BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	MB DOCKET NO. 14-57
Comcast-Time Warner Cable	)	
	)	
	)	
	)	

COMMENTS OF ROKU, INC.

August 25, 2014

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY

Roku, Inc. ("Roku") respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") request for comments on the applications of Comcast Corporation ("Comcast"), Time-Warner Cable Inc. ("Time-Warner"), Charter Communications, Inc., and Spinco, to assign and transfer control of FCC licenses and other authorizations.[1] Consumer demand for video delivered over the Internet is surging, and innovative businesses are offering high-quality news, entertainment, and sports programming that is more accessible, innovative, and convenient than ever before. With consumer Internet video traffic estimated at 66 percent of all Internet traffic in 2013 and expected to rise to nearly 79 percent in just four years,[2] preserving competition in Internet streaming of video content and services is essential. Unfortunately, however, consolidation in the home entertainment ecosystem threatens to reduce the benefits consumers receive through competition from innovative independent Internet streaming platforms.

The Commission has long recognized the incentive and ability of large, vertically integrated Internet service providers ("ISPs")—including ISPs like Comcast that are affiliated with multichannel video programming distributors ("MVPDs")—to constrain consumer choice by favoring their own content and content delivery systems through blocking or throttling. However, these are only the most transparent of a long list of anti-consumer discriminatory actions available to ISPs. For example, an ISP may also discriminate by authenticating an app on its own Internet streaming platform or on favored platforms, but not on others. ISPs may also

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[1] *See* Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and Spinco to Assign and Transfer Control of FCC Licenses and Other Authorizations, MB Docket No. 14-57 (July 10, 2014).

[2] Cisco Visual Networking Index: Forecast and Methodology, 2013–2018 (June 10, 2014), available at http://www.cisco.com/c/en/us/solutions/collateral/service-provider/ip-ngn-ip-next-generation-network/white_paper_c11-481360.html.

discourage consumers from using third-party over-the-top Internet streaming apps in the first place by requiring third-party providers to unlock multiple apps individually. The Commission should craft conditions that address the merged company's incentives and opportunities to undertake a broad range of anticompetitive discriminatory conduct.

Consolidation will likely increase the incentive and ability of the remaining companies to favor certain content and platforms through the use of discriminatory authentication. This is particularly true because of the disruptive roles that the relatively-smaller MVPDs like Time-Warner play in authenticating third party apps and developing their own apps for independent Internet streaming platforms. For example, Time Warner developed a Roku app that enables their cable customers to access virtually the entire Time-Warner cable service offering. By using this app on a Roku streaming player, a Time-Warner subscriber can eliminate the need to rent an additional cable set top box for a second or third television set. This innovative feature is a win-win for both Time Warner and its customers, as it cost-effectively increases the value of both the customer's cable subscription and Roku streaming player. Larger MVPDs such as Comcast have resisted this trend. Likewise, while Time-Warner has authenticated the HBO Go app and the Showtime Anytime app on Roku's platform, Comcast has not authenticated either app. Moreover, Time-Warner executives have announced that they "will be knocking down some of the current obstacles . . . so that customers can have nothing but a Roku device or an Xbox and get their video experience."[3] Comcast has gone the other way, prioritizing its Xfinity platform, which competes with third party streaming platforms by providing streaming video content on demand. Indeed, as the Commission has recognized, MVPDs often view Internet streaming

[3] Joan E. Solsman, Time Warner Cable Will Let You Junk Your Set-Top Box Next Year, CNET, (Sept. 11, 2013), *available at* http://www.cnet.com/news/time-warner-cable-will-let-you-junk-your-set-top-box-next-year/ (quoting then-COO, and now-CEO and Chairman, Robert D. Marcus).

platforms "as a potential competitive threat to their core video subscription service." [4]

