national and regional level; (ii) attending more than 200 supplier diversity events in the last four years, including supplier fairs, conferences, capacity-building events, and business opportunity fairs, panels, and awards ceremonies; and (iii) pursuing diversity objectives in its purchase of professional services, including banking and advertising services. For example, in April 2011, Comcast added The Williams Capital Group, L.P. (Williams Capital), a minority-owned bank, as one of its four placement agencies in its commercial paper program. Since 2011, Williams Capital has issued \$2.75 billion in commercial paper for Comcast. Likewise, it works with diverse firms for advertising, public relations, marketing, and media services, including Burrell Communications, Baru, Grupo Gallegos, Liquid Soul Media, Bark, TD Wang, and Lopez Negrete.

Comcast’s supplier diversity program has been recognized by *DiversityBusiness.com*, *Black EOE Journal*; *Hispanic Network Magazine*; *Professional Women’s Magazine*; the National Veteran-Owned Business Association (NaVOBA); Black Enterprise Magazine; the U.S. Hispanic Chamber of Commerce, and *U.S. Veterans Magazine*, among others. Commenters also recognize Comcast’s efforts to promote supplier diversity, such as the Spanish American Civic Association, which describes Comcast’s support of Hispanic-owned businesses.<sup>131</sup> With this transaction, the combined company will be able to further expand the opportunities for, and the business revenues of, Tier I and Tier II vendors, including additional diverse vendors in new local markets.

- Programming Diversity. Comcast provides its customers with access to a variety of programming choices and options that speak directly to their entertainment or educational interests. Comcast has consistently expanded minority-focused programming, increasing

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<sup>131</sup> Spanish American Civic Association for Equality, Inc. Comments (Aug. 5, 2014).

the amount, quality, and diversity of national and local programming for its customers across its platforms, including its VOD and online platforms.

By year-end 2013, Comcast carried more than 100 networks tailored to ethnic minority and women audiences. Over the last three years, Comcast has significantly expanded carriage of many of these networks, including the following:

- Expanded distribution of The Africa Channel in Detroit, Chicago, and Washington, D.C. markets; also launched in Northern Santa Barbara County, Savannah, Charleston, and South Florida markets, growing the network's audience by more than 2 million homes.
- Expanded carriage of TV One, making it available to over 600,000 additional subscribers in the Chicago and Miami markets.
- Expanded carriage of Mnet to 4 million additional Comcast subscribers in the San Francisco, Chicago, Sacramento, Boston, Washington, D.C., and Philadelphia DMAs.
- Expanded distribution of seven Hispanic programming services (Azteca America, Galavisión, HITN, LATV, nuvoTV (formerly SíTV), Telefutura, and Univision) by more than 14 million subscribers, exceeding by more than 40 percent Comcast's commitment to expand carriage of three Hispanic networks by 10 million subscribers.
- Launched MYX TV, a channel made for and by Asian Americans, in Seattle and western Washington, increasing the network's audience by over 2 million Comcast subscribers.
- Launched the Asian American-oriented network Crossings TV in over 3.5 million homes.

Comcast is proud to be the nation's largest provider of Hispanic and multicultural television packages, with a distribution platform that delivers more than 60 Hispanic networks in both Spanish and English. In 2012, Comcast enhanced its suite of video products and services developed exclusively to serve Latino customers by adding 10 new popular Hispanic channels and doubling Latino On Demand content on TV and online. It also created the XFINITY Latino Entertainment Channel, which provides programming highlights and allows customers to directly access and discover On Demand content through an interactive menu. In 2013, Comcast launched XFINITY Freeview Latino, the biggest Hispanic On Demand event ever, giving customers a two-week all-access pass to discover and view more than 1,000 hours of the best Latino entertainment available in the United States, totaling over 2,500 programs on XFINITY On Demand. And Telemundo Media leads the industry in the production and distribution of high-quality Spanish-

language original content across its multiplatform portfolio to U.S. Hispanics and audiences around the world.<sup>132</sup>

In 2011, Comcast announced its plans to distribute eight new minority-owned and/or operated independent networks on its cable systems, four of which would be controlled or operated by African Americans and four of which would be controlled or operated by Latinos. Two of those networks launched in 2012, and two launched in 2013:

ASPiRE – Comcast joined with sports legend and entrepreneur Earvin “Magic” Johnson and Up TV (formerly the Gospel Music Channel) to launch ASPiRE in 2012. Since its launch, ASPiRE has been offered on Comcast’s digital basic tier and continues to deliver enlightening, entertaining, and positive programming to African American families with a diverse slate including movies, documentaries, short films, music, comedy, visual and performing arts, and faith and inspirational programs. The channel is now available to approximately 9 million Comcast subscribers in 16 markets.

REVOLT – REVOLT TV, the new 24-hour music, pop culture, and social media interactive network developed by Sean “Diddy” Combs, launched in October of 2013 in select cities nationwide on Comcast’s XFINITY TV. REVOLT TV is a multi-genre, multiplatform music network that delivers music news in real time and the best in music programming. The channel is now available to approximately 8 million Comcast subscribers in 25 markets.

BabyFirst Americas – Launched in 2012, BabyFirst Americas is a Latino-focused English-language channel proposed by Spanish-language television veteran Constantino “Said” Schwarz, designed for children and their parents and emphasizing the importance of early development of verbal, math, and motor skills. The channel is now available to nearly 9 million Comcast subscribers in 19 markets.

El Rey – El Rey, which launched in December of 2013, is designed to be an action-packed general entertainment channel in English for Hispanic and general audiences that includes a mix of reality, scripted, and animated series, movies, documentaries, news, music, comedy, and sports programming. The channel is now available to approximately 8 million Comcast subscribers in 19 markets.

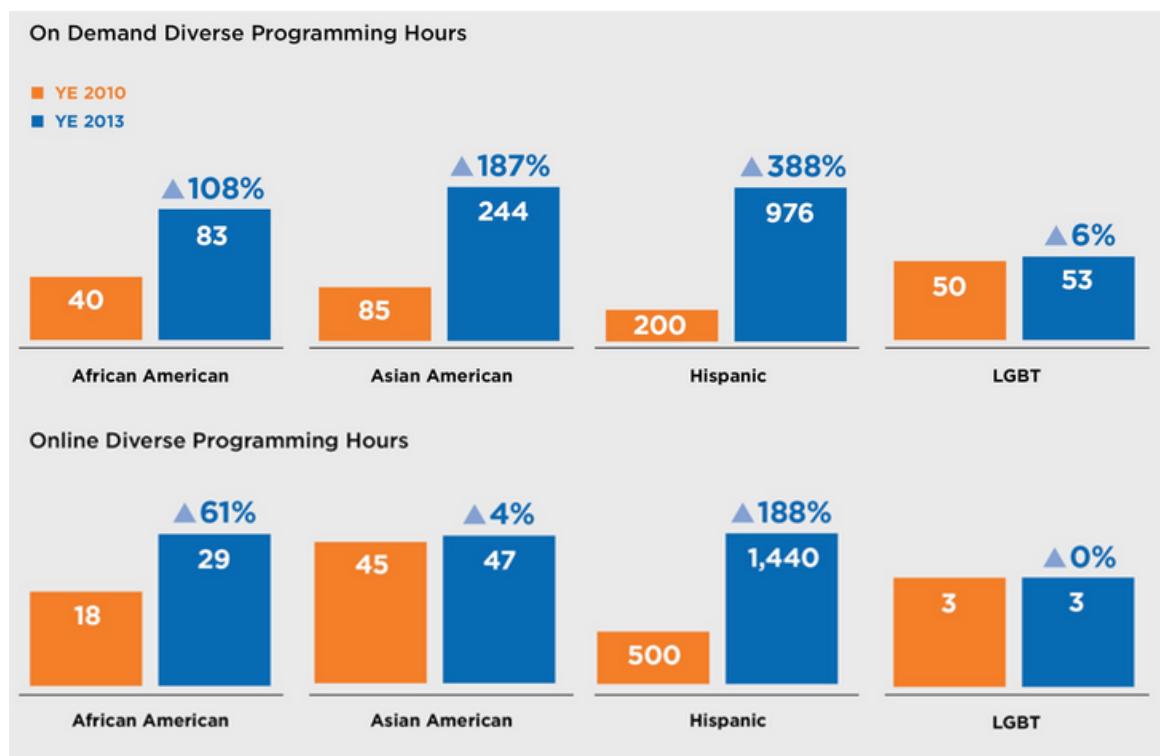
And Comcast will be adding five more independent channels in the coming years, including four more with African American or Latino ownership or management.

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<sup>132</sup> Telemundo’s primary platforms include the Telemundo Network and mun2. Telemundo Network is a Spanish-language television network featuring original productions, theatrical motion pictures, news, and sporting events. It reaches U.S. Hispanic viewers in 210 markets through 17 owned stations and its broadcast and cable affiliates. And mun2 is the preeminent voice for young Hispanics in the United States, reaching TV households nationwide on digital and analog cable and satellite. Since 2011, Telemundo has increased its total primetime viewers by 86 percent, becoming the fastest-growing broadcast network, regardless of language.

Comcast also launched a family of award-winning microsites specific to diverse communities, which offer customers access to special programming for African American, Asian-Pacific American, LGBT, and Hispanic audiences. Each microsite brings together culturally relevant entertainment from a variety of sources in a central, easy-to-navigate location. In 2013 alone, the sites achieved more than 3 million visitors. Moreover, Comcast offers special multicultural programming collections that inform and entertain, in both the On Demand and Online platforms. These collections include: Black History Month and Black Music Month, Asian-Pacific American Heritage Month, LGBT Pride Month, Hispanic Heritage Month, Disability Awareness Month, Veteran's Day, and Native American Heritage Month. Each special collection supplements Comcast's permanent On Demand and Online offerings, providing customers with access to hundreds of additional diverse content hours and choices throughout the year.

As the charts below illustrate, the last three years have seen tremendous growth in Comcast's On Demand and Online offerings of content designed for African American, Asian American, and Hispanic communities.



For these and other efforts, Comcast was recently honored with the 2014 Multicultural TV Front Runner Award, recognizing the company's commitment and leadership in supporting multicultural communities. The National Hispanic Media Coalition ("NHMC") also honored Comcast for its Outstanding Diversity Practices during NHMC's 17th Annual Impact Awards Gala in February 2014. In 2012, Comcast Cable was the first-ever recipient of Broadcasting & Cable and Multichannel News' award for Leadership in Hispanic Television. And in 2013, Comcast and Telemundo won many first-place awards for their programming at The National Association for Multi-ethnicity in Communications' 2013

Excellence in Multicultural Marketing Awards (“EMMAs”). These awards recognize original, multi-platform television programming that depicts the lives, spirit, and contributions of people of color and best reflects the diversity of the global viewing audience. Comcast’s multicultural microsites were honored as well, with six first-place awards at the 2013 EMMAs.

Various commenters applaud Comcast’s fervent commitment to diversity, and cite it as a significant public interest benefit of this transaction that the Commission should embrace. For example, the Virginia Hispanic Chamber of Commerce, Latin American Community Center, Spanish American Civic Association, and Sports Foundation Inc., highlight Comcast’s commitment to airing multicultural, educational, community-based programming and describe how those efforts have helped their constituents.<sup>133</sup>

- Philanthropic and Community Investment.

Comcast and NBCUniversal empower communities by investing in local organizations, developing programs and partnerships, and mobilizing resources to connect people and inspire positive and substantive change. In 2010, Comcast established a three-year goal to increase cash contributions to organizations led by and serving minority groups by 10 percent year-over-year for each of the three years. The company significantly exceeded this 10 percent annual goal. In 2013 alone, Comcast and NBCUniversal contributed a combined \$415 million in cash and in-kind services to charitable organizations nationwide. The company’s cash giving to minority-led and minority-serving organizations in 2013 was *106 percent greater* than 2010 levels.

Comcast and NBCUniversal have been recognized for community investment-related achievements by many organizations, including the following:

- United Way Worldwide recognized Comcast Corporation with two 2013 Summit Awards for volunteer and philanthropic engagement.
- The Congressional Black Caucus Foundation, Inc. recognizes Comcast as a Distinguished Corporation for its tremendous work in promoting digital literacy.
- Comcast and the City of Chicago were awarded the U.S. Conference of Mayors Outstanding Award for Public/Private Partnerships for the collaborative efforts to close the Digital Divide via Comcast’s Internet Essentials program.

The Latin American Economic Development Association characterizes Comcast as one of its most important partners in providing entrepreneurial training for disadvantaged, minority adults.<sup>134</sup> Other commenters, including ASPIRA of New York, Inc., Acacia

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<sup>133</sup> Virginia Hispanic Chamber of Commerce Comments (Aug. 8, 2014); Latin American Community Center Comments at 1 (Aug. 5, 2014); Spanish American Civic Association for Equality, Inc. Comments (Aug. 5, 2014); Sports Foundation, Inc. Comments (Aug. 7, 2014).

<sup>134</sup> Latin American Economic Development Association, Inc. Comments (Aug. 5, 2014).

Network, the Dominican Women’s Development Center, and the Hispanic Federation describe how Comcast’s efforts have benefited their communities.<sup>135</sup>

The transaction will promote significant diversity interests in TWC markets as Comcast builds upon TWC’s existing commitments and extends Comcast’s best-in-class diversity program throughout New York. Indeed, as New York State Assemblyman Robert Rodriguez indicates, “Comcast’s far-reaching economic and educational empowerment programs that stretch from internal hiring practices to cable programming to community investment to broadband adoption . . . can advance the public good . . . throughout the entire state.”<sup>136</sup> Similarly, commenters such as Rochester Council Member Adam McFadden and the New York Chapter of the National Black Chamber of Commerce applaud Comcast’s investment in minority-owned independent networks, increased partnerships with diverse vendors, and placement of minorities in highly visible leadership positions.<sup>137</sup>

#### *7. Improved Energy Efficiency*

Comcast is committed to energy efficiency in its own operations, through the consumer electronics it purchases and in the services offered to consumers. Comcast has added features to its services that provide customers with ways to achieve energy savings at home and is also taking measures to reduce its own energy consumption. Comcast has, for example, added EcoSaver to its XFINITY Home platform – a cloud-based solution that can help customers potentially reduce their energy use and save money on their utility bills year-round.

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<sup>135</sup> ASPIRA Association, Inc. and ASPIRA of New York, Inc. Comments at 1 (Aug. 6, 2014); Acacia Network Comments at 1 (Aug. 8, 2014); Dominican Women’s Development Center Comments at 1 (Aug. 8, 2014).

<sup>136</sup> Robert J. Rodriquez, 68<sup>th</sup> District, Manhattan, Comments at 1 (Aug. 8, 2014).

<sup>137</sup> Adam McFadden Comments (Aug. 11, 2014); National Black Chamber of Commerce, New York Chapter, Comments (Aug. 7, 2014).

Comcast is also committed to increasing the energy efficiency of its set-top boxes. In December 2013, Comcast and TWC joined with other leading multichannel video programming distributors (“MVPDs”), equipment manufacturers, and energy advocacy groups in launching an historic set-top energy conservation agreement to make further gains in this area. When fully implemented across the industry, the agreement will result in an estimated \$1.5 billion in annual residential electricity savings and reduce carbon emissions by the equivalent of four power plants each year. Comcast already meets some of the energy savings goals set out in the energy conservation agreement. In 2013, over 93 percent of the new set-top boxes Comcast purchased satisfied the Environment Protection Agency’s ENERGY STAR 3.0 efficiency levels, exceeding the 90 percent benchmark established in the agreement.<sup>138</sup> And, next month, Comcast Cable EVP and Chief Network Officer John Schanz will challenge the industry to create a new collaborative energy vision for the future.<sup>139</sup>

Comcast is taking other measures to reduce the energy footprint of its services in the home. This includes deploying home-networking solutions that limit the need for multiple DVRs in the home; migrating program guide and DVR recording capabilities from the set-top box to the cloud, where energy can be efficiently managed on a shared basis; deploying over 20 million digital transport adapters, which run on only four watts of power; and streaming cable services in IP to iPads, smartphones, and other customer-owned devices in the home that do not require a connected set-top box.<sup>140</sup>

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<sup>138</sup> See, e.g., Response to Staff Information Request No. DPS-6.

