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Federal Communications Commission
Office of the Secretary

UNITED STATES GOVERNMENT

memorandum

DATE: December 9, 2014

TO: Marlene H. Dortch, Secretary, Federal Communications Commission

FROM: William T. Lake, Chief, Media Bureau

SUBJECT: Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications Inc., and SpinCo for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 14-57

The Media Bureau requests that the following exhibits based on Commission data be entered into the record of the above-captioned assignment and transfer of control proceeding (transaction proceeding).

The Applicants in this proceeding, as well as petitioners and commenters, have made various filings asserting that subscription to particular broadband speeds is relevant to our consideration of these transactions and relying on different sets of subscriber data.[1]

We make no determination at this time concerning contested matters in this proceeding. We seek to facilitate informed discussion. The Commission is in possession of the most up-to-date and comprehensive subscriber data – collected as of December 2013. We make the data available for the purpose of receiving informed comment in this proceeding, including to assist with economic analysis of

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[1] *See* DISH Comments at 27, MB Docket No. 14-57 (Aug. 25, 2014); Public Knowledge and Open Technology Institute Petition to Deny at 8, MB Docket No. 14-57 (Aug. 25, 2014) (asserting that an important consideration for examining potential effects of the proposed transactions on consumers is the number and overall percentage of subscribers to which the Applicants will provide a high-speed broadband service that has minimum speeds of 25 Mbps downstream); Netflix Comments at 16, MB Docket No. 14-57 (Aug. 25, 2014) (asserting that it is important to consider the number of subscribers to which the Applicants will provide minimum speeds of 25 Mbps downstream for multi-person households and minimum speeds of 10 Mbps downstream for individuals); Comcast and Time Warner Cable Opposition at 146, MB Docket No. 14-57 (Sept. 23, 2014) (noting that, based on the most recent data available to them – June 2013 data collected through the Commission's Form 477 – the post-transaction percentage of subscribers to which the merged firm would provide fixed broadband services would be 35.5 percent nationally).

Comcast's estimate is based on the Commission's speed benchmark in past Broadband Progress Reports – connections of at least 4 Mbps downstream and at least 1 Mbps upstream, using as a proxy the Commission's closest reporting tier for that time period of 3 Mbps downstream and 768 kbps upstream. That benchmark is under review. Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 14-126, *Notice of Inquiry*, 29 FCC Rcd 9747, 9755, para. 14 & n.34 (2014) (*Broadband Progress Notice of Inquiry*).

In addition, Comcast and Time Warner Cable state that the percentage of subscribers to which the merged firm would provide fixed broadband services of at least 10 Mbps downstream would be 40 percent, and the percentage of subscribers of connections with at least 25 Mbps downstream speeds would be 54.9 percent. Comcast and Time Warner Cable Opposition at 146-47 & n.454.

the proposed transactions. Such comment may play an integral role in the Commission's ultimate determination about whether the proposed transactions in this proceeding are in the public interest. In addition to Form 477 subscriber totals for the Applicants and other providers in the aggregate, both nationally (Exhibit 1) and in the Applicants' proposed footprints (Exhibit 2), we provide the number of wired, residential broadband providers offering a variety of broadband speeds in the Applicants' proposed footprints (Exhibit 3 – derived from State Broadband Initiative (SBI) broadband deployment data[2] and the Application filings in this docket), as well as subscriber totals by technology at various broadband speeds (Exhibit 4) and a comparison of cable broadband subscription with subscription to other technologies in homogeneous tracts (Exhibit 5). Exhibits 2-3 do not include Bright House Networks' broadband subscribers listed in Exhibit 1.[3]

Exhibit 1 provides the Applicants' residential broadband subscriber totals nationally (before and after the proposed transactions), based on Form 477 data collected for the period ending December 2013.[4] Exhibit 1 (and Exhibits 2, 4, and 5) present subscriber totals for fixed residential broadband services only.[5] This is consistent with the Commission's decision to date to exclude mobile service data from its finding pursuant to 47 U.S.C. § 1302(b). The Commission has noted that available data concerning mobile services appear to be unreliable and overstate deployment to a significant degree.[6]

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[2] http://www.fcc.gov/encyclopedia/changes-coming-form-477-data-collection.

[3] *See* Letter from Kathryn A. Zachem, Senior Vice President, Regulatory and State Legislative Affairs, Comcast Corp. et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 14-57, at 9-13 (June 24, 2014) (discussing Bright House Networks subscribers and their relationship to the proposed transactions).