Without an appropriate set of conditions, further consolidation among MVPDs threatens to harm consumers by eliminating the incentive for Time-Warner to continue to act as a disruptive maverick with respect to Internet streaming platforms. In fact, post-merger, the company may seek to refocus Time-Warner on Xfinity, abandon Time-Warner's plans to eliminate the need for a set top cable box, degrade the service provided to Time-Warner customers by ending support for Time-Warner's Roku app, and extend Comcast's more restrictive approach towards the authentication of third party apps such as HBO Go and Showtime Anytime to the Time-Warner footprint. Likewise, absent this transaction, Time-Warner would continue to have an incentive to ensure reasonable broadband speed and data cap practices that would allow independent Internet streaming platforms to flourish. Post-merger, however, the combined company may have different incentives. To protect the burgeoning but nascent competition in Internet streaming platforms for video programming, the Commission should impose conditions that prevent this consolidation from harming consumers that choose to use independent Internet streaming platforms. Such conditions should, at the least, prohibit the merged company from restricting, degrading, or otherwise interfering with consumer choice and consumer access to lawfully-available streaming content, platforms, and services.

BACKGROUND

Roku was founded in Saratoga, California in 2002 by Anthony Wood, an entrepreneur who is recognized as the inventor of the digital video recorder. Roku has developed an open Internet streaming platform that is used by millions of consumers in the United States to access a wide variety of audio and video programming that can be enjoyed simply by connecting a Roku

[4] Open Internet Order, 25 FCC Rcd at 17916-18 ¶ 22.

streaming player to a consumer's television set and home network. In recent years, Roku has experienced rapid growth in the scale of its business and the size of its operations. Roku currently employs approximately 250 people in Silicon Valley and other locations across the United States, and has sold more than 8 million streaming players. Roku's business is enabled by, and is entirely dependent upon, consumers' unfettered ability to access lawfully available content over a broadband Internet connection to their home.

Roku has built an extensive ecosystem of content providers, application developers, end-users, and retail distributors. Roku offers a rich software development kit enabling third party developers to create content applications, which Roku refers to as "channels," and optimize content for Roku's streaming platform. Roku also offers billing, advertising integration, and other capabilities for content providers seeking new ways to distribute and monetize their content.

Millions of people use Roku's streaming players to access their favorite content, including, movies, network and cable TV shows, news, sports, health and religious programming, music, and games. With a Roku streaming player, consumers can choose from the more than 1,700 individual content channels that are available on the Roku platform and accessed through the Roku Channel Store. Last year alone, consumers streamed 1.7 billion hours of programming using Roku streaming players.

As more consumers have discovered streaming, both the quantity and quality of content available for streaming has quickly evolved. In addition to making previously released movies and television programs available for streaming, today, content is being developed specifically for streaming. Popular television series such as House of Cards, Orange is the New Black, and Behind the Mask, as well as live-streamed concerts and sporting events are changing the media landscape and offering consumers greater choice in what they watch on television, in addition to when and how they watch it. Not surprisingly, industry analysts have reported that consumers with broadband video access have dramatically increased the percentage of their television viewing time spent watching programming that is streamed via the Internet and delivered to their homes over a broadband connection.[5]

Over-the-top streaming platforms such as Roku have also injected new diversity into program offerings. Historically, independent producers distributed their content through MVPDs. As a result, they lacked direct relationships with consumers and had to convince the MVPD of the value of negotiating a commercial relationship for what, to any one MVPD, might be an extremely limited market. With the advent of over-the-top streaming platforms, however, independent content providers can now aggregate demand across MVPDs and directly reach their audiences by creating channels on Roku or other third-party platforms to deliver content directly over the Internet. The emergence of over-the-top streaming platforms has unlocked hundreds of new channels and tens of thousands of new programs. Roku, for example, offers the Black Heritage Network, which bills itself as the only full-time television destination for the real stories of African American life; Gay Life Television, which seeks to educate and entertain the LGBTQ community; i-Italy TV, which features videos on Italian culture in the United States; and hundreds of other specialty channels. Roku also offers more than 400 different specialty religion and spirituality channels – from EWTN Global Catholic Network to the Hebraic Roots Network to the Mormon Channel. Roku channels offer dedicated arts and cultural programming such as Artcast, The Artistic Blog, ArtKick and Docurama, and dedicated instructional