<sup>139</sup> See Jeff Baumgartner, *Comcast’s John Schanz To Issue Energy Challenge*, Multichannel News (Aug. 12, 2014), <http://www.multichannel.com/news/technology/comcast-s-john-schanz-issue-energy-challenge/383117>.

<sup>140</sup> Response to Staff Information Request No. DPS-6. Comcast is also taking measures to reduce its own energy consumption, in its data centers, call centers, and even in Comcast’s corporate headquarters building – which is among the tallest LEEDS Gold certified buildings in United States. The second planned tower, the Comcast Innovation and Technology Center, is designed to attain LEEDS Platinum certification. *Id.*

While both TWC and Comcast have pursued these types of initiatives, Comcast's IP and technology leadership is steps ahead – and in all events, the company's combined resources will allow the type of technological innovation and investment that will be needed to develop the next generation solutions to energy challenges in this space. Staff's comments do not analyze or discuss the resultant benefits to New York, but the record reflects that this will produce demonstrable benefits that should be considered a benefit of the transaction.<sup>141</sup>

#### *8. Improved Customer Experience*

As Comcast Cable CEO and President Neil Smit has made clear, improving the customer experience is a “top priority” for Comcast.<sup>142</sup> The combined company will be well positioned to continue improving the customer experience today while investing heavily to help meet tomorrow’s challenges and needs.<sup>143</sup>

Comcast has invested billions of dollars in upgrading its networks, transforming the end-to-end customer experience through state-of-the-art diagnostic tools for technicians and customer account executives, which allow them to better detect and remediate quality issues, often before they are even noticed by consumers.<sup>144</sup> Comcast has also implemented self-install and self-service options for its customers that are years ahead of TWC’s systems.<sup>145</sup> These efforts to improve the

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<sup>141</sup> Response to Staff Information Request No. DPS-6 and Joint Petition at 28-30.

<sup>142</sup>Billy Gallagher, *Comcast CEO Neil Smit Says Improving Customer Service is His Top Priority*, Tech Crunch Daily (May 6, 2014), <http://techcrunch.com/2014/05/06/comcast-ceo-neil-smit-says-improving-customer-service-is-his-top-priority/>.

<sup>143</sup> Joint Petition at 30.

<sup>144</sup> *Id.* at 72. In addition, Comcast’s all-digital network improves overall video quality and consumer satisfaction. Comcast is able to ingest digital signals from programmers and move the signals through the network to set-top boxes without conversion to and from analog and the accompanying loss of fidelity. *Id.*

<sup>145</sup> *Comcast/TWC Public Interest Statement* at 72-73. The FCC has acknowledged that all-digital service benefits customers by enabling cable operators to remotely activate and deactivate service. This not only eliminates the need for customers to rearrange their schedules and wait for a technician, but it reduces the number of truck rolls necessary, leading to cost savings that can translate to increased investment in innovative products and services. *See id.* at 71 n.171, 72.

customer experience are having significant positive results:

- Comcast now offers one- to two-hour appointment windows, including evenings and weekends. 97 percent of service calls occur within scheduled appointment windows.
- Repeat visits for installations and service appointments are down 29 percent since 2010.
- In 2013, 42 percent of customers used Comcast's self-service options, as compared to 30 percent in 2012.
- Comcast has enabled more self-service options, including access to the same diagnostic tools used by agents.
- More than one-third of customers managed their accounts online in 2013, a 42 percent increase over 2012. These "My Account" functions include outage estimated time of repair; expanded self-help videos; interactive troubleshooting guides; easy call back options (i.e., dial Comcast or request a call back); and Twitter integration.
- Comcast has also enabled customers to access their accounts on mobile devices and even on their TV screens. Its "My Account" smartphone app was launched on iOS in March 2014, and on Android in May 2014. And a "My Account" App for its X1 platform will be deployed soon. (More than 60 percent of customers contact Comcast on mobile devices.)<sup>146</sup>

Moreover, since 2010, Comcast's inbound customer service and billing-related call volume has decreased by approximately 20 million. And in the last two years, Comcast has reduced its truck rolls by *eight million*.

Although Comcast still has work to do in this area, it is making important progress. For example, since 2010 Comcast has improved its J.D. Power Overall Satisfaction score by nearly 100 points as a video provider and close to 80 points in High Speed Data – more than any other provider in the industry during the same period.<sup>147</sup> In a recent report on Comcast's 2013 fourth

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<sup>146</sup> Comcast's self-service efforts have earned several Stevie Awards, including a gold for Innovation in Customer Service and a silver for Online Sales Team of the Year in 2014; and a gold for Online Sales Team of the Year and a bronze for e-Commerce customer service in 2013.

<sup>147</sup> Compare Press Release, J.D. Power & Assocs., 2013 U.S. Residential Television Service Provider Satisfaction Survey (Sept. 26, 2013), <http://www.jdpower.com/content/press-release/jxh1ZHX/2013-u-s-residential-television-serviceprovider-satisfaction-study.htm>, and Press Release, J.D. Power & Assocs., 2013 U.S. Residential Internet Service Provider Satisfaction Survey (Sept. 26, 2013), <http://www.jdpower.com/press-releases/2013-us-residential-internet-serviceprovider-satisfaction-study>, with Press Release, J.D. Power & Assocs., 2010 U.S. Residential Television Service Satisfaction Study

quarter performance, well-regarded industry analyst Craig Moffett said that Comcast's customer service has "*improved by light-years.*"<sup>148</sup>

The combined company will bring these same customer service improvements to New York, along with Comcast's overall commitment to improving network reliability, service quality, and response time. For these reasons, Comcast disagrees with the suggestion of some commenters that new customer service-related conditions ought to be imposed.<sup>149</sup> For one thing, commenters acknowledge that TWC already faces customer service issues of its own,<sup>150</sup> and there is no valid argument that this holding-level transaction – which leaves the TWC entities in place – will somehow exacerbate customer service issues. Moreover, headlines about the “poor” customer service provided by cable companies are often over-stated and unfair based on the actual data. As one recent review of service provider scores observed:

Providing reliable, high-quality Internet and television services across a national network is *much more difficult* than taking a hamburger order or shipping products bought online. When things go wrong, people notice immediately that their computers and TV stopped working and blame providers, *even when fault lies elsewhere . . . .* Where a lot can go wrong, much of it beyond the control of the provider, it's tough to keep customers happy.<sup>151</sup>

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(Oct. 6, 2010), <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010166>; and J.D. Power & Assocs., 2010 U.S. Residential Internet Service Provider Satisfaction Survey (Oct. 28, 2010), <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010167>.

<sup>148</sup> MoffettNathanson Research, Comcast Q4 2013: Boardwalk Empire, at 2 (Jan. 28, 2014) (emphasis added).

<sup>149</sup> See, e.g., Staff Comments at 39-42; City of New York Comments at 6 (Aug. 6, 2014); UIU Comments 7-8 (Aug. 8, 2014); Gale Brewer, Manhattan Borough President, Comments at 2, 4 (Aug. 8, 2014).

<sup>150</sup> See e.g., Staff Comments at 27-29; City of New York Comments at 5 (Aug. 6, 2014); UIU Comments at 6-7 (Aug. 8, 2014).

<sup>151</sup> Adams Nager, *How to Misuse American Customer Satisfaction Index Data to Try to Block a Merger*, ITIF Innovation Files (Mar. 24, 2014), <http://www.innovationfiles.org/how-to-misuse-american-customer-satisfaction-index-data-to-try-to-block-a-merger/> (emphasis added); see also id. (noting that the three industries with the lowest ACSI rankings are pay-tv providers, internet providers, and airlines). In cases where customers are upset due to Comcast's actions, it tries its best to correct the problem for that customer as soon as possible and to avoid it going forward. For example, in response to the very unfortunate customer service experience of Ryan Block, Comcast has stated that the company is very embarrassed by the way its employee spoke with Mr. Block. The way in which the representative in question communicated with Mr. Block is unacceptable, and Comcast has

Furthermore, “greater size does not equal poorer service.”<sup>152</sup> That is particularly true here, where the greater synergies resulting from the transaction will enable Comcast to accelerate upgrades to the TWC systems, providing better, more reliable services and reducing some of the service problems that have plagued New York customers.

Indeed, no commenter has presented any fact-based argument that the combination of the two Companies will be the source of customer service issues. In fact, as discussed above, the opposite is almost certainly true given the network improvements, self-installs, and diagnostics that digital upgrades will enable, and the substantial priority on improvements in this area publicly proclaimed by Comcast. The comments also note that, in certain areas, Comcast is already improving its performance.<sup>153</sup> For this reason, the Staff proposal “that the combined company . . . be required to achieve improvements in service performance as measured by J.D. Power” is unnecessary and inappropriate.<sup>154</sup>

Comcast has over 200 million tech and call center contacts with its customers annually. Thus, even if Comcast does a great job 99.9 percent of the time, it is inevitable that there still will be 200,000 interactions involving customers who may be dissatisfied for any number of reasons over the course of a year. While Comcast will continue to invest to reduce *any* dissatisfaction,

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contacted Mr. Block to personally apologize. It is not consistent with how Comcast trains its customer service representatives. The overwhelming majority of Comcast employees at all levels work very hard to do the right thing every day, not just for its customers but in their communities. And, importantly, Comcast is using this very unfortunate experience reported by Mr. Block to reinforce how critical it is to always treat its customers with the utmost respect. In particular, Mr. Block’s call prompted a customer service review that is resulting in real changes. Comcast has created a task force to ensure that the messages it uses in communicating with its customers reinforce that the customer experience is the company’s top priority. Nearly a dozen employee coaching courses that previously were optional are now required. In addition, the company is reviewing all training materials used in customer service and sales.

<sup>152</sup> *Id.*

<sup>153</sup> See, e.g., Staff Comments at 29.

<sup>154</sup> *Id.* at 39.

evaluating the company based on a survey it may not be able to interpret and address, and linking that survey’s result to financial penalties, is both unworkable and unfair. Comcast has its own internal metrics and it is committed to improving them – and internal metrics can be customized, analyzed, understood, and revised as necessary to ensure that the correct underlying issues are identified and addressed. None of this is possible with a third-party survey.

In addition, Comcast faces an intensely and increasingly competitive business environment and any failings in customer service will impose a financial penalty in the marketplace, through customer churn to competitors.<sup>155</sup> This competitive dynamic ensures that Comcast will remain focused on improving customer satisfaction. In this context, the proposed customer service conditions are unjustified – especially when Comcast intends to *improve* upon TWC’s current trouble call rate and network reliability. Notably, the Commission has long-recognized that, in competitive markets, metric and penalty plans are generally unnecessary.<sup>156</sup> While Comcast thus respectfully urges the Commission to reject all of the largely obtrusive measures, Comcast remains open and eager to addressing with Staff appropriate measures going forward to capture improvement.

Staff also suggests tying the issue of customer service to “a commitment that, for non-headquartered staff, employment in New York should not decline disproportionately to the State’s portion of the combined company’s territory,” over each of the first five years post-closing.<sup>157</sup>

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<sup>155</sup> See, e.g., *Joint Petition of Verizon Communications Inc. and MCI, Inc.*, Order Asserting Jurisdiction and Approving Merger Subject to Conditions, Case 05-C-0237, at 56 (Nov. 22, 2005) (“*Verizon-MCI Order*”). (“In general, we agree with Verizon that the ability of consumers to seek out competitive alternatives provides a strong incentive for it to address retail service quality.”).

<sup>156</sup> *Verizon-MCI Order* at 56. (“Today, the level of intermodal competition for telecommunications services statewide has increased to such a degree that we believe it significantly reduces the need for a Verizon statewide retail service quality rebate program and, therefore, we will impose no requirement on Verizon to implement one.”).

<sup>157</sup> Staff Comments at 42.

Staff's employment-related proposal addresses anticipatory concerns that are not justified on the record. Moreover, Staff's proposal addresses a non-existent problem because Comcast is already on record that it does not anticipate reductions in customer-facing jobs. As Comcast's Executive Vice President, David L. Cohen, has stated publicly: "Most of our jobs are – are the customer facing jobs of technicians in call centers and local management and we don't anticipate any reductions in those jobs."<sup>158</sup>

**D. The Transaction Will Produce Scale, Scope, and Geographic Rationalization that Ensure that the Benefits Described Above Are Realized**

Combining the two Companies will produce economies of scale and expanded geographic reach that underpin all the benefits for New York described above. Those benefits will also be advanced by the sharing of technologies and services and the increased geographic rationalization of systems that the transaction will produce.

The record demonstrates that New York will receive substantial economic benefits from the transaction. Dean Donald Siegel of the School of Business of the State University of New York at Albany, for example, observes that "the theoretical and empirical evidence strongly suggests that this type of transaction will improve economic performance."<sup>159</sup> As a result, he "strongly support[s] approval of the transaction."<sup>160</sup>

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<sup>158</sup> Senator Patrick J. Leahy Holds a Hearing on the Comcast-Time Warner Cable Merger, Financial Markets Regulation Wire, at 28 (Apr. 9, 2014); see also, Response to Staff Information Request No. DPS-17. As a leading technology company, Comcast is continually hiring college graduates, and spends millions of dollars to train those hires. Reflecting apparent awareness of this, Staff proposes that Comcast "work with the State University of New York to design a workforce development program with community colleges" and "consider committing to fund a \$1 million pilot program." Staff Comments at 43. Given the need for high quality personnel, the excellent reputation of New York's higher education system, and Comcast's participation in such partnerships, Comcast looks forward to further discussion of this proposal, though no condition to this effect is appropriate.

<sup>159</sup> Dean Donald Siegel, School of Business, State University of New York at Albany Comments (Aug. 6, 2014).

<sup>160</sup> *Id.*

As Drs. Rosston and Topper observed: “Scale can make the difference between investing in a new product or service and not investing, and scale can accelerate the introduction of products, services, and network and equipment enhancements.”<sup>161</sup> Dr. Mark Israel likewise explained:

When investments have the character that some or all of the costs are ‘fixed’ – meaning costs that do not grow as the investment is extended to a larger scale (or at least do not grow proportionally to the increase in scale) – then greater scale will lead to greater revenue without proportionally greater costs. As a result, more investments will meet the hurdle rate and thus more investments can profitably be undertaken, increasing the firm’s incentive to invest in innovative new services.<sup>162</sup>

The FCC also has previously recognized that scale can be an important driver of increased innovation and consumer benefits:

We also agree with the Applicants that the greater scale and scope of the merged entity is likely to spur new investment. The development and deployment of new technologies often entails a significant up-front, fixed investment. The merged company should have a greater ability to spread those fixed costs across a larger customer base, which should in turn foster incentives for investment by the merged entity, as well as other businesses that seek to sell equipment, technology, and services to the merged entity.<sup>163</sup>

In addition, the expanded geographic reach made possible by a combination of firms will increase the economic efficiencies by enhancing the ability of the combined entity to serve customers whose needs span the existing geographic footprints of the two firms.<sup>164</sup> Post-transaction, Comcast will reach additional markets in which it previously had limited or no presence, including New York City, and the transaction will provide Comcast with access to several markets that are located near its existing markets, such as upstate New York. This will

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<sup>161</sup> *Rosston/Topper Decl.* ¶ 10.

<sup>162</sup> *Israel Decl.* ¶ 107.

<sup>163</sup> *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23317 ¶ 184 (2002).

<sup>164</sup> *Rosston/Topper Decl.* ¶ 58.

allow Comcast to more efficiently deploy and upgrade its broadband facilities, by potentially investing, for example, in new Converged Regional Access Networks (“CRANs”) supported by additional regional data centers – an expense that might not have been justified by either company’s individual network assets (or customers) in a particular area. As noted, this expanded geographic reach and enhanced geographic rationalization will greatly enhance the combined company’s ability to bring much-needed additional competition to ILECs in the business-services marketplace.

