46. A reasonable limitation to this requirement is that Comcast offer Xfinity by itself within its cable television footprint only; otherwise Comcast would be competing directly with out-of-region cable operators in the supply of MVPD service. In addition, Comcast cable television subscribers should be able to opt out of Xfinity from their cable television package at a rebate equal to the standalone retail price of Xfinity. With access to Xfinity at a *positive* price, customers subscribing to an OTT or some other online video provider could "cut the cord" to Comcast's cable television service and still be able to watch Xfinity content. Moreover, with access to Xfinity at a *reasonable* price, OTT providers could put forward a compelling offer to Comcast cable television subscribers.

47. Because regulating the retail price for Xfinity is anathema to economists, we would prefer to induce Comcast to price its online portal at a reasonable level by requiring Comcast to allow its cable customers to opt out of Xfinity for a rebate equal to Xfinity's standalone price. To understand why the opt-out provision is important, consider what might happen if Comcast were constrained to provide Xfinity by itself with no opt-out provision. Assume a Comcast customer subscribes to a bundle of cable television and Internet with Xfinity (the "Xfinity bundle") for $100 per month. If the customer drops her cable television service but is allowed to access Xfinity pursuant to the à-la-carte requirement, then her new monthly charge is equal to the standalone (penalty) price of cable modem service ($60 per month) and the standalone price of Xfinity (to be set by Comcast). Accordingly, an OTT provider inducing an Xfinity bundle customer to cut the TV cord has a monthly margin of $40 less the standalone price of Xfinity less the marginal cost of supplying online video service. If Comcast sets the standalone price of Xfinity at $40 per month, then the margin for the OTT provider vanishes. However, if Comcast customers may opt out of Xfinity at a rebate equal to the standalone price

of Xfinity, then Comcast's incentive to squeeze OTT providers will be tempered. Continuing this example, if Comcast charges $40 per month for Xfinity, then a Comcast customer paying $100 per month for the Xfinity bundle who opts out of Xfinity would save $40, reducing her bill from $100 to $60 per month for a bundle of cable television and cable Internet service.

48. I understand that one remedy under consideration is to compel Comcast to unbundle its Xfinity service from its digital cable television service for Comcast's cable television customers only. In our option, this remedy would not effectively promote the development of online video. Such a limited requirement would leave customers no motivation to cut the cord and leave OTT providers no entrée into the MVPD market. Supposing the à-la-carte remedy were limited to existing Comcast television customers, a Comcast Internet-only subscriber could not access Xfinity—nor could a Verizon DSL or FiOS customer. Without access to Xfinity, customers would be disinclined to cut the TV cord and transition to an online video service; cutting the cord would mean loss of access to the must-have online content in Xfinity, including the soon-to-be-affiliated NBCU must-have online content likes sports and news that currently resides on Hulu and NBC.com. With little prospect for competition from OTT providers, the price of Comcast's cable television service would remain stubbornly high. In contrast, when Comcast is compelled to sell Xfinity to all comers on a standalone basis, OTT providers could thrive and thereby impose significant price disciple on Comcast's cable television service. Limiting the à-la-carte remedy to Comcast's cable television customers would be merely reinforcing Comcast's anticompetitive tie-in; no one could access Xfinity without authenticating a subscription to Comcast cable television. In sum, if Comcast is not compelled to sell Xfinity on an à-la-carte basis to all comers, then Comcast customers would not likely switch to an OTT provider because they would lose access to the must-have content that is exclusive to

Xfinity. This argument presumes that customers of an OTT provider could not access NBCU's online properties via alternative sites such as Hulu and NBC.com.

49. To be fair, a limited à-la-carte requirement might allow Comcast customers to purchase a rival online video service with the rebate from opting out of Xfinity. However, depending on how Comcast priced its standalone cable television service (that is, without Xfinity), this opportunity could be severely limited. For example, if Comcast offered its cable television customers a $5 per month rebate for opting out of Xfinity, the OTT providers would have $5 of margin (before considering their costs) within which to lure Comcast customers to their online portals. Even if OTT providers could earn a profit at $5 per month in revenues, there is still no assurance they would thrive without access to the must-have online programming behind the Xfinity portal. In sum, OTT providers can only benefit consumers if OTT providers can add as much value as consumers lose by cutting the cord. By linking Xfinity access—which would include NBCU's must-have online content if the transaction were approved—to a Comcast cable television subscription, the value OTT providers add is largely attenuated.

CONCLUSION

50. Having fully considered the reply by Comcast and its economists, I continue to believe that the proposed transaction would reduce competition in the supply of MVPD services. NBCU's broadcast programming is must-have content, and as the Commission recognized in its 2007 *Sunset Order*, "a competitive MVPD's lack of access to popular *non-RSN networks* would not have a materially different impact on the MVPD's subscribership than would lack of access to an RSN." The best way for the Commission to preserve competition from Comcast's traditional MVPD rivals and from nascent OTT providers is to ensure that non-Comcast customers have access to NBCU's must-have content. Comcast has proven routinely that the non-discrimination provisions in the Cable Act are gameable. Comcast will not efficiently price

its affiliated, must-have content—that is, price the content as if it were an independent network—until it is exposed to the possibility that a Comcast subscriber may opt out of a network from Comcast's digital tier at a rebate equal to the wholesale price. Similarly, OTT providers will not get their legs under them until Comcast is barred from requiring authentication to access Fancast Xfinity TV or its other must-have online programming.

* * *

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed on August 19, 2010.

Hal J. Singer

CERTIFICATE OF SERVICE

I, Ryan King, hereby certify that on this 19th day of August, 2010, I caused true and correct copies of the foregoing Reply to Comcast-NBCU Opposition to be served by postage pre-paid first-class U.S. Mail on the following individuals:

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FOR PUBLIC INSPECTION

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