[5] *See, e.g.*, Marlena Haller, Harris Poll: Popularity of Streaming Increases with TV Viewers, ETCENTRIC (June 20, 2014), http://www.etcentric.org/harris-poll-popularity-of-streaming-increases-with-tv-viewers/ (reporting that the number of Americans that most often stream shows is up three percent since 2012, and that nearly a quarter of Americans say that they watch more streaming television than they did a year ago).

programming through channels like Innovative Language and Pro Guitar Lessons. In addition, Roku offers dozens of foreign-language and international networks, such as TamilTV, AfricaLive, Sahara TV, and HaitiTV, each of which provides content directly to small, historically under-served communities. For all of the diversity of these innovative content offerings though, they share one thing in common: few, if any, would exist without open and non-discriminatory video programming delivery over the Internet.

While Roku is a well-recognized and independent brand and has a growing and highly engaged base of users, Roku is still a relatively small company when compared to the large MVPDs, online video distributors, Internet sites, consumer electronics manufacturers and other business enterprises that have significant, if varying, interests in the delivery of audio and video content to the home via the Internet. As an independent technology innovator that has developed and operates an open Internet streaming platform used by millions of consumers to access an incredibly broad array of content in their homes, Roku has a unique perspective on the impact that the Comcast/Time-Warner transaction could have on the future of home entertainment.

Consumers should have access to the lawful content of their choice. As the Commission has repeatedly found, "'the freedom to send and receive lawful content' is 'essential to the Internet's openness and to competition in adjacent markets such as voice communications and video and audio programming.'"[6] Currently, consumers have access to a wealth of online content using over-the-top video streaming.[7] However, that access depends on ISPs offering service that is sufficient to support streaming video.

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[6] *See Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5593 ¶ 89 ("NPRM") (quoting Open Internet Order, 25 FCC Rcd at 17941-42 ¶ 62).

[7] *See*, *e.g.*, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fifteenth Report, 28 FCC Rcd 10496, 10627-32 ¶¶ 270-275 (describing the offerings of online video distributors such as Netflix, Hulu, and Amazon Instant Video).

Without a fast and reliable broadband Internet connection, a Roku player or other streaming platform may provide frustratingly inconsistent access—or worse, no access—to movies, TV shows, and other video programming. Chairman Wheeler recently stated that he is aware of this problem and "know[s] how exasperating it can be."[8] Moreover, access speeds and quality standards for video streaming have, and will continue to, evolve over time. For example, streaming 1080p content already requires a 6 Mbps connection,[9] and 3D content requires over a 9 Mbps connection.[10] Soon, consumers will need speeds of around 20 Mbps to watch 4K content without glitches.[11]

At the same time, however, ISPs affiliated with MVPDs have an incentive to favor MVPD-supplied services over independent Internet video streaming products and services. As the Commission has found, ISPs that are integrated with MVPDs can have "an incentive to prevent [over-the-top] services from developing . . . and to hinder the competition from those that do develop," along with the opportunity and "incentive to discriminate against unaffiliated content and distributors in [their] exercise of control over consumers' broadband connections."[12] With their control over last-mile facilities, these entities may block, degrade, or otherwise impair their competitors' ability to offer streaming video services. If the Commission fails to protect

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[8] *See* FCC, Statement by FCC Chairman Tom Wheeler on Broadband Consumers and Internet Congestion (June 13, 2014), available at http://www.fcc.gov/document/chairman-statement-broadband-consumers-and-internet-congestion.

[9] Roku, *How Is Video Streaming Quality Related to Internet Speed and Networking?*, http://support.roku.com/entries/22282284-How-is-video-streaming-quality-related-to-Internet-speed-andnetworking (last visited August 21, 2014).

