

Exhibit 4



Outlook

RE: Touchstream v. Comcast | 2:23-cv-00062-JRG-RSP

From Park, James Y. <james.park@davispolk.com>**Date** Wed 2/5/2025 12:07 PM**To** Jordan Bergsten <jbergsten@bsfllp.com>; Philip Eckert <peckert@bsfllp.com>; Touchstream <Touchstream@bsfllp.com>; Melissa Richards Smith <melissa@gillamsmithlaw.com>; Tom Gorham <Tom@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>**Cc** Deron Dacus <ddacus@dacusfirm.com>; dpw.comcast.touchstream <dpw.comcast.touchstream@davispolk.com>; Ramani, Ashok <ashok.ramani@davispolk.com>; Farber, Alena <alena.farber@davispolk.com>

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Jordan,

We disagree with Touchstream's characterizations but agree that there is no need to belabor these points further. Comcast made a reasonable proposal in the hopes of avoiding the need to bother the Court, which Touchstream has rejected. Accordingly, the parties are at impasse.

Regarding the briefing schedule, Comcast proposes that it respond to Touchstream's motion within three business days of filing and that each party's brief be limited to five pages, with no replies.

Best Regards,
James

James Y. Park

+1 650 752 2044 office

+1 347 601 6043 mobile

james.park@davispolk.com

Davis Polk & Wardwell LLP

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From: Jordan Bergsten <jbergsten@bsfllp.com>**Sent:** Tuesday, February 4, 2025 1:02 PM**To:** Park, James Y. <james.park@davispolk.com>; Philip Eckert <peckert@bsfllp.com>; Touchstream <Touchstream@bsfllp.com>; Melissa Richards Smith <melissa@gillamsmithlaw.com>; Tom Gorham <Tom@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>**Cc:** Deron Dacus <ddacus@dacusfirm.com>; dpw.comcast.touchstream <dpw.comcast.touchstream@davispolk.com>; Ramani, Ashok <ashok.ramani@davispolk.com>; Farber, Alena <alena.farber@davispolk.com>**Subject:** RE: Touchstream v. Comcast | 2:23-cv-00062-JRG-RSP

Thank you for your response. We disagree with many of your characterizations but at this point I think the parties understand each other's position on where we are and how we got here.

In short, it is unacceptable that Comcast served an interrogatory response on December 11, 2024, stating that the "Xfinity TV Remote mobile application will...no longer be operable by December 31, 2024," and let that response stand until the January 28, 2025 Evan Cohen deposition, where Mr. Cohen testified that the app *is* in fact operable after December 31, 2024 because Comcast briefly made the app inoperable in December 2024 and then decided to "roll[] back" that change for current users continuing into 2025. (E. Cohen Tr. pp. 34-35). The "you should have caught us earlier" defense you now articulate is no defense at all.

The document production you contemplate is one Comcast should have made in December, and should certainly make now, and each day that goes by without Comcast making that production with an upcoming trial setting unfairly prejudices Touchstream. I don't hear you arguing (nor could you persuasively do so) that these documents on this issue on which Comcast re-opened discovery are irrelevant, or do not exist, or would be unduly burdensome to produce. Please let us know the date on which we can expect this production.

I'm also perplexed by Comcast attempting to exclude all emails from this production. If you have any authority supporting this decision, please provide it. Based on Mr. Cohen's testimony and the documents Comcast produced we appear to be looking at a window of about two months on a single issue on which Comcast has re-opened discovery, and Comcast has made no showing of burden here.

As for a deposition, we appreciate your offer but I don't see how you can reasonably expect us to agree to the deponent or a time limit before we see the documents. But even as it stands now, the 45 documents we produced on this issue last week after Mr. Cohen (partially) corrected the record and Mr. Cohen's unpreparedness to speak for the company last week on several aspects of the sunseting decision easily justify more than 30 additional minutes on the record.

We appreciate Comcast's willingness to work with us on adding additional exhibits from this supplementation for trial—we look forward to discussing further once we have the full production.

Finally, as previously mentioned we intend to seek leave for our expert witnesses to serve supplemental reports commenting on how, if at all, this new evidence affects their opinions. Any global agreement for avoiding court intervention would need to involve agreement on this as well.

Please respond tomorrow with any revisions to Comcast's proposal or, alternatively, confirming that we are at an impasse. We are willing to meet and confer again on these issues tomorrow if you think it would be helpful.