Moreover, by combining their portfolios of products and services, the Companies will be able to provide more and improved products and services at lower cost than each would be able to do on its own. It will be more efficient for Comcast and TWC to provide these services as a combined company because the two firms use similar inputs in creating these services. For example, as noted, the transaction will allow Comcast to integrate the best features of its voice services with TWC’s best features, creating best-in-class voice services offering. In addition, each company brings proprietary technology and specialized knowledge about providing its unique mix of products and services.<sup>165</sup>

These key economic drivers will provide the combined company with a greater ability to invest and innovate, not only to serve its existing customers better, but also to respond effectively to new competitive dynamics.<sup>166</sup> All of this will serve to benefit New York and as a great complement to the Governor’s innovative Start-Up NY program. As this program seeks to attract new and expanding businesses, and provide them access to world-class higher education institutions and advanced research laboratories, the new and innovative services and faster

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<sup>165</sup> See *id.* ¶¶ 65-68.

<sup>166</sup> Angelakis Decl. ¶¶ 12-13.

broadband speeds that Comcast will bring to New York can serve as a critical enticement for that relocation or expansion. Comcast looks forward to being an active partner with the State in such initiatives.

**II. THERE ARE NO VALID COMPETITIVE CONCERNS IN THIS TRANSACTION, AND THE CONCERNs RAISED BY CRITICS ARE IRRELEVANT TO THE TRANSACTION AND FACTUALLY INACCURATE**

Contrary to the inaccurate and speculative claims of some commenters, this transaction does not raise any material competition concerns. As more fully shown below, there are no horizontal competition issues because Comcast and TWC do not compete against each other anywhere in New York. New Yorkers will have the same number of choices in service providers after the transaction as they do today. Nor does the transaction pose any vertical concentration concerns. TWC owns only modest programming assets that will barely move the needle in NBCUniversal's portfolio. These few networks are easily replicable and face – and will continue to face – intense competition in the video marketplace. And concerns about how the transaction may affect the combined company's national market share and vertical integration beyond New York are, as Staff has acknowledged, properly before the FCC and Department of Justice ("DOJ") and *not* part of this proceeding in all events.<sup>167</sup>

Indeed, a large portion of the issues and concerns raised by critics are entirely speculative, factually inaccurate, and irrelevant to the transaction itself. Many of these detractors have asserted various claims about Comcast's size, broadband management practices, use of "data caps," views on municipal broadband providers, advertising business, isolated customer service incidents outside of New York, and other matters that, as explained in the sections below, are not only

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<sup>167</sup> Staff Comments at 38.

wrong, but also have *nothing* to do with the issues properly before the Commission in this proceeding.

#### **A. The Transaction Will Not Result in Any Competitive Harm**

Certain commenters contend that the Commission should deny the Joint Petition because it will lead to competitive harm and consumers lack other choices for cable, Internet, and telephone service, or because the transaction will reduce competition in the state.<sup>168</sup> These allegations are legally and factually baseless. As explained in the Joint Petition, Comcast and TWC have no overlapping service areas and do not compete with each other in New York. Comcast's merger with TWC will not change the number of choices any New York consumer has for cable, Internet, or telephone service. Thus, there is no voice, video, or data service for which a current TWC customer will have a smaller choice of providers as a result of this deal, and, in fact, the change in ownership of TWC will mean that the combined company can offer a more robust alternative for each of these services than it did previously.<sup>169</sup> Staff agrees, noting for example that "following the proposed transaction, there should be no diminution in the number of service provider options available to consumers in the video market because Comcast and Time Warner do not currently have overlapping service areas in New York."<sup>170</sup>

Comcast's existing market shares in video and voice in New York are minimal today, and combining Comcast with TWC thus does not result in any significant increase in concentration.<sup>171</sup> In all events, the market for video services is robustly competitive in New York, with telcos,

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<sup>168</sup> See, e.g., Zephyr Teachout and Tim Wu ("Teachout and Wu") Comments at 8 (Aug. 8, 2014); Stop the Cap! Comments at 3 (Aug. 6, 2014).

<sup>169</sup> See *Comcast/TWC Public Interest Statement* at 138-40.

<sup>170</sup> Staff Comments at 26.

<sup>171</sup> Joint Petition at 2, 6.

overbuilders, and DBS providers all offering competitive alternatives, and new online video providers increasingly competing with many of the services traditional MVPDs have provided.<sup>172</sup>

The residential voice market in New York is likewise the focus of vigorous competition among wireline telephone companies and fixed and mobile VoIP providers, as well as wireless providers.<sup>173</sup> The combined company will enhance that competition across each of these services.<sup>174</sup> And while the broadband market is not an appropriate focus of this proceeding, as explained below, that market is also vibrant and expanding. As such, the transaction will not have any negative impact on competition in New York, but will instead enhance competition by creating a more robust competitor for New York subscribers.

Indeed, the FCC's latest report on Internet access shows significant broadband competition throughout the United States. Using the FCC's definition of broadband for data-collection purposes (3 Mbps/768 Kbps), approximately 99 percent of households are located in census tracts where at least two or more fixed broadband providers reported offering at least 3 Mbps downstream and 768 kbps upstream. Even at a higher speed threshold, approximately 92 percent are located in census tracts where two or more providers reported offering at least 10 Mbps

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<sup>172</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, 10513-14 ¶ 36 & Table 2 (2013) (concluding that approximately 130.7 million American homes, or nearly 99 percent, had access to at least three MVPDs as of 2011 and that nearly 47 million, or over 35 percent, had access to at least four MVPDs, with new online options emerging).

<sup>173</sup> See *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Statement of Policy On Further Steps Toward Competition In the Intermodal Telecommunications Market And Order Allowing Rate Filings, Case 05-C-0616, at 6, 23 (April 11, 2006) ("PSC Intermodal Competition Order") (finding that various types of service providers are competing for customers in New York, and noting the Staff White Paper conclusion that the Commission's "pro-competitive regulatory decisions, coupled with advances in technology, have resulted in New York State being one of the most competitive markets for telecommunications services in the nation").

<sup>174</sup> Joint Petition at 12-13, 15-20.

downstream and at least 1.5 Mbps upstream.<sup>175</sup> Taking into account mobile broadband, consumers have even more options. Approximately 99 percent of households are located in census tracts where three or more fixed or mobile broadband providers reported offering at least 3 Mbps downstream and 768 kbps upstream, and approximately 98 percent are located in census tracts where two or more providers reported offering at least 10 Mbps downstream and at least 1.5 Mbps upstream.<sup>176</sup> This means there is intense competition for customers among cable, DSL, fiber, and advanced VDSL services offered by some ILECs. Wireline broadband providers also increasingly compete with wireless, which is already a meaningful broadband alternative and is becoming a more effective competitor as 4G and other wireless technology is deployed.

Likewise, the transaction will not create any vertical concerns. 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.<sup>177</sup> Content providers have numerous, and ever-increasing, outlets for their content, and the FCC has long-standing rules that protect those providers against anticompetitive discrimination. Further, since TWC accounts for only a tiny percentage of the programming industry, the combination of Comcast and TWC will not materially change competition among programmers.<sup>178</sup>

Nor will the proposed transaction negatively impact the diversity of local news voices, such as Comcast's NBCU's WNJU (Telemundo) and TWC-owned local cable news channels like NY1

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<sup>175</sup> FCC, *Internet Access Services as of June 20, 2013*, at 9, Fig. 5(a) (WCB 2013), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-327829A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-327829A1.pdf).

<sup>176</sup> *Id.*, at 10, Fig. 5(b).

<sup>177</sup> See, e.g., *Comcast/TWC Public Interest Statement* at 43-56, 140-51.

<sup>178</sup> See *id.* at 152-54.

and NY1 Noticias. There will be well over 150 independent local news outlets in New York after the transaction, as well as at least five independent Spanish-language news voices (and 18 Spanish-language media voices total, including radio stations that primarily air music but also include some news and information during program breaks).<sup>179</sup> Accordingly, the transaction will not have a material impact on the rich diversity of local news voices available in New York.

**B. Concerns Regarding Broadband Availability, Deployment, and Competition Issues Are Extra-Jurisdictional and, In Any Event, Are Not Factually Accurate**

Staff states that it “is not recommending that the Commission ‘regulate’ broadband in the traditional sense of the word,” but asserts that broadband should be included in the public interest review and potentially subject to conditions because it relies on the same network as telephone and cable services and “because all of these services fall under the rubric of communications and are interchangeable to an extent.”<sup>180</sup> Staff, the City of New York, and several other commenters focus a great deal on the Petitioners’ provision of high-speed broadband services, arguing that the Commission can and should impose broadband-related conditions on the transaction. As Staff acknowledges, however, the relevant statutory provisions underpinning this proceeding pertain only to telephone corporations (PSL Sections 99(2) and 100(1) and (3)), and to cable television systems (PSL Section 222(3)(b)).<sup>181</sup>

The Commission has no authority to review broadband transactions and lacks statutory authority to regulate broadband services – and beyond this, cable broadband services are interstate

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<sup>179</sup> This includes broadcast stations, daily and weekly newspapers, local cable news channels, web-only local news sites, and local magazines.

<sup>180</sup> Staff Comments at 7-8.

<sup>181</sup> Staff Comments at 11-13.

information services that are not properly subject to state jurisdiction.<sup>182</sup> The Commission has expressly ruled that comments relating to matters beyond the Commission’s jurisdiction should be disregarded in a review of whether a regulatory approval is in the public interest:

Many of the comments received in this proceeding . . . do not relate to issues before us or subject to our jurisdiction. We do not have general supervisory power over LIPA, the Town of Brookhaven, Suffolk County, DEC, EPA, FERC, or any other federal, state or local agency that has concurrent or sole jurisdiction over one or more aspects of the Caithness project or its interconnections. The issues raised by [commenters regarding a long list of issues] ***are all matters beyond our jurisdiction, and therefore are not relevant or material to our decisions in this proceeding, and are not considered.***<sup>183</sup>

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<sup>182</sup> *Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4832 ¶ 59 (2002) (holding that cable Internet service is an interstate information service) (“*Cable Modem Declaratory Ruling*”) (subsequent history omitted); *see also Petition of Oneida County Rural Telephone Company for Approval to Refinance an Existing REA Debt*, Order Authorizing Issuance of Securities, Case 05-C-0619 (Aug. 24, 2005) (finding that DSL/broadband services are outside the Commission’s jurisdiction since such services have been determined by the FCC to be an interstate information service). And neither Section 706 of the Telecommunications Act of 1996 itself nor the D.C. Circuit’s interpretation of this provision in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), alters these findings. Indeed, Section 706 cannot be properly read to provide the Commission with an independent grant of authority to regulate broadband services. Even if it did, however, such a finding does not trump other provisions of the Communications Act or prior FCC determinations that broadband Internet access services is an interstate information service that is not subject to state or local regulation or conditions. *See Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4832 ¶ 59. Section 152 of the Communications Act grants the FCC plenary authority over interstate services, and the FCC may preempt any state law that is inconsistent with federal policy regarding these services. *See* 47 U.S.C. § 152. Congress and the FCC have established a deregulatory framework for interstate information services like broadband, and the FCC has preempted state regulation of such services on several occasions. *See e.g.*, 47 U.S.C. § 230(b)(2) (“It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by federal or State regulation[.]”) (emphasis added); *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4802 ¶ 5 (“[W]e believe broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.”) (internal quotation omitted); *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3318 ¶¶ 16-17 (2004) (“Federal authority has . . . been recognized as preeminent in the area of information services, and particularly in the area of the Internet and other interactive computer services . . . [and] states have generally played a very limited role with regard to information services. . .”); *id.* ¶ 17 (“The Commission has . . . determined that certain state regulations of information services would conflict with the national policy of nonregulation.”); *Amendment of Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry) et al.*, Report and Order, 104 FCC 2d 958, 1125 ¶ 343 (1986) (subsequent history omitted) (explaining that the FCC “preemptively deregulated [information] services, foreclosing the possibility of state regulation of such offerings.”).

<sup>183</sup> *Petition of Caithness Long Island, LLC for a Certificate of Public Convenience and Necessity to Develop, Own and Operate an Approximately 346 Megawatt Electric Generating Plant in the Town of Brookhaven, Suffolk County; and for an Order Regarding Regulatory Regime*, Order Granting a Certificate of Public Convenience

The Commission should reject commenters' invitations to impose conditions related to broadband on Petitioners as both beyond the appropriate scope of its jurisdiction, and as inappropriate.<sup>184</sup>

### *1. Broadband Deployment and Improvements*

Some commenters urge the Commission to require Comcast to commit to deploying faster broadband speeds, and fill in any coverage or service gaps.<sup>185</sup> Again, it is difficult to see how such conditions could be a legitimate subject for consideration in a proceeding based on the voice and video markets.<sup>186</sup> But beyond this, the arguments simply miss the mark. A key benefit of this transaction, as described above, is that Comcast anticipates making significant capital investments in New York to bring higher broadband speeds to the state – more quickly than TWC would do on its own. The planned digital upgrades will improve materially the quality and speeds of the broadband service currently available on TWC systems. As such, the imposition of "conditions" in this area, even if they were jurisdictionally appropriate, is simply not justified. There is no plausible argument that the transaction could adversely affect broadband speeds in New York – to

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and Necessity, Providing for Lightened Regulation and Approving Financing, at 17-18 (Nov. 15, 2006) (emphasis added).

<sup>184</sup> Although the Companies address these non-jurisdictional arguments and benefits herein in order to provide a comprehensive view of the public interest benefits of the proposed transaction, Petitioners respectfully reserve all rights relating to those issues, including without limitation Petitioners' legal and equitable rights relating to jurisdiction, filing, disclosure, relevancy, due process, review, and appeal. The inclusion of or reference to non-jurisdictional subjects and benefits should not be construed as a waiver of any rights or objections otherwise available to Petitioners in this or any other proceeding, and may not be deemed an admission of relevancy, materiality or admissibility generally or with specific regard to the Commission's actual public interest standard under applicable law.

<sup>185</sup> See, e.g., City of New York Comments at 6 (Aug. 6, 2014); UIU Comments at 6 (Aug. 8, 2014); Gale Brewer, Manhattan Borough President, Comments at 1-2 (Aug. 8, 2014).

<sup>186</sup> Notably, while there are ideas for programs put forth by Staff (such as New York Essentials, I Link, and additional low-income broadband programs) that may warrant consideration in some forum – with the appropriate involvement of other agencies, providers, and stakeholders – the promotion or imposition of such programs is out of place in the limited context of this proceeding involving telephone certification and cable television transfers.

the contrary, Comcast's acceleration of TWC's conversion to all-digital should *enhance* broadband speeds in New York.

The same is true with respect to any apparent "gaps" in broadband deployment in the state, in for example some rural areas. Any such issues are a pre-transaction concern and there is no basis to contend that the transaction would aggravate those issues. But again, the transaction will *improve* these circumstances.<sup>187</sup> Where economically feasible, Comcast has strong incentives to expand services in rural areas in order to gain new customers, including residential and business subscribers, and has demonstrated its ability to do so in prior acquisitions.<sup>188</sup>

One path forward that Comcast already has considered is the Connect NY Broadband Grant Program. Comcast sees this program, as structured, as a positive model for public-private partnership that can help to expand service to areas of need identified jointly by Comcast and New York State. TWC has already undertaken this approach in New York State, and Comcast has successfully participated in a similar program in neighboring Vermont. Comcast likewise looks forward to partnering with State and local economic development entities, and to participation in

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<sup>187</sup> See Statement of Professor Santorelli, New York City Public Statement Hearing, Tr. at 41 (June 19, 2014) ("There's much data in the public filings and in the public statements and elsewhere to suggest that the transaction would in fact yield more benefits [than] cost [in realizing state goals, such as broadband connectivity]," and indications the transaction would bolster the Start Up NY program); *see also id.*, Tr. at 41-42 ("New York City in particular is well positioned to benefit [from]...leveraging existing assets here, like NBC and Comcast Venture Funding Arm, all of which could assist it, the newly formed company, and immediately establishing it as a partner to helping New York City and potentially other cities throughout the state cement its reputation as a hub for high tech innovation.").