[10] *See*, e.g., Barb Gonzalez, *How Much Bandwidth Do You Need for Streaming Video*, SOUND AND VISION (Jul. 16, 2012), http://www.soundandvision.com/content/how-much-bandwidth-do-you-need-streaming-video.

[11] *See* Jane Wakefield, *BBC to Stream World Cup Matches in 4K Ultra HD*, BBC (June 5, 2014), http://www.bbc.com/news/technology-27713243.

[12] Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4268- 69, 4275 ¶¶ 78, 93 (2011).

streaming video from such anti-competitive efforts, it risks losing competition in this market and, with it, "a tangible opportunity to bring customers additional benefits."[13]

To protect the dynamism of the emergent Internet protocol video industry, the Commission should carefully examine whether the Comcast/Time-Warner transaction will harm the public interest by eliminating the independent Time-Warner and its incentives to continue its disruptive support for the Internet streaming platforms, or by otherwise restricting consumer access to "TV Everywhere" content through discriminatory practices.

ARGUMENT

I. THE TRANSACTION HARMS CONSUMERS BECAUSE IT WILL ELIMINATE TIME-WARNER AS A DISRUPTIVE SUPPORTER OF AUTHENTICATED STREAMING ON INDEPENDENT INTERNET STREAMING PLATFORMS

Historically, many major MVPDs were wary of streaming video because of the potential disruption to their traditional Pay TV bundled business model; therefore, MVPDs tended to discourage direct streaming of popular TV content in their contracts with content originators.[14] TV Everywhere, also known as "TVE" or "authenticated streaming," allows the MVPD to continue to charge for premium content, thus eliminating the incentive to "cut the cord," while still permitting content originators to meet growing consumer demand for the ability to access content over the Internet on mobile devices and Internet-connected devices in the home.

TVE uses content apps that run on various platforms, such as Android, iOS and other systems, and enables consumers to access content on demand on various types of Internet connected devices, including mobile phones, tablets, video game consoles, smart TVs, and

[13] *Id*. at ¶ 78; see also NPRM, 29 FCC Rcd at 5606 ¶ 126.

[14] *See* Open Internet Order, 25 FCC Rcd at 17916-18 ¶ 22 ("Several MVPDs have stated publicly that they view these services as a potential competitive threat to their core video subscription service. . . . By interfering with the transmission of third parties' Internet-based services or raising the cost of online delivery for particular edge providers, telephone and cable companies can make those services less attractive to subscribers in comparison to their own offerings").

streaming players. To ensure that the user has subscribed for the content as part of an MVPD subscription, the content providers rely on the MVPDs to authenticate the end user's right to access premium content. A subscriber can only access the TV Everywhere app developed by a content provider for a particular streaming platform after entering an authentication provided by the MVPD. Specifically, the consumer must enter a user name and password established through its MVPD, and then the TVE app checks with the MVPD's back end systems to determine if the app has been authenticated for use on the desired streaming platform. Once the MVPD confirms that the end user has the right to access a TV Everywhere app on the targeted streaming platform, the MVPD unlocks the consumer's access to the TVE app by "authenticating" it. This approach preserves the pay TV "bundle" business model for MVPDs. It also establishes more outlets for the content provider and the consumer to connect, and opens new types of content and new levels of service flexibility for consumers.

Although customers have embraced authenticated streaming, this technology has the potential to be abused by ISPs owned or affiliated with MVPDs. Importantly, as the larger MVPDs consolidate and increase the size of their service areas, the merged MVPDs' incentive and ability to engage in abusive authentication practices increases: with larger size, an MVPD's abusive authentication practices become a more effective weapon with which to reduce competition from independent Internet streaming platforms. For instance, while consumers and content providers would like content to be available on as many hardware and software platforms as possible, MVPD contracts with content providers typically allow the MVPD to choose which streaming platforms a given TVE app can be authenticated on. Rather than prioritizing platform support by consumer interest or software compatibility, MVPDs can use their power of authentication in an anticompetitive manner to favor one streaming platform over another.