[4] The Applicants' broadband businesses have continued to grow since the transaction proceeding began earlier this year. In fact, Comcast, Time Warner Cable and Charter have made net additions of approximately 1.5 million broadband subscribers since filing their Form 477 reports as of December 31, 2013, the most recent period for which overall subscriber data has been reported. *See* Comcast Corp., Investor Relations, Third Quarter 2014 Trending Schedules, p. 4, http://files.shareholder.com/downloads/CMCSA/3661576083x0x788075/387ca4f4-31f0-4172-87a1-508cea675621/3Q14%20Trending%20Schedule.pdf; Time Warner Cable Inc., Investor Relations, Third Quarter 2014 Trending Schedules, p. 7, http://ir.timewarnercable.com/files/2014%20Earnings/3Q14/TWC-Trending-Schedules-Q3-2014-FINAL.pdf; Charter Communications Inc., 3Q2014 Trending Schedule, p. 1, http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-finlanding. Time Warner Cable and Charter report residential broadband subscriber net additions separately from business customers, for a total of 707,000 net residential adds in the first three quarters of 2014. Comcast added a total of 901,000 net residential and business broadband subscribers during the same time period. Assuming Comcast was adding residential and business broadband customers in the same ratio as the other two reporting companies, Comcast would have added a net of approximately 801,000 residential broadband subscribers, for a three-company total of 1,508,000 net new residential broadband customers so far this year. A total of approximately 1,694,000 net broadband additions (residential and business) have been reported by the Applicants so far this year.

[5] The four exhibits addressing subscriber counts from Form 477 reports – Exhibits 1, 2, 4 and 5 – are based on "fixed residential" broadband services, which include fixed wireless and satellite, as reported on Form 477. The count of providers in Exhibit 3 is not based on Form 477 subscriber data, but rather on SBI deployment data, and focuses on "wired residential" broadband providers, which excludes fixed wireless and satellite.

[6] *See Broadband Progress Notice of Inquiry*, 29 FCC Rcd at 9764, para. 34 & n.81. The Commission stated that the nature of the available data, among other things, limited its ability to make concrete findings about mobile deployment in its most recent review, and it expressed similar concerns regarding satellite services. *See id.* at para. 34 & nn.82, 85.

Exhibit 2 provides estimates of the Applicants' residential broadband subscriber totals at a variety of broadband speeds within their proposed footprints (before and after the proposed transactions). A provider's footprint is defined as all tracts where a given provider has at least one residential subscriber today. The post-transaction footprints are based on post-transaction tract lists submitted by the Applicants. The total number of broadband subscribers within any particular provider's footprint includes all broadband subscribers in any tract where the particular provider serves at least one subscriber. This means that the particular provider's percentage of subscribers within its footprint likely understates its percentage among households it serves because the denominator likely includes some households that could not be served by the particular provider (i.e., the provider's network likely does not cover the whole tract, but all subscribers in the tract are included).

Exhibit 3 presents the number of wired residential broadband providers for each of the Applicants' proposed footprint areas, by percentage of housing units with either 0, 1, 2, or 3+ providers at a variety of speeds. Additionally, the number of providers is provided at the national level. For this analysis, the category "wired, residential ISPs" includes providers using the following technologies: ADSL, DOCSIS and FTTP (SBI transmission technology codes 10, 40, 41 and 50); it excludes providers who are not facilities-based providers or who focus only on non-residential customers (includes only provider type of 1; excludes end-user-category of 2, 3 or 4).

Exhibit 4 presents residential broadband subscriber totals nationwide by technology (cable, FTTP, ADSL, other fixed broadband).

Exhibit 5 compares the percentage of residential subscribers to cable broadband technology with other wireline technologies – fiber, Upgraded DSL (DSL that is capable of providing speeds of at least 10 Mbps downstream/768 kilobits upstream), and Legacy DSL (DSL that is not capable of providing speeds of at least 10 Mbps downstream/768 kilobits upstream), in homogeneous census tracts nationally. A homogeneous tract is defined as one that is 90% covered by the technology of interest, with no more than 10% of the tract covered by multiple non-cable providers or better telco technology. (See note to table for additional explanation.)

For further information, or to obtain a copy of Highly Confidential information subject to the *Second Amended Modified Joint Protective Order* in this proceeding,[7] contact Ty Bream, Industry Analysis Division, Media Bureau, at Ty.Bream@fcc.gov or (202) 418-0644.

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[7] *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Second Amended Modified Joint Protective Order, DA 14-1639 (Nov. 12, 2014).