<sup>188</sup> Cf. Statement of Mark J. Reilly, Senior Vice President of Government Affairs – Northeast Division, Comcast, Buffalo Public Statement Hearing, Tr. at 56-57 (June 16, 2014) (discussing Comcast's significant infrastructure investments following the acquisitions of systems from Adelphia and AT&T broadband); Michael McGlynn, Mayor, Medford, MA, Comments at 1 (Aug. 8, 2014) ("In Massachusetts, Comcast has invested over \$5 billion in the last two decades in infrastructure and technology.").

the Start Up NY program. Comcast appreciates the opportunity to address such subjects with the Commission, New York State Broadband Program Office, and other important stakeholders.<sup>189</sup>

## 2. *Data Caps*

The Writers Guild of America, West, Inc. (“WGAW”), Zephyr Teachout and Tim Wu, and Stop the Cap! argue that Comcast will extend data caps and usage-based pricing to New York to impose restraints on online content and drive up consumer costs.<sup>190</sup> This broadband-related claim is irrelevant to this proceeding and beyond the Commission’s jurisdiction. Indeed, the FCC expressly approved of usage-based billing in its 2010 *Open Internet Order* and is again examining the issue in the pending Open Internet rulemaking.<sup>191</sup> In other words, whether data caps are appropriate is a matter of *federal* regulatory concern, not one that relates to this proceeding or that is even transaction specific (since nothing precludes TWC from adopting caps at any time, as it has in the past).

But even leaving all this aside, these arguments also fail because they are entirely speculative and based on fundamental inaccuracies. First, Comcast *does not have “data caps” today*. Comcast announced almost two years ago that it was suspending enforcement of its prior

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<sup>189</sup> The New York State Broadband Program Office urges the Commission to require the combined company to participate in the NYS Broadband Mapping Program and submit address-level broadband availability data. *See* New York State Broadband Program Office Comments at 5 (Aug. 8, 2014). The transaction, however, provides no basis to impose additional broadband reporting requirements. Moreover, as the NYS Broadband Office notes, TWC already submits address-level data for areas in which it has projects through the Connect NY program, and in its other service areas. Comcast supports the Connect NY program and its important goal of providing new service to areas with little or no Internet access. The merged company will continue TWC’s existing obligations associated with the Connect NY program, including filing all data pursuant to program requirements, and is interested in further ways Comcast can participate in Connect NY. Comcast looks forward to maintaining TWC’s strong partnership with the state and the NYS Broadband Program Office going forward.

<sup>190</sup> WGAW Comments at 16 (Aug. 8, 2014); Teachout and Wu Comments at 3-4 (Aug. 8, 2014); Stop the Cap! Comments at 22-23 (Aug. 6, 2014).

<sup>191</sup> *See Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17945 ¶ 72 (2010) (“*Open Internet Order*”); *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5577, 5588 ¶¶ 45, 73 (2014).

250 GB excessive usage cap and that it would instead be trialing different pricing and packaging options to evaluate options for subscribers – options that reflect evolving Internet usage and that are based on the desire to provide flexible consumption plans, including a plan that enables customers who want to use more data the option to pay more to do so as well as a plan for those who use less data the option to save some money. As has been well publicized for some time now – including through Comcast’s own website – these trials are ongoing and currently cover a small minority of customers.<sup>192</sup> Some of these trials include a data usage plan that allows customers who use very little Internet each month to receive a discount on their service fee, and variations on a plan that provide customers with the ability to buy additional increments of usage if they exceed a base amount (starting at 300 GB) that is included with their service. As it turns out, only a very small percentage of Comcast customers in the trials go over 300 GB in any given month, so few customers see increased costs because of the data plans and Comcast has seen no evidence that the data plans discourage usage, which has generally continued to increase in and outside of the trial markets.

### *3. Open Internet*

Demands that Comcast must agree to additional open Internet conditions in perpetuity or otherwise change its position regarding the applicability of federal Open Internet regulations should be disregarded.<sup>193</sup> Again, this issue relates to broadband service and goes beyond the scope

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<sup>192</sup> See *Questions & Answers About Our New Data Usage Plan Trials*, Comcast, <http://customer.comcast.com/help-and-support/internet/datausage-trials> (last updated May 29, 2014); see also Statement of Comcast Senior Vice President Mark E. Reilly, Buffalo Public Statement Hearing, Tr. at 57-59 (June 16, 2014) (explaining the scope and purpose of the limited trials of pricing and packaging options).

<sup>193</sup> See, e.g., Gale Brewer, Manhattan Borough President, Comments at 3-4 (Aug. 8, 2014); Scott Stringer, Comptroller, City of New York, Comments at 3-4 (July 21, 2014); Stop the Cap! Comments at 29 (Aug. 6, 2014).

of this proceeding; it also relates to a uniquely federal regulatory framework that is not appropriately addressed by the Commission. But beyond that, the concerns are simply unjustified.

Comcast was a supporter of the FCC's original Open Internet rules and has lived under them for more than three years. Although the no-blocking and non-discrimination portions of the original Open Internet rules were vacated by the United States Court of Appeals for the District of Columbia Circuit, Comcast is still fully bound by them – and is the only provider in the country still subject to them, due to its voluntary commitment to be legally bound by them in connection with its merger with NBCUniversal. Comcast has fully abided by these rules, and there has been no credible claim to the contrary. Comcast's commitment to abide by these rules runs for another four years and it is widely expected that the FCC will have in place new, industry-wide open Internet rules well before the expiration of Comcast's commitment.

Of particular note, Comcast's commitment to the FCC's Open Internet rules will extend in full to all of the TWC systems it acquires.<sup>194</sup> Accordingly, to the extent open Internet issues are of concern, the transaction should be viewed as beneficial, since it will automatically extend the FCC's Open Internet rules to TWC and its subscribers.

Finally, Comcast has built a successful business offering its customers access to any and all of the Internet content they want. It does so in a highly and increasingly competitive marketplace. Because of this, Comcast has a strong economic incentive not to interfere with its

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<sup>194</sup> Commenters' suggestion that Comcast's deal with Netflix represents an Open Internet violation is simply incorrect. See, e.g., Scott Stringer, Comptroller, City of New York, Comments at 3 (July 21, 2014); Teachout and Wu Comments at 6 (Aug. 8, 2014); WGAW Comments at 12 (Aug. 8, 2014). The FCC expressly stated that backbone arrangements were not covered by the Open Internet rules, *Open Internet Order*, 25 FCC Rcd at 17944 ¶ 67 n. 209, and the FCC Chairman recently reiterated this view, News Release, FCC, Statement by FCC Chairman Tom Wheeler on Broadband Consumers and Internet Congestion (June 13, 2014), <http://www.fcc.gov/document/chairman-statement-broadband-consumers-and-internet-congestion>. Further, the FCC is currently examining the very competitive backbone marketplace, *see id.*, which serves to emphasize the degree to which such issues are not appropriate for this proceeding – even more so considering that backbone connections are inherently interstate and the concerns are distinctly national in scope.

customers' access to online providers' content. The services that online video distributors ("OVDs") and other "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. Degrading its broadband services by restricting customers' freedoms to access the content of their choosing would harm Comcast's own business by inducing consumers to switch to other providers or downgrade their service.<sup>195</sup>

In short, open Internet issues are neither appropriate for this proceeding nor substantively valid, and they should be dismissed out of hand.

#### 4. *Municipal Broadband*

Common Cause New York and WGAW argue that the transaction will undermine municipal broadband initiatives in New York.<sup>196</sup> This broadband-related issue is not relevant to this proceeding because it is outside the scope of the Commission's review. Nor is it clear how the *transaction* provides a basis for the concern expressed by Common Cause New York and WGAW. Notably, no government commenter – including the New York State Broadband Program Office, which acts as the point of contact for all broadband related issues in the State and is responsible for executing the State's broadband strategy – identified municipal broadband as an issue of concern relating to this transaction. More fundamentally, the concern is unmoored from

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<sup>195</sup> See *Comcast/TWC Public Interest Statement* at 157-58; *Israel Decl.* ¶¶ 36-39 (noting that "[t]he 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.").

<sup>196</sup> Statement of Susan Lerner, Common Cause New York, New York City Public Statement Hearing, Tr. at 21-22 (June 19, 2014); WGAW Comments at 25-26 (Aug. 8, 2014).

reality. The claim that Comcast has been attempting to outlaw municipal broadband is simply erroneous. Although Comcast has concerns about the wisdom of municipal broadband initiatives, it has not been an active advocate for legal prohibitions on such programs.

### **C. Non-Transaction-Specific Matters Are Outside the Scope of This Proceeding**

As reflected in Staff's comments, the Commission's review is based upon the proposed transaction and its impact in New York. The Commission should reject attempts to inject into this proceeding any extraneous issues that have nothing to do with the proposed transaction in New York, or otherwise enlarge the proceeding beyond the Commission's jurisdiction.

#### *1. VoIP Regulation*

The Public Utility Law Project of New York, Inc., Utility Intervention Unit of New York's Division of Consumer Protection ("UIU"), and Common Cause New York raise concerns regarding the rise of VoIP service in New York,<sup>197</sup> but those concerns are not specific to this transaction. The transaction will not affect TWC's existing status as a regulated telephone utility; following the transaction, the TWC entities, which will remain in place, will continue to comply with applicable statutes, regulations, and orders. As a result, the combined company will continue to provide Lifeline service pursuant to TWC's existing eligible telecommunications carrier designation (unless and until the Commission approves the removal of such designation), which Staff correctly characterizes as a benefit of the transaction.<sup>198</sup> Comcast, through TWC, also will continue to comply with any applicable reporting requirements that apply to all New York eligible telecommunications carriers. There accordingly is no transaction-related concern here, and no basis to impose additional Lifeline requirements on Comcast.

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<sup>197</sup> PULP Comments at 2-3 (June 19, 2014); UIU Comments at 3 (Aug. 8, 2014); Common Cause New York Comments at 14 (Aug. 8, 2014).

<sup>198</sup> Staff Comments at 26.

## *2. Advertising Complaints*

Viamedia's complaints concerning television advertising are plainly outside the Commission's jurisdiction and have nothing to do with advancing the "public interest." Instead, Viamedia is attempting to use the Comcast-TWC transaction review process to advance its own parochial business objectives.<sup>199</sup> As explained below, Viamedia is an advertising broker that competes with Comcast and TWC to "represent" other MVPDs in selling local cable advertising time. Viamedia suggests that the transaction will somehow harm either advertisers or MVPDs in New York. But neither advertisers nor MVPDs have come forward to voice these concerns, which highlights the self-interested objectives of Viamedia. Moreover, the "relief" that Viamedia demands is designed not to remedy any anticompetitive result of the transaction, but instead simply to give Viamedia a leg up in competing with the combined company for business.

A few basic background points put Viamedia's complaints in context. MVPD advertising is a very small sliver of the overall local advertising market. Cable and satellite companies typically only receive two minutes per hour of advertising inventory on cable programming networks, with the networks retaining the rest. They receive no advertising time on local broadcast stations. The FCC has estimated that MVPD advertising only accounts for seven to eight percent of all local advertising, far less than local broadcast, radio, Internet, or even daily newspapers. According to SNL Kagan, only seven percent of local advertising revenues go to cable nationally. In New York City, according to BIA Kelsey, 5.5 percent of local ad spending went to cable television. In an effort to compete more effectively with these other media, MVPDs typically pool their advertising inventory in a market (sometime referred to as a "designated market area" or "DMA" in the advertising industry) through "interconnects," which then sell advertising on a

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<sup>199</sup> Viamedia, Inc. Comments (Aug. 8, 2014).

DMA-wide basis. Viamedia acknowledges that interconnects are pro-competitive.<sup>200</sup> The largest MVPD in a region typically manages an interconnect, an activity that requires substantial investments in personnel, equipment, and technology. In many markets, Viamedia competes with interconnects to sell advertising inventory on behalf of MVPDs. Viamedia represents many MVPDs, including providers in New York like RCN, as well as CenturyLink, Frontier, Blue Ridge Cable, Service Electric, and others.

Contrary to Viamedia’s suggestions, local cable advertising in New York (and elsewhere) will not be adversely affected by the proposed transaction. In New York, there are currently two interconnects, one managed by Cablevision (in which Comcast participates) and one managed by TWC. Following the transaction, Comcast will simply replace TWC in managing its New York interconnect. Comcast will not “dominate” local advertising in New York, just as TWC does not “dominate” local advertising today.<sup>201</sup> As noted, cable advertising is just a small part of the local advertising market. The fact that Comcast manages interconnects in other regions is irrelevant, since these interconnects do not compete with the New York interconnect – a car dealership that wants to buy advertising in New York would never turn to an interconnect selling advertising time in Philadelphia or Boston. Viamedia obliquely suggests that it would be anticompetitive for Comcast to seek to combine the two New York interconnects.<sup>202</sup> Yet elsewhere Viamedia concedes that it is the norm for only one interconnect to serve a given DMA and that such an arrangement “benefit[s] both MVPDs and advertisers.”<sup>203</sup>

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<sup>200</sup> *Id.* at 3.

<sup>201</sup> *Id.* at 9.

<sup>202</sup> *Id.* at 2, n.1.

<sup>203</sup> *Id.* at 4.

Viamedia's claim that Comcast has a "history of requiring advertisers to purchase the entirety of a DMA" is simply false.<sup>204</sup> In the interconnects it manages, Comcast has in fact allowed for advertisers to purchase increasingly narrow geographic regions within a DMA. Comcast features this as a selling point for why advertisers should purchase cable spot advertising with a Comcast-managed interconnect as opposed to advertising with a broadcast network or another less targeted outlet.<sup>205</sup>

Viamedia complains that Comcast has elected not to do business with it in markets where Comcast manages the interconnects. But neither the antitrust laws nor any other law obligates Comcast to do business with Viamedia, especially since Viamedia also competes with Comcast.<sup>206</sup> Rather than "free riding" on Comcast's efforts, Viamedia is free to create an alternative interconnect of its own – as New York demonstrates that it is certainly possible to have more than one interconnect in a market. Moreover, even though Comcast is under no obligation to deal with Viamedia, Comcast has recently offered to do business with Viamedia in three DMAs (selected by Viamedia) on market terms – and Comcast expects that this arrangement will move forward. Not only does this illustrate that Viamedia's concerns are baseless, it also demonstrates that this entire "dispute" is a standard-issue commercial one, *not* one that is a unique, transaction-related anticompetitive harm appropriate for consideration by this Commission in this proceeding.

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<sup>204</sup> *Id.* at 6.

<sup>205</sup> Viamedia also makes claims regarding interconnects that Comcast manages outside of New York, as well as Comcast's control over NCC (which represents MVPDs in the sale of their local ad time to *national* advertisers). But the former issue is not relevant to this proceeding, and the latter is not a transaction-specific concern, since Comcast already controls NCC today. In addition, Viamedia's CEO recently wrote to Comcast to give his "[t]hanks for the support in the NCC extension" (even though this decision was made independently by NCC's management), demonstrating that it is completely disingenuous for Viamedia to complain about Comcast's conduct with respect to NCC.

<sup>206</sup> *Verizon v. Trinko*, 540 U.S. 398, 407-08 (2004) (explaining that "compelling negotiation between competitors may facilitate the supreme evil of antitrust: collusion").

### *3. Outage Reporting*

Despite claims to the contrary, further reporting on disaster preparedness by TWC and Comcast is unnecessary. TWC’s certificated entity already files requisite outage reports with the Commission.<sup>207</sup> In addition, TWC has been responsive to the Commission’s request in 2006 that it develop facility and service outage reporting practices. As a result, the TWC outage reporting team submits informal reports to Staff whenever a significant outage occurs (for any service) in New York, including information such as affected customers, cause of outage, and plans for restoration, as well as relevant follow up.<sup>208</sup> As to its own VoIP service currently offered in New York, Comcast has cooperated with Staff to provide general outage reports during times of significant events. Comcast does not anticipate that the proposed transaction will affect existing outage reporting.<sup>209</sup>

Comcast takes its emergency management responsibilities very seriously, and has implemented a standard management hierarchy and procedure for managing incidents of any size, known as the Incident Command System (“ICS”). The ICS has been adopted by all local, state, and federal agencies, as well as Fortune 100 companies. Under Comcast’s ICS standard, Comcast’s key management teams are trained on roles and responsibilities during an incident, and develop critical partnerships with the state emergency management agencies and commercial power companies. As permitted, Comcast embeds representatives in the state emergency management agency and in the power company’s emergency operations center during times of crisis. Comcast has also invested in a web-based tool, WebEOC, that is widely utilized by state

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<sup>207</sup> See, e.g., Response to Staff Information Request No. DPS-10. As an ETC, TWC also maintains an updated emergency response plan on file at the Commission.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

emergency response agencies and allows Comcast to communicate with emergency management agencies before, during, and after an incident. Any emergency response enhancements that Comcast provides to TWC as a result of the merger will be included in the annual update to TWC's emergency response plans filed with the Commission.