Regards,

Jordan

Jordan Bergsten

Partner

BOIES SCHILLER FLEXNER LLP

1401 New York Avenue, N.W.

Washington, DC 20005

(t) +1 202 274 1105

jbergsten@bsfllp.com

From: Park, James Y. <james.park@davispolk.com>

Sent: Monday, February 3, 2025 2:02 PM

To: Jordan Bergsten <jbergsten@bsfllp.com>; Philip Eckert <peckert@bsfllp.com>; Touchstream <Touchstream@bsfllp.com>; Melissa Richards Smith <melissa@gillamsmithlaw.com>; Tom Gorham

Cc: Deron Dacus <ddacus@dacusfirm.com>; dpw.comcast.touchstream <dpw.comcast.touchstream@davispolk.com>; Ramani, Ashok <ashok.ramani@davispolk.com>; Farber, Alena <alena.farber@davispolk.com>
Subject: RE: Touchstream v. Comcast I 2:23-cv-00062-JRG-RSP

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Jordan,

Comcast has not made any inaccurate representations and its December 11 supplementation was complete. As Evan Cohen confirmed in his deposition, the Xfinity TV Remote app has been removed from the app store and can no longer be installed on customer devices. E. Cohen Dep. Tr. at 50:9-51:3. Mr. Cohen also explained that Comcast will complete the process of shutting off the servers that support any versions of the TV Remote app already on devices by the first or second week of February 2025. *Id.* at 46:9-47:10. Comcast has no intention of “rolling back” the sunseting of the app or making the accused functionalities available in any other form.

As we explained in our meet and confers this week, Comcast will not refer to the sunseting of the app at trial unless Touchstream raises the issue. However, pursuant to its discovery obligations, Comcast nonetheless promptly supplemented its relevant interrogatory response and produced the existing documents relating to this issue on December 11, 2024. It also offered to make Mr. Cohen available for deposition in early January 2025. Touchstream then chose to wait to depose Mr. Cohen until **January 28** and did not raise any purported deficiencies with Comcast’s supplemental production in advance of the deposition—even though the small number of public webpages to which Touchstream now points were available well before that date.

There is thus no basis for Touchstream’s belated complaints or its demands for further discovery. In any event, thank you for providing a better sense for the discovery Touchstream truly wants. We have discussed those requests with our client and Comcast would agree to the following, should doing so resolve the parties’ dispute:

1. Subject to a reasonable search of nonprivileged documents in its possession, custody, or control, Comcast will produce:
 - a. All transcripts and logs of customer interactions with Comcast Care representatives regarding the sunset of the Xfinity TV Remote app (subject to redactions for personally identifiable information); and
 - b. Any additional internal non-email documentation regarding the sunset of the TV Remote app that may have become available since the time of Comcast’s previous supplemental production.
2. Subject to evidentiary objections as to their admissibility, Comcast will not object to Touchstream’s addition of a reasonable number of trial exhibits regarding the sunset of the TV Remote app. Comcast also reserves the right to seek the addition of a reasonable number of rebuttal trial exhibits should Touchstream raise this issue at trial.
3. Comcast will make Evan Cohen available for another 30-minute deposition regarding the sunset of the TV Remote app.

Of course, should Touchstream continue with its broader unreasonable demands, Comcast will oppose any further discovery for all the reasons discussed above. Should that be necessary, Comcast will not agree to a 48-hour response deadline, which is patently unfair and prejudicial.

Comcast trusts, however, that the above proposal will obviate the need for any motion practice, and

Best Regards,
James

James Y. Park

+1 650 752 2044 office
+1 347 601 6043 mobile
james.park@davispolk.com

Davis Polk & Wardwell LLP

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From: Jordan Bergsten <jbergsten@bsfllp.com>
Sent: Saturday, February 1, 2025 11:09 AM
To: Park, James Y. <james.park@davispolk.com>; Philip Eckert <peckert@bsfllp.com>; Ramani, Ashok <ashok.ramani@davispolk.com>; Deron Dacus <ddacus@dacusfirm.com>; dpw.comcast.touchstream <dpw.comcast.touchstream@davispolk.com>; Farber, Alena <alena.farber@davispolk.com>; Hardisty, Micayla <micayla.hardisty@davispolk.com>; Touchstream <Touchstream@bsfllp.com>; Melissa Richards Smith <melissa@gillamsmithlaw.com>; Tom Gorham <Tom@gillamsmithlaw.com>; McKellar Karr <McKellar@gillamsmithlaw.com>
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Comcast Counsel,

Earlier last week, Touchstream requested a number of items to remedy Comcast's selective and belated supplementations and, it turned out, inaccurate representations. Comcast wholesale refused.

On our meet and confer Friday, Comcast requested that Touchstream tell Comcast "what it really wants." Touchstream responded that Comcast has Touchstream's list of requests, and if Comcast wishes to take a position other than wholesale refusal, it should make a proposal.

Of course, Comcast knows which additional documents exist, and we do not, which is why it makes no sense to ask us to negotiate against ourselves and blindly narrow our requests on our own. But as of this week we at least know the following exist:

- external communications from Comcast Care to subscribers who complained about Comcast sunsetting the remote app, and
- internal communications from Comcast Care requesting that the remote app sunset be rolled back

Presumably there are additional internal communications and documentation on both of these things.

Comcast has not even tried to make an excuse for not producing all of this when it provided, well after the close of discovery, a self-serving narrative about why it was sunsetting the app and a limited document production to try and support the same. At the very least, Touchstream demands that Comcast produce all of that now. As Comcast well knows, your discovery obligations go well beyond that to any relevant documents on this issue in which you have re-opened discovery. So we demand you fulfill those broader discovery obligations as well.

We look forward to your positions on Monday on what Comcast is willing to provide in response to our requests to try to avoid involvement of the Court.

We also look forward to Comcast's proposal for an expedited briefing schedule in the event that your

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