Similar problematic practices involve leveraging authentication so as to discourage consumers from using TVE apps in the first place. For example, MVPDs often choose to require consumers to authenticate and unlock multiple apps individually, rather than simply authenticating a TV Everywhere device once to unlock all apps on that device, which would greatly simplify authentication for consumers. Similarly, some MVPDs may sunset authentication codes for third-party TVE apps after a limited period of time but not sunset authentication codes for their own affiliated TVE apps. The discriminatory sunset provisions require consumers to update codes for third-party apps but not for the MVPD-provided apps. This results in a cumbersome approach. For consumers, it functions as a major deterrent to the use of over-the-top TVE applications. For streaming platforms such as Roku's, it stifles innovation that would otherwise streamline the process for consumers to search, access, and interact with video content. The practice is also largely unnecessary because MVPDs have secure options to unlock TV Everywhere apps other than individual customer authentication, such as through IP address verification. Imagine, for example, if MVPDs erected similar requirements for channel-by-channel authentication on their own paid TV platforms, where every channel available over the set-top box required a separate multi-digit, alphanumeric code to enable access.

Additionally, MVPDs with affiliated ISPs can abuse their power over authentication by choosing to authenticate only their own or affiliated offerings. For instance, Comcast has begun offering its own streaming services through its Xfinity service, which includes proprietary, Internet connected cable set-top boxes. In effect, Comcast is competing with online video distributors as well as with Roku and other independent manufacturers of streaming players. Accordingly, it should come as no surprise that Comcast has been a laggard in the authentication arena. For example, even today, Comcast customers cannot utilize HBO Go on a Roku streaming player despite the fact that Comcast's rivals such as Time-Warner have enabled authentication for the HBO Go app for years. When Comcast and similarly situated MVPD/ISPs refuse to authenticate third-party apps, they impair the functionality and utility of innovative third-party streaming platforms such as Roku's and could use that deliberate impairment to compete unfairly with independent third party platform providers seeking to enter or expand in the market. This is not competition on the merits; rather it is using market power in the ISP space to harm competition in the Internet streaming player space.[15]

The relatively-small Time-Warner, however, takes a drastically different approach than does Comcast. For example, Time Warner developed its own Roku app that enables their cable customers to access virtually the entire Time-Warner cable service offering. By using this app on a Roku streaming player, a customer can eliminate the need to rent an additional cable set top box for a second or third television set. This innovative feature is a win-win for both Time Warner Cable and its customers, as it cost-effectively increases the value of both the customer's cable subscription and Roku streaming player. Likewise, Time-Warner authenticates both the HBO Go app and the Showtime Anytime app on Roku's platform.

Importantly, unlike Comcast, Time-Warner executives have announced that they "will be knocking down some of the current obstacles . . . so that customers can have nothing but a Roku device or an Xbox and get their video experience."[16] Unbundling MVPD video offerings from the set-top box in the manner outlined by Time-Warner will further spur innovation, lower prices, and consumer choice in cable set top boxes and Internet streaming platforms. Not only

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[15] *Cf.* Open Internet Order, 25 FCC Rcd at 59199 ("In 2008, the Commission found that Comcast disrupted certain peer-to-peer (P2P) uploads of its subscribers, without a reasonable network management justification and without disclosing its actions.").

[16] Joan E. Solsman, *Time Warner Cable Will Let You Junk Your Set-Top Box Next Year*, CNET, (Sept. 11, 2013).

will consumers no longer be required to rent cable boxes to receive cable programming, but their increased ability to choose freely among the different available platforms will drive platform manufacturers to innovate in ways beneficial to consumers.