**D. Other Concerns, While Arguably Transaction-Related, Should Nevertheless Be Dismissed Because They Are Based on Unfounded Assumptions, Incorrect Facts, and Insupportable Proposals**

*1. Rate Levels*

Concerns that the transaction will result in increased rates are unfounded.<sup>210</sup> As an initial matter, the transaction will not reduce the number of competitors in New York, so there is no reasonable basis for claiming that the transaction will cause prices to increase. If anything, the transaction could have the *opposite* effect by putting pressure on other providers to offer more competitive rates to compete with the combined company's increased technological leadership and programming and through the efficiencies arising out of the combined entity's increased scale.<sup>211</sup>

As for the rates to TWC customers in particular, it bears repeating that the proposed transaction will occur solely at the holding company level, and thus Petitioners are not seeking authority for changes to New York customers' rates, terms, or conditions.<sup>212</sup> To be sure, given the constantly evolving and fluid nature of the market, specific rate and speed tiers and promotions

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<sup>210</sup> See, e.g., Teachout and Wu Comments at 2-4 (Aug. 8, 2014); Stop the Cap! Comments at 13-14 (Aug. 6, 2014); Public Utility Law Project of New York, Inc. Comments at 4 (June 19, 2014).

<sup>211</sup> Further, economic theory teaches that some portion of marginal cost savings inevitably are passed through to customers and that the incentive to do so is even stronger in competitive markets. See Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* 92-93 (Prentice Hall, 4th ed. 2004); Robert S. Pindyck & Daniel L. Rubinfeld, *Microeconomics* 346 (Prentice Hall, 6th ed. 2005).

<sup>212</sup> For this reason, the transaction will be technologically transparent for consumers. See Staff Comments at 26. To the extent that, after closing of the transaction, Comcast wishes to make changes that require regulatory approval, Comcast will, of course, follow applicable New York filing and notice requirements.

offered today may be modified or discontinued over time.<sup>213</sup> But the combined company will have to consider the significant competition it faces before changing any rates, and fears of rapid or unreasonable rate hikes are therefore simply unfounded.<sup>214</sup> Indeed, from 2004 through 2013, while programming costs per video subscriber for Comcast rose an astonishing 120 percent, Comcast's retail prices to its customers rose at only *about half* that rate. Nonetheless, Comcast envisions a constructive dialog to ensure that key Commission priorities are satisfactorily addressed.

Surprisingly, a few commenters appear to suggest that Comcast's plans to improve services and technology, and provide customers with a more attractive set of offerings, are problematic because they will lead to – or are even somehow *designed to justify* – higher prices.<sup>215</sup> But certainly no commenter can seriously suggest that customers would be better off if the company were to forego technological advances or an increase in programming choices; that does not merit serious consideration.<sup>216</sup> In all events, commenters have no reason for concern: high-end services will

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<sup>213</sup> While Staff and others suggest a variety of conditions and programs, including continuation of certain promotional products such as the TWC \$14.99 “Everyday” offering and the creation of new stand-alone requirements, Staff itself “recognize[s] the rapid pace of change in the broadband market.” Staff Comments at 45. Full consideration of the nature of the broadband market and the “rapid pace of change” reveals the inadvisability of attempts to dictate specific future products, speeds and programs.

<sup>214</sup> New York City expresses concern regarding transparency regarding rates and reported discrepancies between advertised and actual charges. City of New York Comments at 4-5 (Aug. 6, 2014). Comcast strives to provide accurate and understandable information regarding its rates and will continue its efforts to minimize confusion in this area. See 2014 Broadband Speed Report at 27-49.

<sup>215</sup> See, e.g., Teachout and Wu Comments at 4 (Aug. 8, 2014); WGAW Comments at 14-15 (Aug. 8, 2014); Stop the Cap! Comments at 8-10 (Aug. 6, 2014).

<sup>216</sup> One commenter erroneously suggests that New Yorkers could pay an additional \$1.59 billion per year following the transaction. Teachout and Wu Comments at 2-3 (Aug. 8, 2014). But this is based on a gross misunderstanding of the meaning and relevance of average revenue per user (“ARPU”) figures. The commenter relies on ARPU figures for Comcast that are vastly overstated – the figures for TWC appear to reflect residential ARPU, while the figures for Comcast appear to reflect residential ARPU *plus* commercial and advertising revenue. Moreover, even if Comcast's aggregate ARPU is higher than TWC's this does *not* mean that Comcast charges more than TWC for similar services. Rather, it means that Comcast provides more services to its customers – likely showing that the value proposition for those services is better for Comcast customers, not worse. Just as they do today, consumers will remain free to select the number and types of services they want.

remain optional – offering services that are both reasonable and affordable.<sup>217</sup> And, as Dr. Israel concluded, because “residential consumers will be able to choose from the exact same number of broadband providers as they can today . . . the transaction creates no horizontal incentives for the combined firm to raise prices or reduce quality relative to the stand-alone firms.”<sup>218</sup> Nonetheless, Comcast expects to engage productively to further address fundamental Commission priorities.

## 2. *Corporate Board Changes*

Contrary to the assertion of some commenters, the Commission should not condition the transaction on Comcast expanding its board of directors to include seats that specifically represent New York interests in order to improve responsiveness to customer concerns.<sup>219</sup> The company prides itself on responding to the needs of its customers regardless of where in the Comcast service area they reside. It is unworkable to require that the board must include a representative from each major market in order to ensure that the needs of such markets will be seriously considered – and it is even more tenuous to think that Comcast would disregard the important New York marketplace under any circumstances. Further, UIU’s reliance on the *Fortis-Central Hudson Order* to support mandating such a corporate change is misplaced.<sup>220</sup> The corporate governance matters raised in that case, including the appointment of two directors who reside in New York to the board of Central Hudson Gas & Electric Corporation, were in response to a foreign company’s

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<sup>217</sup> In light of such availability and affordability, there is certainly no need to create brand new initiatives, such as the newly-suggested New York Essentials program, or to mandate rate-specific offerings. Staff Comments at 44-45.

<sup>218</sup> *Israel Decl.* ¶ 19.

<sup>219</sup> See, e.g., Village of Albion Comments at 3 (July 15, 2014); Orleans County Legislature Comments at 1 (July 1, 2014); Niagara County Legislature Comments at 3 (Aug. 8, 2014); UIU Comments at 8-9 (Aug. 8, 2014).

<sup>220</sup> *Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions; Order Authorizing Acquisition Subject to Conditions*, Case No. 12-M-0192 (June 26, 2013) (“*Fortis-Central Hudson Order*”). As discussed in Section III below, even the standard of review for gas and electric utility transactions differs from the standard of review for this transaction.

purchase of a local New York State regulated energy utility with a limited service territory – facts that have no parallel here.<sup>221</sup>

#### **E. Local Franchising Matters and Matters Relating to National Market Share Are Not Relevant to the Commission’s New York State-Focused Review**

As Staff makes clear, the Commission’s review is based upon the proposed transaction and its impact in New York State specifically. Comments that relate to local franchising matters – or to national issues – are not appropriately addressed in this proceeding.

##### *1. Local Franchising Issues*

A small number of local communities have raised issues relating to local franchise compliance and renewal.<sup>222</sup> Those issues are appropriately addressed in the franchise transfer proceedings pending in those communities, not in this docket. Nevertheless, Comcast notes for the record here that there is no basis for concern about Comcast’s commitment to PEG programming and support.<sup>223</sup> Indeed, Comcast looks forward to working with individual franchising authorities in franchise renewals to address local community PEG needs and interests.

Comcast has a long history of supporting PEG across the country based on the interests and needs of specific franchise communities. For example, as the Mayor of Medford, Massachusetts, and the Board of Selectman of Peterborough, New Hampshire note, Medford and Peterborough serve as pilot locations for Comcast’s “Project Open Voice” to bolster local and minority-themed video content by creating a web portal for hyper-local news and information

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<sup>221</sup> Comcast Corporation already has one director from New York, Dr. Judith Rodin.

<sup>222</sup> See, e.g., City of Rochester Comments at 1 (Aug. 4, 2014); City of Oneonta Comments at 1 (June 17, 2014); Town of Caroline Comments at 1 (July 10, 2014); Lockport Community Cable Commission Comments at 1-2 (May 16, 2014); Village of Alden Comments at 1-4 (Aug. 14, 2014).

<sup>223</sup> See, e.g., Gale Brewer, Manhattan Borough President, Comments at 3 (Aug. 8, 2014) (expressing concerns regarding public access programmers Manhattan Neighborhood Network, Queens Public Television and BRIC in Brooklyn); Lockport Community Cable Commission Comments at 1 (May 16, 2014); West Harlem Environmental Action, Inc. Comments at 2 (July 17, 2014); City of New York Comments at 7 (Aug. 6, 2014).

online and On Demand, and content covering the arts, culture, education, government, and recreation.<sup>224</sup> The Peterborough Board of Selectman also describes how Comcast provided facilities and equipment for local customers and businesses to create content for their neighbors and the world, revolutionizing the notion of public access programming.<sup>225</sup> Cape Cod Community Television Corporation similar describes how “Comcast has always been a fully supportive and active participant in community activities . . . and provide[s] technical and/or financial support for many community events.”<sup>226</sup>

2. *National Issues – and in Particular National Market Share Issues – Are Properly Addressed by the Relevant Federal Agencies, and, In Any Event, Raise No Competitive Issues*

Commenters raise a number of arguments that are properly before the appropriate federal agencies and do not belong in this proceeding. For example, some commenters argue that the transaction does not serve the public interest because it will result in a greater nationwide market share in broadband or video, affecting competition across the country for consumers, broadcasters, or programmers. But arguments concerning the alleged *national* impact of the transaction are by definition not New York-specific matters. Comcast supports Staff’s comment that federal-related issues are best addressed by the FCC and the DOJ.<sup>227</sup>

But in the interest of correcting the record with respect to certain parties’ misstatements about Comcast’s video and broadband market shares, they are briefly addressed below.

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<sup>224</sup> Michael McGlynn, Mayor, Medford, MA, Comments at 1 (Aug. 8, 2014); Barbara Miller, Chair, Peterborough Board of Selectman, Comments (Aug. 7, 2014). Under Project Open Voice, Comcast developed portals in six communities – Philadelphia, PA, Hialeah, FL, Houston, TX, Peterborough, NH; Fresno, CA and Medford, MA.

<sup>225</sup> Barbara Miller, Chair, Peterborough Board of Selectman, Comments (Aug. 7, 2014).

<sup>226</sup> Cape Cod Community Television Corporation Comments (Aug. 8, 2014).

<sup>227</sup> Staff Comments at 38.

*Video Share.* Claims that the transaction will harm programmers due to the combined company’s national video share ignore applicable judicial precedent and the realities of the today’s fiercely competitive MVPD marketplace.<sup>228</sup> The combination of Comcast and TWC will leave the combined entity with approximately 29 million subscribers in systems it manages, after divestitures and exchanges involving Charter Communications. Comcast’s share of the MVPD market will be below 30 percent, essentially the same share that Comcast had after the 2002 AT&T Broadband and 2006 Adelphia transactions. This share is plainly insufficient to give Comcast anticompetitive “buyer power” over sellers of video programming.

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 percent on the basis of buyer power concerns.<sup>229</sup> 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. . .*”<sup>230</sup> 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.<sup>231</sup>

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 and online video

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<sup>228</sup> See, e.g., Assemblyman Brad Hoylman, 27<sup>th</sup> District, Manhattan, and Senator Richard Gottfried, 75<sup>th</sup> District, Manhattan, Comments at 1 (Aug. 1, 2014); WGAW Comments at 18-21 (Aug. 8, 2014); Teachout and Wu Comments at 3 (Aug. 8, 2014); Stop the Cap! Comments at 30-31 (Aug. 6, 2014).

<sup>229</sup> See *Time Warner Entm’t Co. v. FCC*, 240 F.3d 1126, 1136 (D.C. Cir. 2001) (“*Time Warner II*”).

<sup>230</sup> *Comcast Corp. v. FCC*, 579 F.3d 1, 9 (D.C. Cir. 2009) (emphasis added).

<sup>231</sup> *Id.* at 8.

distributors. Given these clear judicial precedents and the enhanced competition that has developed in the video marketplace since the decisions were issued, there is no credible basis for concluding that a cable operator serving less than 30 percent of all MVPD subscribers could be a bottleneck or raise competitive issues.<sup>232</sup>

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 determining what programming to carry. Comcast would lose subscribers to other MVPDs if it were to fail to carry channels its customers want to watch, or fail to offer them in attractive packages, and any existing or newly affiliated networks would gain little or no benefit from that strategy given the wide variety of unaffiliated viewing options.<sup>233</sup>

*Broadband Share.* Some opponents likewise claim that Comcast's percent share of a "national market" for broadband services (which some assert will be well over 40 or 50 percent) poses a competitive threat to OVDs and other edge providers.<sup>234</sup> To the contrary, the combined company will not have the incentive or ability to degrade or otherwise be a "bottleneck" for access to its broadband customers.

As a preliminary matter, the most up-to-date data (based on the FCC's recently released Internet Access Services report as of June 2013 and Applicant's corresponding Form 477 data) show the combined company ultimately having a 35.5 percent share of the narrow fixed-only

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<sup>232</sup> See *Comcast/TWC Public Interest Statement* at 143-51; *Rosston/Topper Decl.* ¶¶185-88.

<sup>233</sup> See *Rosston/Topper Decl.* ¶¶ 202-05. See *id.* ¶¶ 176-78 (explaining that the transaction will not give Comcast market power to change the demand for or supply of programming). See also *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.").

<sup>234</sup> See, e.g., Teachout and Wu Comments at 6 (Aug. 8, 2014); WGAW Comments at 12-14 (Aug. 8, 2014).

universe of broadband connections, and a 15.5 percent share when mobile broadband connections are included.<sup>235</sup>

More importantly, however, the combined company's static share of the national universe of broadband subscribers is irrelevant to whether the combined company could act as a bottleneck or harm edge providers, because broadband competition depends on the choices available to each household at the *local* level.<sup>236</sup> Comcast and TWC serve almost entirely distinct geographic areas and do not compete in any relevant market for Internet access services.<sup>237</sup> Therefore, the transaction will change nothing about competition for such services and the number of broadband choices available to consumers. In fact, consumers have ample and increasing choice of broadband providers; the combined company will face substantial competition from a variety of sources – from providers of advanced DSL service (including FTTN), FTTP, increasingly robust and pervasive wireless service, and other types of broadband service (including cable overbuilders and satellite).<sup>238</sup> In short, not only will the combined company's broadband share be lower than opponents' claims, but it also will present no competitive issues.

### **III. STANDARD OF REVIEW**

The Commission should approve the transaction without conditions because it satisfies the public interest test traditionally applied to these types of transactions. Under New York law, the

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<sup>235</sup> See Letter from Kathryn A. Zachem, Comcast, et al., to Marlene H. Dortch, FCC, MB Docket 14-57, at 5 & n.10 (June 27, 2014) (“June 27th Letter”) (calculations include the reduction of 3.9 million subscribers following the Divestiture Transactions with Charter). Prior to the release of the Internet Access Services Report as of June 2013, Dr. Israel calculated Comcast’s post-transaction share of national broadband subscribers as 39.5 percent of fixed-only connections and as 19.9 percent of fixed and mobile connections combined based on December 2012 data (assuming planned divestitures of 3 million customers). See *Israel Decl.* ¶ 42 & Table 1; see also June 27th Letter at 5.