Unless the Commission imposes appropriate conditions, Comcast's acquisition of Time-Warner is likely to harm consumers by eliminating the incentive for Time-Warner to continue to act as a disruptive player with respect to Internet streaming platforms. In fact, post-merger, the company may seek to refocus Time-Warner on Xfinity, abandon Time-Warner's plans to eliminate the need for a set top cable box, degrade the service provided to Time-Warner customers by ending support for Time-Warner's Roku app, and extend Comcast's more restrictive approach towards the authentication of third party apps such as HBO Go and Showtime Anytime to the Time-Warner footprint.

The FCC and the Department of Justice ("DOJ") have both previously recognized that the elimination of a disruptive competitor (i.e., a "maverick") through acquisition is a serious concern. For example, in suing to block AT&T's proposed acquisition of T-Mobile, DOJ stressed the disruptive role played by T-Mobile, the fact that "T-Mobile has been responsible for numerous 'firsts' in the U.S. mobile wireless industry," and the fact that the transaction would reduce competition in such areas as "quality, product variety, and innovation."[17] The FTC staff similarly noted that the AT&T T-Mobile transaction would "eliminate T-Mobile, a provider whose disruptive pricing and innovation have benefitted wireless consumers throughout the United States."[18] Similar concerns arise here.

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[17] Second Amended Complaint at ¶¶ 28, 33, *United States v. AT&T*, Case No. 11-01560 (ESH), Docket No. 39 (Sept. 30, 2011).

[18] Federal Communications Commission Staff Analysis and Findings at ¶ 1, WT Docket No. 11-65 (Nov. 29, 2011).

II. THE TRANSACTION WILL INCREASE THE INCENTIVE AND ABILITY OF THE COMBINED COMPANY TO HARM ITS RIVALS THROUGH DISCRIMINATORY BROADBAND SPEED AND DATA CAP PRACTICES

MVPDs affiliated with ISPs have the incentive and ability to discriminate in the provision of broadband speed in ways that disadvantage independent Internet streaming platforms, limit consumer choice, and constrain content diversity and free expression. For example, an ISP can provide inadequate broadband speed for disfavored Internet streaming platforms, while prioritizing delivery of content for platforms it owns. ISPs can thereby degrade the quality of rival platforms and exert pressure on consumers to choose the video content that they and their affiliates provide. Indeed, in its "managed network" business, Comcast currently provides a "fast lane" for its streaming services, while relegating rival offerings to a "slow" lane.[19]

In addition, ISPs have the potential to use data caps in discriminatory ways that limit consumer choice and constrain content diversity and free expression. For instance, one way that ISPs can discourage their customers from using over-the-top content is by exempting other content—especially their own or commonly-controlled content—from data caps. A number of ISPs have chosen this path already.[20] As a result, the streaming video offered by those ISPs does not count against their customers' data caps, but competing services offered by over-the-top providers do. A related way that ISPs can discourage consumption of over-the-top video content in favor of ISP-affiliated content is by establishing artificially low data caps. By using data caps

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[19] *See, e.g.*, Shalini Ramachandran, *Comcast Takes the Netflix Fight to College Campuses*, THE WALL STREET JOURNAL (Aug. 21, 2014), http://blogs.wsj.com/corporate-intelligence/2014/08/21/comcast-takes-the-netflix-fight-to-college-campuses/ (Comcast "services travel on a special portion of Comcast's cable pipe that is separate from the more congested portion reserved for public Internet access.").

[20] *See, e.g.*, Michael Weinberg, *AT&T Exempts Itself From its Data Cap, Violates (at least) the Spirit of Net Neutrality*, Public Knowledge (Jan. 15, 2013), https://www.publicknowledge.org/news-blog/blogs/att-exempts-itself-its-data-cap-violates-leas.

that are lower than needed to ensure sufficient network capacity, ISPs can exert pressure on consumers to choose the video content that they and their affiliates provide (and are thus exempt from the caps). Moreover, the lower the data cap, the greater the potential for competitive harm. For example, customers with low data caps are more likely to be mindful of their data usage and, as a result, prefer video options that do not count against the data caps over video options that do.