<sup>236</sup> See *Comcast/TWC Public Interest Statement* at 158; *Israel Decl.* ¶¶ 20-23, 42.

<sup>237</sup> See *Comcast/TWC Public Interest Statement* at 127 & n.307, 138.

<sup>238</sup> See *id.* at 42-56, 141; see also *Israel Decl.* ¶¶ 42-47.

Commission's authority to review telephone corporation and cable television transfers is limited to a determination as to whether the transfer of the telephone corporation and/or cable television system is "in the public interest."<sup>239</sup> The framework for such a determination is well established.<sup>240</sup> It takes into consideration, for example, the increasingly competitive markets within which such providers operate, which make most transactions non-problematic; limitations on the Commission's jurisdiction resulting from the dual federal-state legal construct for such services; and the largely (and increasingly) deregulatory regime applicable to such services.<sup>241</sup> This approach traditionally results in very few (if any) conditions for approval of telephone and cable transactions. The overwhelming majority of such transactions have been approved through a streamlined process.<sup>242</sup> In fact, the Commission recently approved a transaction between two large, established providers – sizeable competitors of Comcast and TWC in both business and residential markets – without conditions.<sup>243</sup>

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<sup>239</sup> N.Y. PSL §§ 100(3) and 222(3)(b); *see also*, PSL § 99(2).

<sup>240</sup> *See Joint Petition of PAETEC Holding Corp. et al.*, Order Authorizing Transfer, Case 11-C-0425, at 13 (Nov. 11, 2011) ("PAETEC-Windstream Order"); *see also Joint Petition of Time Warner Cable Inc. and Adelphia Communications Corporation for the Approval of the Transfer of Certain Assets; Joint Petition of Adelphia Communications Corporation, Comcast Corporation and Time Warner Cable, Inc. for Approval of Certain Assets*, Order Approving Petitions, Cases 05-V-0771 & 05-V-0747, at 3 (Nov. 7, 2005) ("TWC-Adelphia Approval Order").

<sup>241</sup> *See, e.g., PAETEC-Windstream Order* at 12-15; *PSC Intermodal Competition Order* at 6 (stating the Commission's intention to "eliminate, consistent with the public interest and to the extent practicable, the asymmetrical aspects of regulations so as to treat each telecommunications provider—wired and wireless, Internet Protocol-enabled (IP-enabled) or traditional circuit-switched voice, data or video—as even-handedly as possible given the legal framework.").

<sup>242</sup> *See, e.g., Joint Petition of Sprint Communications Company L.P. and Starburst II, Inc. for Approval of a Transfer of Indirect Control to Starburst II, Inc. of Sprint Communications Company L.P.*, Recommended Decision Approved as So Ordered, Case 12-C-0532 (Jan. 17, 2013); *Joint Petition of Qwest Communications Company International, Inc. and CenturyLink, Inc., et al. for Approval of the Transfer of Control of Qwest Communications Company, LLC*, So Ordered Staff Recommendation, Case 10-C-0345 (Aug. 24, 2010).

<sup>243</sup> *PAETEC-Windstream Order* at 15-16.

Indeed, the Commission’s competitive telephone and cable transaction framework focuses generally on the simple question of whether the acquiring telephone or cable provider has the legal, financial, technical, and managerial ability to operate the acquired systems (a finding that it does is typically sufficient for approval of the transaction),<sup>244</sup> and the lack of any competitive harm. For example, in a recent case that involved the transfer of over 200 cable television franchises serving nearly half a million customers, the Commission approved the transfer in an efficient fashion upon finding that the acquiring companies had the capability to operate the acquired systems.<sup>245</sup> Notably, the only condition imposed was a requirement that “[t]here shall be no reduction in resources that may result in a diminution in the overall service level as a result of the transfer.”<sup>246</sup>

This approach stands in stark contrast to the regulatory framework that applies to the State’s review of gas and electric utility transactions. These utilities remain subject to rate-of-return, service, and facilities-regulation and are subject to direct oversight by the Commission to ensure the provision of safe, adequate and reliable heat and electric service to captive customer bases. Not surprisingly, therefore, the Commission applies a far more rigorous review standard to transactions involving such entities to ensure (among other things) that captive ratepayers do not bear the risks and inappropriate costs of those acquisitions<sup>247</sup> and that essential service is not

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<sup>244</sup> See *TWC-Adelphia Approval Order; Petition of Adelphia Communications Corporation for Approval, on a Prospective Basis, of the Transfer of Assets Currently Held by Two Adelphia Communications Corporation’s Subsidiaries (Western NY Cablevision, L.P. and Parnassos, L.P.) to AT&T Comcast Corporation, Pursuant to Public Service Law § 222*, Order Approving Transfer, Case 02-V-1327, at 3 (Jan. 22, 2003); *Joint Petition of Time Warner, Inc. and America Online, Inc. for Approval of a Merger in Which Each Corporation will Merge with Subsidiaries of a Newly-Formed Holding Company, AOL Time Warner, Inc., and Continue to Exist as Wholly-Owned Subsidiaries, Pursuant to Sections 99, 100 and 222 of the Public Service Law*, Order Approving Merger, Case 00-V-0274, at 2-3 (June 30, 2000); *PAETEC-Windstream Order*.

<sup>245</sup> *TWC-Adelphia Approval Order* at 3-4.

<sup>246</sup> *Id.* at 4.

<sup>247</sup> See *Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations*, Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy

interrupted.<sup>248</sup> Typical conditions in utility merger proceedings accordingly address plant investment and sale of generation facilities, set end user rates, establish accounting requirements, allocate financial risk and synergy savings, and mandate specific benefits for the captive rate base.<sup>249</sup>

Proposals that the Commission approach this transaction with the same mindset, and apply the same types of burdensome conditions, are entirely unjustified. Electric and gas utilities remain the quintessential public service utilities. Their markets are characterized by a lack of competition, captive customer bases, and direct rate-setting and operational oversight by the Commission. These characteristics are inapplicable to the voice and video communications marketplace, where customers may choose from among many providers and can respond to less-than-good service or higher than expected rates by voting with their feet. For all these reasons, the Commission has expressly distinguished the review process for communications companies from that applicable to electric and gas utilities, noting that a company “providing telecommunications services on a

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Delivery Long Island, Case 06-M-0878, at 5-6 (Aug. 23, 2007) (noting that evaluation of the public interest standard for an electric utility is intertwined with revenue and rate plan issues); *see also Fortis-Central Hudson Order* at 24 (discussing how synergy savings “would be available for rate mitigation” under a rate-regulated model).

<sup>248</sup> It should be noted, however, that even with respect to the electric industry, the Commission has reduced oversight of corporate transfers with respect to those segments that do not have captive ratepayers. For example, note the regulatory structure for retail electric providers, or “ESCOs,” as well as the lightened regulation regime applicable to wholesale electric generators. In the latter case, the Commission has applied the *Wallkill* Presumption for almost twenty years, wherein the Commission eschews jurisdiction over transfers of ownership interests in entities upstream from the parents of New York competitive electric generation subsidiaries, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption. *Wallkill Generating Company*, Order Establishing Regulatory Regime, Case 91-E-0350 (Apr. 11, 1994); *Carr Street Generation Station, L.P.*, Order Providing for Lightened Regulation, Case 98-E-1670 (Apr. 23, 1999).

<sup>249</sup> See, e.g., *Joint Petition of Iberdrola, S.A., et al.*, Abbreviated Order Authorizing Acquisition Subject to Conditions, Case 07-M-0906 (Sept. 9, 2008) (“*Iberdrola Transaction Order*”); *Fortis-Central Hudson Order* at 24. In some recent electric and gas utility transactions, the Commission saw the need to address serious risks presented by foreign company acquisitions of New York State electric and gas utilities. The Commission identified major concerns regarding transparency, cross-subsidization, potential affiliate company abuse, and risky ventures, that it found could pose a threat that the merged companies will have difficulty maintaining appropriate levels of safety, reliability, and customer service performance.” *Iberdrola Transaction Order* at 7-8.

competitive basis *does not require the degree of regulatory scrutiny that applies to monopoly public utilities.*<sup>250</sup>

This approach is more sensible for the communications and video markets because providers in these markets face significant competition. Imposing transactional conditions that do not apply to the rest of the competitors in the market can handicap the merging company and distort the competitive landscape in unintended and unforeseeable ways. As the Commission previously noted, “some regulations, particularly when applied asymmetrically, can be detrimental to the innovation in pricing and services that occur as a result of true competition.”<sup>251</sup> And because competitive markets are typically dynamic and fast moving, transactional conditions can tie one provider’s hands in ways that make it impossible to respond effectively to new market conditions – a risk unlikely to be faced in the more staid utility marketplace. Michael Santorelli, Professor of Law at New York Law School and Director of the Advanced Communications Law & Policy Institute, made a point to note at the Commission’s New York City Public Statement Hearing in this case that “mergers are just not the best way to make lasting policy.”<sup>252</sup>

For all these reasons, the Commission did not apply the heavy-handed utility review framework even in its review of a transaction involving the acquisition by New York State’s most dominant ILEC of one of the State’s largest competitive providers.<sup>253</sup> In that case – the Verizon-MCI merger affecting some 50 million customers nationwide – the Commission did not require

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<sup>250</sup> *PAETEC-Windstream Order* at 13.

<sup>251</sup> *PSC Intermodal Competition Order* at 6.

<sup>252</sup> Statement of Michael J. Santorelli, New York City Public Statement Hearing, Tr. at 40. As Judge Prestemon noted at the hearing, Professor Santorelli oversees the Institute’s many research and writing efforts, a major component of which involves the examination of the array of broadband and technology policy issues impacting New York City and New York State. *See* Tr. at 34.

<sup>253</sup> *Verizon-MCI Order*.

synergy-sharing or apply the heavy-handed rate- and investment-related requirements derived from electric and gas utility mergers; instead, the limited conditions imposed by the Commission related primarily to the merged company’s provision of wholesale services.<sup>254</sup>

Legally, the Commission is required to review this transaction under standards consistent with those applied in precedential transactions.<sup>255</sup> Court of Appeals precedent holds that, absent a valid explanation, “failure to conform to agency precedent will . . . require reversal on the law as arbitrary, even though there is in the record substantial evidence to support the determination made.”<sup>256</sup> Staff contends that the recent change in N.Y. PSL 222 provides a basis for a more stringent review process in this transaction. But the recent amendment to Section 222 did not modify the traditional public interest standard applicable to cable transactions. It merely clarified that the applicant is required to make a positive showing that the proposed transaction is in the public interest, rather than the Commission having to find the absence of a negative impact.<sup>257</sup> And the actual public interest test at issue remained unchanged and should be interpreted as it always has been.<sup>258</sup>

While Staff argues that the law should be interpreted to impose a far more stringent test because the revised statute is now more similar to New York PSL Section 70, which provides the basis for

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<sup>254</sup> See generally *Verizon-MCI Order*. Moreover, New York’s regulatory framework has consistently distinguished competitive providers – like Comcast and TWC – from ILECs, subjecting competitors to light regulatory oversight. See, e.g., *PAETEC-Windstream Order* at 13; *PSC Intermodal Competition Order* at 36-37.

<sup>255</sup> *Matter of Charles A. Field Delivery Service, Inc.*, 66 N.Y.2d 516, 519-20 (1985).

<sup>256</sup> *Id.* (noting the policy reasons for ensuring consistent results in administrative decisions).

<sup>257</sup> Compare N.Y. PSL § 222(3)(b) (2013) with N.Y. PSL § 222(3)(b) (eff. Mar. 31, 2014); see Bill No. S6357-D/A8557-D, Part R, § 1 (eff. Mar. 31, 2014).

<sup>258</sup> See *Lorillard v. Pons*, 434 U.S. 575, 581 (1978) (“[W]here... Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.”); *Robinson v. Broome County*, 195 Misc. 24, 32, 87 N.Y.S.2d 501, 508 (N.Y. Sup. 1949) (“When an amended statute re-enacts the provisions of a former law by the use of equivalent words the re-enactment will not be regarded as a new law, but as a continuation of the existence of the former law.”). While Staff suggests that the Legislature intended a new test, there is no support for that in the legislative history, and Staff points to nothing to support its contention. Staff Comments at 14.

Commission review of gas and utility mergers,<sup>259</sup> there is no legislative history to support that assertion. And on its face, the revised statute is actually more reasonably seen as having been aligned with the review standard applicable to telephone company transactions under PSL Section 100, which similarly assign to the applicant the burden of showing that the transaction is in the public interest.<sup>260</sup> As noted above, the Commission has repeatedly utilized a streamlined approach and refrained from imposing conditions in conducting transaction reviews under Section 100.

Finally, federal law precludes the Commission from using the stringent, heavily regulatory utility approach in reviewing this transaction. In enacting Section 617 of the Federal Communications Act,<sup>261</sup> Congress sought to have the FCC establish an efficient and rational cable franchise transfer process.<sup>262</sup> In response to this Congressional directive, the FCC adopted franchise transfer Form 394 which was designed to include “the information necessary to establish the legal, technical and financial qualifications of the proposed transferee” and to “ensure that the franchise authorities are provided with sufficient information to evaluate and render prompt decisions with respect to such transfer requests.”<sup>263</sup>

Consistent with Section 617 and the FCC’s implementing regulations, cable franchise transfer reviews must be confined to inquiries and information directly relevant to the proposed transferee’s legal, financial, and technical ability to perform under the existing franchise

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<sup>259</sup> Staff Comments at 13.

<sup>260</sup> N.Y. PSL § 100(3). The similarity of the standards and burdens under Section 100 and amended Section 222 are duly noted by Staff. Staff Comments at 12.

<sup>261</sup> 47 U.S.C. § 537.

<sup>262</sup> H.R. Rep. No. 102-862, at 84 (1992) (Conf. Rep.).

<sup>263</sup> *Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992*, Report and Order, 8 FCC Rcd 6828, 6840 ¶¶ 85-86 (1993) (“Cable Television and Competition Act Order”).

agreements.<sup>264</sup> Beyond the specific information provided for in Form 394 and in the franchise agreement itself, franchising authorities may only request such additional information “as is reasonably necessary to determine the qualifications of the proposed transferee.”<sup>265</sup>

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<sup>264</sup> The FCC has also emphasized that “in exercising their transfer jurisdiction, franchising authorities may not seek to circumvent the Commission’s authority over rate regulation, franchise fees or other matters.” *Id.* at 6834 ¶ 39 n.38. The franchising authority also is limited to considering issues relevant to operation of the *cable* system and cable service, and courts have accordingly stricken unrelated conditions. *See MediaOne Group, Inc. v. County of Henrico*, 257 F.3d 356 (4th Cir. 2001); *AT&T Corp. v. City of Portland*, 216 F.3d 871 (9th Cir. 2000). *See also* 47 U.S.C. § 544(b) (“In the case of any franchise granted after the effective date of this title, the franchising authority, *to the extent related to the establishment or operation of a cable system,*” may request that a franchise include requirements for cable facilities and equipment.) (emphasis added). To eliminate any doubt as to the meaning of this provision, the legislative history to Section 624(b) provides that “the franchising authority, as well, cannot enforce or impose requirements which are not related to the operation of a cable system.” H.R. Rep. No. 98-934, at 68 (1984).

<sup>265</sup> *Cable Television and Competition Act Order*, 8 FCC Rcd at 6840 ¶ 86.

#### **IV. CONCLUSION**

As the record clearly demonstrates, the proposed transaction will enhance consumer welfare and competition and deliver substantial public interest benefits for the residents, businesses, schools, libraries, students, and municipalities of New York. At the same time, it will cause no competitive or public interest harms. Accordingly, Petitioners respectfully urge the Commission to expeditiously approve this transaction. Of course, Comcast and Time Warner Cable remain open and eager to work constructively with the Commission and Staff, and the Companies are confident that they will be able to address any legitimate remaining concerns the Commission and Staff express regarding additional public interest considerations in connection with the Commission's approval of the transaction.

Respectfully submitted,

*Andrew M. Klein*

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Dated: August 25, 2014

## **APPENDIX A**

**SELECTED COMCAST-NBCUNIVERSAL  
DIVERSITY & INCLUSION AWARDS  
2010-2014**

**Overall/Multiple Focus Areas**

- For the second consecutive year in 2014, Comcast-NBCUniversal was named among *DiversityInc* magazine's prestigious ***Top 50 Companies for Diversity*** list, moving up from No. 49 in 2013 to No. 44. The "Top 50" includes companies from a wide range of industries that *DiversityInc* recognizes for "using diversity management to attract and retain a global, multicultural workforce and gain market share." Companies participate in the annual survey assessing four areas of diversity management:
  - CEO Commitment: accountability for results, communications, visibility
  - Human Capital: management, professional development, and promotions
  - Corporate and Organizational Communications: mentoring, employee resource groups, philanthropy, consistency/effectiveness of diversity-management initiatives
  - Supplier Diversity: spend with certified minority-owned and women-owned companies, as well as spend with companies owned by people with disabilities, veterans, and members of the LGBT community

Comcast was recognized as one of *DiversityInc's 25 Noteworthy Companies* for the three consecutive prior years.

- Comcast and NBCUniversal were named among the ***2014 LATINO 100*** by *Latino Magazine*, which recognizes companies providing the most opportunities for Latinos.
- For the second consecutive year in 2014, ***U.S. Veterans Magazine*** (USVM) named Comcast-NBCUniversal among its ***Best of the Best*** lists for "Top Veteran-Friendly Companies" and "Top Supplier Diversity Programs."
- For the second year in a row in 2014, ***Hispanic Network Magazine*** named Comcast-NBCUniversal among its ***Best of the Best*** in "Top Diversity Employers" and "Top Supplier Diversity Programs."
- The ***Urban League of Southern Connecticut*** awarded NBCUniversal its ***Corporate Diversity Award*** in June 2014.
- The readers of ***Diversity/Careers in Engineering & Information Technology*** recognized Comcast-NBCUniversal as a ***2014 Best Diversity Company***.

- The **National Association for Multi-ethnicity in Communications (NAMIC)** honored Comcast and NBCUniversal with its **2013 Industry Diversity Champion Award**, which is given to a company demonstrating an exemplary effort to address diversity and inclusion among its workforce and within the communities it serves. The **Industry Diversity Champion Award** was presented during the National Cable Telecommunications Association (NCTA)'s annual Cable Show held in June 2013 in Washington, D.C.
- In November 2013, Comcast and NBCUniversal were both designated a **2013 Top Company for People of Color by NAMIC**, based on the findings of NAMIC/WICT's (Women in Cable Telecommunications) Cable Telecommunications Workforce Diversity Survey.
- **OCA - Asian Pacific American Advocates**, a national membership driven organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans (APAs), awarded Comcast-NBCUniversal its **2013 Outstanding Corporate Partner Award** during the National Asian Pacific American Corporate Achievement Awards in November 2013. The distinction recognizes Comcast-NBCUniversal for its demonstrated commitment to diversity and to partnering with OCA on community investment efforts.
- **Black EOE Journal** (BEOEJ) named Comcast among its **2013 Best of the Best** lists for "Top Diversity Employers" and "Top Supplier Diversity Programs." In determining the Best of the Best companies, the BEOEJ polled hundreds of Fortune 1000 companies for its 2013 Best of the Best evaluations. BEOEJ is a leading African American career and business magazine. Its annual review is an evaluation of the nation's employers, initiatives, government agencies, and educational institutions.
- **Hispanic Network Magazine** named Comcast and NBCUniversal among its **2013 Best of the Best** lists for "Top Diversity Employers" and "Top Supplier Diversity Programs" for 2013.
- **U.S. Veterans Magazine** (USVM) named Comcast-NBCUniversal among its **2013 Best of the Best** lists for "Top Veteran-Friendly Companies" and "Top Supplier Diversity Programs."
- **Professional Woman's Magazine** recognized Comcast-NBCUniversal among its **2013 Best of the Best** lists for "Top Diversity Employers for Women" and "Top Supplier Diversity Programs for Women."
- In March 2013, **Calvert Investments**, a mutual fund firm that invests in companies that engage in sustainable and responsible practices, released its ranking of diversity among companies in the S&P 100. Using an in-depth methodology, Calvert examines diversity policies, programs, and performance metrics that these companies employ. This year, **Comcast scored 90 points out 100 for its record on including women, minorities, and LGBTs**. Among other initiatives, Calvert highlighted Comcast's diversity recruiting

events, new Office of Corporate Diversity and Inclusion, and restructured Internal Diversity Council.

- Comcast Corporation was honored with the ***New York Urban League's (NYUL) 2013 "Champions of Diversity" Award***, presented at the 10th Anniversary Champions of Diversity (COD) Awards Breakfast in February 2013. The COD Awards Breakfast recognizes companies that understand the need for diversity in the job market, embracing diversity to its fullest potential, and understanding that, to be successful in today's competitive market, diversity must be reflected in every aspect of the workplace. Corporate leadership, employment policy, supplier relations, and corporate giving are fundamental tenets of NYUL's philosophy. In listing Comcast-NBCUniversal among its COD honorees, the NYUL recognized that the company's "top-down commitment to diversity is evident through its leadership, hiring, supplier relations and philanthropic activities."
- ***Black Enterprise*** magazine selected Comcast as one of its 40 Best Companies for Diversity in 2012. *Black Enterprise* compiles its 40 Best Companies for Diversity list with a survey measuring diversity among employee base, senior management, board of directors, and procurement.
- Comcast-NBCUniversal ranked No. 9 among ***HispanicBusiness.com's 2013 Best Companies for Diversity***. Each year, *Hispanic Business* magazine analyzes top corporation's efforts on diversity in recruitment and retention, governance, supplier development, and philanthropy.
  - 2013 marks Comcast's 9th consecutive year on *Hispanic Business*'s Top 60 list (Comcast was also ranked No. 9 in 2012, moving up from No. 37 in 2011, and No. 38 in 2010).
- For the second year in a row, Comcast was named among ***Asian Enterprise Magazine's Fortune 500's Best Companies for Asian Americans and Pacific Islanders***, recognizing Comcast's "invaluable contribution to the Asian American and Pacific Islander community." (August 2012)

## Governance

- Comcast and NBCUniversal's Diversity Councils are ranked among the ***2014 Top 25 Diversity Councils by the Association of Diversity Councils*** (a practice group of the diversity and inclusion training firm PRISM International, Inc.). Exact rankings will be announced in October 2014.
  - 2014 is the sixth consecutive year that Comcast has made the *Top 25* list.
  - In 2009, Comcast was ranked No. 12; in 2010, Comcast was ranked No. 13; in 2011, Comcast was No. 8; in 2012, Comcast and NBCUniversal's Diversity

Councils were ranked No. 5. In 2013, Comcast and NBCUniversal's Diversity Councils were ranked No. 3.

- Comcast received a score of 85 on the Hispanic Association of Corporate Responsibility's (HACR) 2013 ***Corporate Inclusion Index*** (CII). The HACR CII, a component of HACR's Corporate Accountability Strategy, takes a comprehensive measurement of Hispanic inclusion at *Fortune 100* and HACR corporate member companies by focusing on HACR's four pillars of corporate social responsibility and market reciprocity: Employment, Procurement, Philanthropy, and Governance.
  - Comcast earned a score of 75 on the 2012 CII, 60 points on the 2011 CII, and 50 points on HACR's 2010 CII.
- In May 2012, the ***Equality Forum*** honored NBCUniversal with its ***International Business Leadership Award***.
- Comcast received a ***Corporate Impact Award*** at the California Asian & Pacific Islander Policy Summit, *iADVOCATE*, in April 2012.
- At the ***National League of Cities***' (NLC) Congress of Cities and Exposition in 2012, Comcast officials accepted awards of appreciation from Asian Pacific American Municipal Officials (APAMO), Women in Municipal Government (WIMG), National Black Caucus of Local Elected Officials (NBC-LEO), Hispanic Elected Local Officials (HELO) and the Gay Lesbian Bisexual Transgender Officials (GLBTO).

## **Workforce**

### **All Communities**

- ***Equal Opportunity*** magazine ranked Comcast No. 22 in among its 2014 ***Top 50 Employers***. Readers of *Equal Opportunity* select the top companies in the country for which they would most prefer to work or believe would provide a positive working environment for members of minority groups.
- In March 2014, ***The Legal Intelligencer*** named Comcast's legal team among Pennsylvania's Best In-House Legal Departments of the Year for, among other things, its commitment to diversity.
- The Legal Department of Comcast Cable Communications was selected to receive the ***Minority Corporate Counsel Association's 2013 Employer of Choice Award for the Mid-Atlantic Region***. Comcast was selected from law department applicants of corporations across the Mid-Atlantic for demonstrating a commitment to diversity and creating and maintaining an inclusive workplace.

- Comcast was named one of the **2012 Best Adoption-Friendly Workplaces** by the Dave Thomas Foundation for Adoption. The list recognizes the top 100 companies with the best adoption benefits available to their employees. Comcast tied for No. 3 with Verizon Communications in the Communications and Telecommunications category.
- Comcast placed No. 9 out of 50 among **Diversity MBA Magazine's "Top 50 Companies for Diverse Managers to Work."** (April 2010)

### African American

- Comcast received the **National Association of Black Accountants' (NABA) 2012 Workforce Diversity Award.**
- Comcast received the "**Outstanding Achievement in Workforce Initiatives**" honor from the **Philadelphia Association of Black Accountants** in 2012.
- Comcast was recognized as the **2011 National Black MBA Association, Inc.'s Corporate Partner of the Year.**
- NBCUniversal won the **2010 National Association of Black Journalists Best Practices Award**, given annually to a news organization for extraordinary coverage of issues of great importance to the black community and for efforts in increasing diversity among newsroom staff and management.

### Asian

- Comcast received the **Asian American Justice Center's 2011 Bridge Builder Award.** (October 2011)
- Craig Robinson, NBCUniversal's Chief Diversity Officer, was honored by the **Japanese American Citizens League (JACL)** in September 2012 with its **Salute to Champions Award**. Comcast received the JACL's Salute to Champions Award in September 2011.
- **Hmong American Partnership** featured Comcast as its "**Partner of the Month**". (August 2011)
- Comcast Cable received the **APIsCAN Corporate Vision and Leadership Award from the Asian Pacific Islanders California Action Network.** (July 2011)

### Hispanic

- As mentioned above, for the second consecutive year in 2014, Comcast and NBCUniversal were named among *Latino Magazine's LATINO 100*.

- In its Fall 2013 issue, *Latino Magazine* recognized Comcast among the *LatinoSTEM10* as a top 15 company actively encouraging Latinos to enter STEM (science, technology, engineering and mathematics) careers.
- Comcast Corporation was ranked No. 3 among the *2013 LATINA Style 50 Report*, the seventh consecutive year that Comcast was selected for the list.
  - Comcast was selected as the *Company of the Year (No. 1)* for the *2012 LATINA Style 50 Best Companies for Latinas to Work*.
  - Comcast ranked No. 45 on LATINA Style's 2011 list. In 2010, Comcast ranked No. 46.

## Women

- *Women in Cable Telecommunications* (WICT) ranked Comcast (and Cox Communications) first among Best Operators for Women in Cable; and NBCUniversal ranked first among Best Programmers for Women in Cable in *WICT PAR's 2013 Best Companies for Women in Cable Telecommunications* survey, the first time one company won both awards the same year.
- Comcast was named *Regional Corporation of the Year* by the *Woman's Business Enterprise Council of PA NJ DE*. (May 2010)

## Veterans

- In November 2013, *G.I. Jobs* and *Military Spouse* magazines ranked Comcast-NBCUniversal No. 76 among the *Top 100 Military Friendly Employers for 2014*. Companies compete for this elite title through a data-driven survey, with criteria scoring key programs and policies such as the strength of company military recruiting efforts, percentage of new hires with prior military service, and retention programs.
- Due to an unprecedented number of participants in its annual survey, *G.I. Jobs*, for the first time, awarded a new *Military Friendly Employers®* designation in 2012, recognizing employers that offer tremendous benefits for military personnel but fall outside of *G.I. Jobs'* Top 100 list. Comcast was named among this elite group of *Military Friendly Employers®* in *G.I. Jobs* magazine's January 2013 issue, having qualified for this designation based on our survey score, which meets *G.I. Jobs'* stringent criteria and exceeds an established baseline.
  - Comcast was listed among *G.I. Jobs'* 2011 Top 100 Military Friendly Employers (at No. 87); Comcast also ranked No. 87 on the 2010 *G.I. Jobs'* Top 100 list.
- Comcast-NBCUniversal was named one of *U.S. Veterans Magazine's "2012 Best of the Best: Top 100 Companies Recruiting Veterans."*

- In November 2012, ***the U.S. Chamber of Commerce*** and its National Chamber Foundation announced Comcast and NBCUniversal among its ***2nd Annual Lee Anderson Hiring Our Heroes Award Winners***, honoring employers that have gone above and beyond to honor the sacrifices made by our nation's military families. Specifically, Comcast and NBCUniversal received the ***Lee Anderson Veteran and Military Spouse Employment Award***, which recognizes Comcast and NBCUniversal's proven dedication in addressing the challenges faced by veterans, transitioning service members, and military families in their search for meaningful employment.

## LGBT

- For the second year in a row, Comcast-NBCUniversal earned a 100% score on the ***Human Rights Campaign's*** (HRC) 2014 Corporate Equality Index (CEI), and was recognized among ***HRC's "Best Places to Work"*** list. HRC's CEI rates large U.S. employers and their policies and procedures pertinent to LGBT employees.
  - Comcast scored 80 points out of 100 on HRC's 2012 CEI, 95 out of 100 on HRC's 2011 CEI, and 90 out of 100 on HRC's 2010 CEI.
- For the second year in a row in 2012, NBCUniversal was selected as one of ***Work Life Matters magazine's Top Companies for LGBT Equality***, honoring the trailblazing company's work for LGBT equality, both within and outside the company. (June 2011 and November 2012)

## People with Disabilities

- Comcast was listed No. 27 among ***Careers & the disABLED Magazine's Readers' Choice Top 50 Employers for 2014***. The Readers' Choice Awards include public and private sector employers for which the publication's readers would most like to work or that they believe would provide a progressive environment for people with disabilities.
  - Comcast ranked No. 9 on the 2013 list and No. 41 on the 2012 list.
- Universal Orlando won a ***2012 Exceptional Employer Award from the State of Florida's Agency for Persons with Disabilities***. Lighthouse Central Florida nominated Universal Orlando for its work with them on providing employment opportunities for persons with disabilities.
- NBCUniversal won the ***Disability Rights Legal Center's Corporate Diversity Award***. (November 2011)

## **Procurement**

- The **National Veteran-Owned Business Association** (NaBOVA) named Comcast and NBCUniversal among its 2014 *10 Best U.S. Corporations for Veteran-Owned Businesses*. Comcast and NBCUniversal had previously won the award in 2012.
- **DiversityBusiness.com** ranked Comcast-NBCUniversal No. 27 among its **Top 50 Organizations for Multicultural Business Opportunities** (Div50) for 2014. The *Div50* award recognizes commitment to diversity throughout the nation's multicultural business community and commitment to growing this economic sector. The award is based on factors such as volume, consistency, and quality of business initiatives a company grants to multicultural suppliers. 2014 marked the company's ninth consecutive year on the list.
- Comcast is ranked 12th among the 2014 **HispanicBusiness.com Top 25 Supplier Diversity Companies** list.
- In August 2014, the **National Association for Multi-ethnicity in Communications (NAMIC)** announced the winners of its 2014 **Excellence in Multi-cultural Marketing Awards (EMMAs)**, garnering 10 top awards across Case Studies/Campaigns and Marketing Tactics. The EMMAs recognize excellence in marketing designed to culturally diverse audiences and customers among African American, Asian, Hispanic and other market segments. Comcast also earned an additional six 2014 EMMA Awards for international marketing efforts.
  - In 2013, Comcast garnered five first place wins to lead the Cable Distributors division. Additionally, Telemundo Media, including mun2, garnered three first place wins, and International Media Distribution earned two first place awards. Comcast's EMMA wins for 2012 totaled 13.
  - Comcast, in collaboration with GRM Marketing, won first place in the Tactics Category for Experimental Marketing of NAMIC's 2011 **Excellence in Multicultural Marketing** Awards (EMMAs) for La Academia de Comcast. (October 2011)
- In December 2013, the **PA-NJ-DE Minority Supplier Development Council (MSDC)** recognized Comcast as **National Corporation of the Year** based on the company's supplier diversity policies, contracting activity, MBE development, leadership, and engagement. The PA-NJ-DE MSDC is one of 37 regional councils of the National Minority Supplier Development Council, which certifies minority-owned businesses and creates access to opportunities for them.
- In September 2013, Comcast-NBCUniversal was honored among **United States Hispanic Chamber of Commerce**'s (USHCC)'s **Million Dollar Club** (\$100M-\$250M category), which recognizes corporations and procurement executives who actively demonstrate an unwavering commitment to Hispanic Business Enterprises (HBEs) through their work with Hispanic suppliers.