The discriminatory use of broadband speed and data caps by ISPs associated with MVPDs is particularly pernicious because Internet streaming platforms are subject to positive feedback effects. As additional users are drawn to a streaming platform, the platform becomes more valuable to users because, for example, app developers focus on providing additional and improved apps for the platform. Thus, by using discriminatory practices to drive users away from disfavored streaming platforms, ISPs diminish the quality of the service the disfavored platform can provide in the future. Generally speaking, these positive feedback effects do not depend on whether the Internet streaming platform has a large number of users in any particular city or locality; instead they depend on the number of consumers regardless of user location. This is important, because even if the proposed transaction does not increase market concentration in any particular locality, the expanded nationwide footprint of the combined company creates a greater ability to harm independent Internet streaming platforms.

Absent intervention by the FCC, this transaction will exacerbate the anticompetitive threat of discriminatory broadband speed and data cap practices. As described above, Time-Warner acts as a disruptive player with respect to Internet streaming platforms. Absent this transaction, Time-Warner would continue to have an incentive to ensure reasonable broadband speed and data cap practices that would allow such services to flourish. Comcast, of course, does not have the same incentives given its focus on its competing Xfinity streaming platform.

The transaction will change Time-Warner's incentives so that they are aligned with the incentives of Comcast. Moreover, given its larger footprint, the combined company would have greater ability and incentive to harm independent Internet streaming platforms through discriminatory broadband speed and data cap practices. As a result, the ability of independent Internet streaming platforms to continue to compete and innovate will be threatened.

III. APPROPRIATE CONDITIONS ARE NECESSARY TO PROTECT CONSUMERS

The anticompetitive harms described above can be addressed by carefully tailored conditions that will protect the burgeoning but nascent competition in Internet streaming platforms for video programming. To that end, Roku respectfully requests that the Commission impose conditions on the proposed transaction that will prohibit the merged company from restricting, degrading, or otherwise interfering with consumer choice and customer access to lawfully-available streaming content, platforms, and services.

To address the likely impact of the transaction on authentication practices, the merged company should be prohibited from discontinuing or degrading Time-Warner's current and planned apps and authentication practices. For example, the company should commit to seeing through Time-Warner's plan to permit customers to choose the "no cable box" alternative outlined by Time-Warner's CEO. Moreover, the merged company should commit to reasonable and non-discriminatory authentication procedures and should be barred from discriminating in favor of its own Xfinity product (including the forthcoming X1 set-top box from Comcast) with respect to app and content authentication.

To remedy the transaction's impact on Time-Warner's incentives to provide adequate broadband speed for the programming of independent Internet streaming providers, the

Commission should condition the transaction upon the merged company's commitment to provide nondiscriminatory broadband access to rival streaming providers.

Finally, to prevent the transaction from exacerbating the threat to competition and consumers posed by discriminatory data cap policies, the Commission should require that the merged company's video services count against the same data caps applicable to over-the-top video services. For the same reason, the combined company should not be permitted to selectively exempt Internet protocol video traffic from any particular source or provider (whether affiliated with the ISP or not) from data caps.

CONCLUSION

Consumers have a deeply vested interest in an open competition between manufacturers of various types of streaming devices and video streaming services. As a relatively small but highly innovative company that has demonstrated strong consumer demand for its products, Roku is eager to compete on the merits. However, with its proposed acquisition of Time-Warner, Comcast is not competing solely on the merits; it is seeking to purchase a disruptive firm that provides key support to Comcast's video-streaming rivals. After the acquisition, the combined company would have the incentive to harm those rivals and consumers by ending Time-Warner's pattern of maverick behavior, or otherwise restricting or degrading third-party Internet streaming rivals. The Commission should impose appropriate conditions to counteract this harm.

Dated: August 25, 2014

Respectfully Submitted,

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