- Comcast was named one the ***Best Companies for Asian American and Pacific Islanders*** in 2012 by ***Asian Enterprise*** magazine, which recognized Comcast's "unwavering and continued commitment to the small business community" and "invaluable contribution to the Asian American and Pacific Islander community."
- The ***Rocky Mountain Minority Supplier Development Council*** named Comcast its ***Corporate Partner of the Year*** in July 2012.
- Comcast was ranked No. 1 among the ***Top 50 Green Fleets*** in 2012 by ***Fleet Central Magazine***, thanks in part to Comcast's effective outsourcing relationship with Burt Fleet. Burt Fleet, an MSDC-certified supplier, has provided in excess of 20,000 vehicles to Comcast across our service footprint, making Comcast the 4th largest fleet in the U.S., and aiding Comcast's commitment to lowering our carbon footprint by purchasing flex-fuel and hybrid vehicles.
- NBCUniversal was named ***2012 Corporation of the Year*** by the ***Greater Los Angeles African American Chamber of Commerce*** (GLAAACC), for its contribution and support of the African American business community.
- Comcast was recognized as the ***National Black Chamber of Commerce's Corporate Partner of the Year*** for its achievements with diverse suppliers. (August 2011)
  
- The ***Hispanic Chamber of Commerce*** in Philadelphia recognized Comcast as the 2010 "***Corporate Advocate of the Year***."

## **Programming**

- The ***National Hispanic Media Coalition*** (NHMC) honored Comcast for its Outstanding Diversity Practices during NHMC's ***17th Annual Impact Awards Gala*** in February 2014. The Impact Awards Gala celebrates the artistic achievement of American Latino artists shows work is so creative and outstanding that it must be recognized. NHMC also honors those individuals or entities whose achievements have greatly benefited the welfare of the Latino community in front of and behind the camera.
- Comcast-NBCUniversal was awarded the ***2014 Multicultural TV Front Runner Award*** for the company's commitment and efforts to support multicultural communities -- in particular, for noteworthy efforts like *His Dream, Our Stories*, the interactive and comprehensive multimedia package we unveiled to honor the 50th anniversary of the March on Washington for Jobs and Freedom.
- The ***GLAAD Media Awards*** recognize and honor media for their fair, accurate, and inclusive representations of the lesbian, gay, bisexual and transgender community and the

issues that affect their lives. They also fund GLAAD's work to amplify stories from the LGBT community that build support for equality. In 2014, sixteen Comcast-NBCUniversal productions were nominated for the **25th Annual GLAAD Media Awards**, which recognize and honor media for their fair, accurate, and inclusive representations of the LGBT community and the issues that affect their lives.

- *Dallas Buyers Club* (Focus Features) – Outstanding Film
- “There’s the Door” *Necessary Roughness* (USA Network) – Outstanding Individual Episode
- *Days of Our Lives* (NBC) – Outstanding Daily Drama
- “Gay Rights at Work” *MSNBC Live* (MSNBC) – Outstanding TV Journalism Segment
- “Pride & Prejudice” Melissa Harris-Perry (MSNBC) – Outstanding TV Journalism Segment
- “Scouts Dishonor” *The Last Word with Lawrence O’Donnell* (MSNBC) – Outstanding TV Journalism Segment
- “Wild Blue Yonder: Scott Hines” *The Rachel Maddow Show* (MSNBC) – Outstanding TV Journalism Segment
- “Entregando a mi nieta” *Caso Cerrado* (Telemundo) – Outstanding Daytime Talk Show Episode [Spanish Language]
- “Exclusivas Declaraciones” *Al Rojo Vivo* (Telemundo) – Outstanding Daytime Talk Show Episode [Spanish Language]
- “Matrimonios del mismo sexo: Entrevista con Daniel Zavala y Yohanel Ruiz” *Un Nuevo Día* (Telemundo) – Outstanding Daytime Talk Show Episode [Spanish Language]
- “Decisión Histórica” *Noticiero Telemundo* (Telemundo) – Outstanding TV Journalism Segment [Spanish Language]
- “Hasta que la corte nos una” *Noticias Telemundo 51* (WSCV-51 [Miami, Fla.]) – Outstanding Local TV Journalism [Spanish Language]
- “Natalia: rompiendo barreras” *Noticiero Telemundo Arizona* (KTAZ-39 [Phoenix, Ariz.]) – Outstanding Local TV Journalism [Spanish Language]

- “Reportaje Especial: Derechos Homosexuales” *Noticiero Telemundo Washington* (WZDC-25 [Washington, D.C.]) – Outstanding Local TV Journalism [Spanish Language]
- *Brooklyn Nine-Nine* (Universal Television) – Outstanding Comedy Series category
- “Fred Rosser” *The Ellen DeGeneres Show* (syndicated/airs on NBC’s 10 Owned Stations) – Outstanding Talk Show Episode
- In May 2014, the ***National Academy of Television Arts and Sciences*** awarded Telemundo two ***Sports Emmys***, the most of any Spanish-language broadcast network. Telemundo also received more nominations and awards than any other Hispanic broadcast network at the 35th Annual Sports Emmy® Awards, the first time specific categories for Spanish-language television were included. The World Cup classifying match between Mexico and Costa Rica on “Rumbo al Mundial” in October 2013 was recognized as “Outstanding Live Sports Coverage in Spanish” and the network's acclaimed sportscaster Andrés Cantor was honored as “Outstanding On-Air Sports Personality in Spanish.”
- In July 2013, ***NAMIC*** announced winners of its ***19th Annual Vision Awards***. Presented in partnership with ***NAMIC - Southern California***, the awards recognize original, multi-platform television programming that depicts the lives, spirit, and contributions of people of color and best reflects the diversity of the global viewing audience. 2013 winners include:
  - Comedy: *The Rickey Smiley Show* (TV One)
  - Digital Media – Long Form: *Black and Latino* (mun2)
  - Digital Media – Short Form: *The Secret of Chancla* (mun2)
  - Reality (Unscripted): *Tia and Tamera* (Style Network)
  - Reality (Social Series): *Save My Son* (TV One)
- Eighteen NBCUniversal productions were nominated for the ***24th Annual GLAAD Media Awards (2013)***, including *Smash* (Outstanding Drama Series), *The New Normal* (Outstanding Comedy Series), *Titulares Telemundo*'s interview with openly gay boxer Orlando Cruz, and *Days of Our Lives* (Outstanding Daily Drama).
- According to the ***National Association of Black Journalists***' 2012 Diversity Census, NBC again led the industry with 27% newsroom management diversity, up from the prior year's 24%.

- Comcast Cable was the first-ever recipient of ***Broadcasting & Cable and Multichannel News' new award for Leadership in Hispanic Television.*** (October 2012)
- MSNBC was announced as the recipient for the ***DANDI Award in the Media*** category at the first annual DANDI Awards Ceremony held in July 2012. The Diversity and Inclusion Awards, better known as the DANDI Awards, was founded in 2012 to recognize exemplary commitment and focus on diversity and inclusion. The mission of the DANDIs is to celebrate the contributions of any individual, group or organization that is truly making a difference toward creating a more diverse and inclusive world. MSNBC prepared a video that was presented during the awards ceremony, featuring Phil Griffin and emphasizing the network's commitment to diversity.
- The ***American Association of People with Disabilities*** honored NBCUniversal's USA Network with its Image Award at the annual ***AAPD Leadership Awards*** Gala in March 2012. USA was acknowledged for *Characters Unite*, which has helped promote equal rights and opportunities for people with disabilities. *Characters Unite* is USA Network's public service campaign to address the social injustices and cultural divides still prevalent in our society. Inspired by USA's iconic *Characters Welcome* brand and, with the support of leading national nonprofit organizations, the ongoing initiative is dedicated to supporting activities and messaging that combat hate and discrimination while promoting understanding and acceptance — on-air, online, and in communities around the country.
- Comcast and NBCUniversal were recognized at the ***23rd Annual GLAAD Media Awards*** in 2012. Among other mentions:
  - Neil Meron and Craig Zadan, producers of *Smash*, were honored with the ***Vito Russo Award***, which is presented annually to openly LGBT media professionals who have made a significant difference in promoting equality;
  - FOCUS Features' *Pariah* was honored as Outstanding Film—Limited Release;
  - Telemundo's "Lesbianas celebran 10 años" Caso Cerrado was honored as Outstanding Daytime Talk Show Episode.
  - GLAAD's Acting President took a special moment in his remarks to thank Comcast for sharing GLAAD's anti-bullying public service announcements with Comcast's nearly 23 million video customers;
  - Tina Fey and Rachel Maddow were featured in GLAAD's video clip recognizing media personalities who were committed to the positive representation and inclusion of LGBT community members and issues in the media.
- In February 2012, the ***National Latino Media Council*** (NLMC) released its 2011 Network Diversity report card, awarding NBC an overall B+ grade (an improvement over 2010's B grade). NBC earned an A+ for "Actors: On-Air Primetime Reality Shows," the highest score in any category for any network. NBC also earned an A in the

“Entertainment Creative Executives” category, as well as the “Network Commitment to Diversity Initiatives and Submission of Data” category. The NLMC noted that there have been “tangible and incremental” results since NBC’s 2000 MOU was signed.

- In December 2011, NBCUniversal received an overall grade of B from the ***Asian Pacific American Media Coalition***, the highest grade ever given by the group.
  - In December 2011, the ***Asian Pacific American Media Coalition*** (APAMC) issued its annual report card. Overall, NBC, with a B (up from a B- in 2010), ranked highest in this year’s APAMC report cards, which marks the 10th anniversary of judging the inclusion of APAs in eight categories: actors, unscripted show participants, writers/producers, directors, development, procurement, executives, and network initiatives. No other network has ever received this high a grade from the coalition. Out of 12 report cards since 2000, NBC has received the highest overall grade 8 times (5 of them ties with other networks). NBC has also received the highest grade for actors, development deals, and writers/producers, and tied for top honors in procurement, executives, and diversity initiatives. Guy Aoki, Co-Chair of the APAMC, stated, “last season, NBC had 13 regulars of Asian Pacific descent (boosted by five regulars on *Outsourced*). This was the highest number any network has been able to achieve in the 11 years the Coalition has released report cards. Accordingly, we have issued our highest grade in the actors category ever, a B+. NBC is the only network to receive this high a grade, which they also received in 2004.”
- NBCUniversal was named to the ***WICT Foundation/PAR Initiative Best Programmers for Women in Telecommunications*** in 2011.
- NBCUniversal won several categories at the 22nd Annual GLAAD Media Awards (2011), including ***Outstanding Individual Episode*** for the “Klaus & Greta” episode of *30 Rock*. MSNBC’s *The Last Word with Lawrence O’Donnell* won for Outstanding TV Journalism Segment for its “Fort Worth Speech” segment. (April 2011)
- In April 2011, MSNBC President Phil Griffin was honored by the ***National Action Network*** as a recipient of its 13th annual ***Keepers of the Dream Award***.
- In July 2011, NBC’s *Parenthood* was selected to receive the ***American Federation of Television and Radio Artists***, AFL-CIO’s (AFTRA) 2011 American Scene Award in the Television Dramatic Program category for its diversity of age and ethnicity, as well as groundbreaking storylines that accurately and honestly depict the intricacies of relationships. In addition, NBCUniversal’s *The Voice* was selected as recipient of AFTRA’s 2011 American Scene Award in the Talent competition.

## **APPENDIX B**

**SELECTED COMCAST-NBCUNIVERSAL  
COMMUNITY INVESTMENT AWARDS  
2010-2014**

- In 2014, Comcast and NBCUniversal received the ***Innovative Program Award*** for *Internet Essentials* at the 2014 T. Howard Foundation Diversity Awards Dinner.
- In March 2014, the ***Denver Indian Center*** presented its Excellence in Corporate Partnership Award to Comcast-NBCUniversal for the company's outstanding work with American Indian communities in Colorado and across the United States. Comcast Denver was recognized separately as Local Partner of the Year.
- Comcast-NBCUniversal received a ***Distinguished Corporation Award*** from the ***Congressional Black Caucus Foundation, Inc. (CBCF)*** for its work in promoting digital literacy. This award honors corporations that have demonstrated a commitment to cultivating minority and civic engagement, public discourse on African American history, or the preservation of important historic artifacts through philanthropic or programmatic support. The award was presented at CBCF's Avoice Heritage Celebration on February 2014.
- In December 2013, Comcast was recognized among ***The Civic 50***, an initiative to identify the 50 most community-minded companies in the nation. Additionally, Comcast was recognized as No. 3 – Best in Communications industry. Launched in 2012, *The Civic 50* is an initiative to survey and rank S&P 500 corporations on how they engage with the communities they serve and institutionalize these practices in their corporate culture. Specifically, *The Civic 50* recognizes companies seeking to best use their time, talent, and resources to improve the quality of life in the communities where they do business.
- During its 2013 Corporate Philanthropy Summit, the ***Philadelphia Business Journal*** presented Comcast with the ***Top Community Impact Award*** and the ***Top In-Kind Donor Award*** in the extra-large company category. Comcast was also ranked as the fifth-largest corporate charitable giver in the Philadelphia region.
- In September 2013, the ***Marin County Chamber of Commerce*** awarded Comcast its ***Spirit of Marin Award*** for its efforts in the *Internet Essentials* program.
- In September 2013, the ***Foundation for Florida Virtual Schools*** awarded Comcast its ***Bridging the Gap Award*** for demonstrating a resourceful approach to education by connecting communities through innovation and technology.
- In June 2013, WICT honored Comcast as an exceptional operator that champions community and public service programs in support of women's initiatives through the *Internet Essentials* program.
- In May 2013, the ***Gay, Lesbian & Straight Education Network (GLSEN)*** honored USA Network's *Characters Unite* campaign with its ***Inspiration Award*** during GLSEN's Respect Awards in New York City.

- During the ***United Way Spirit of America® and Summit Awards*** program in April 2013 in Indianapolis, the United Way recognized Comcast Corporation with awards for ***Philanthropic Engagement and Volunteer Engagement***. The Spirit of America and Summit Awards program, celebrating its 26th year, is United Way's highest national honor for corporations, recognizing United Way Global Corporate Leaders with the most comprehensive commitments to strengthening communities.
- In January 2013, the ***United States Conference of Mayors*** recognized Comcast and the City of Chicago as the ***Outstanding Public/Private Partnership*** for the *Internet Essentials* program.
- In 2013, Comcast received a Beacon Award® from the Association of Cable Communicators for its Internet Essentials Ambassadors Program.
- In June 2012, Comcast was honored with the ***Communications Pillar Award at the United Way's Annual Community Celebration***. The award recognizes a company that strategically raises visibility and awareness through outstanding communication to employees about the impact United Way makes in the Chicagoland community. Among other mentions:
  - Comcast's Angie Wells received the Outstanding Volunteer of the Year Award, which recognizes a United Way volunteer whose work has gone above and beyond the defined requirements and resulted in groundbreaking achievements towards the advancement of United Way's LIVE UNITED 2020 vision.
  - Comcast was also recognized for giving 110% year-over-year with our Comcast United Way employee campaign.
- Comcast received a ***Platinum PR Award*** in 2011 for Comcast Cares Day.
- Comcast Cable Communications was honored with a ***2011 Visionary Award presented by United Spinal***.