

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**



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Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a).

And Related Matter.

Application 14-04-013  
(Filed April 11, 2014)

Application 14-06-012  
(Filed June 17, 2014)

**NOTICE OF EX PARTE COMMUNICATION OF COMCAST CORPORATION**

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March 16, 2015

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Pursuant to Rule 8.4 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, Comcast Corporation (“Comcast”) submits this Notice of the following oral *ex parte* communication in the above-referenced proceeding.

On March 11, 2015, Suzanne Toller and Patricia Robbins of Davis Wright Tremaine LLP (counsel for Comcast), Michael Brady (Vice President, State Regulatory Affairs, Comcast Cable), Christopher McDonald (Vice President, Government Affairs, West Division, Comcast Cable), John Gutierrez (Senior Director of Government Affairs of California, Comcast), and Sandra McCubbin (Consultant, Lang, Hansen, O’Malley & Miller) met with Commissioner Carla Peterman and her advisors Julie Fitch and Niki Bawa from approximately 3:10 to 4:10 p.m. The meeting was initiated by Comcast and was held at the Commission, 505 Van Ness Avenue, San Francisco, CA 94102. No written materials were provided.

During the meeting, representatives of Comcast noted that the Joint Applicants' comments and reply comments on the Proposed Decision address legal and factual errors, including arguments as to why certain proposed conditions are outside of the Commission's jurisdiction. However, they emphasized that the Commission could enforce conditions within its jurisdiction along with any voluntary commitments made by Comcast—just as it enforces commitments made in settlement agreements, or regulatory requirements that stem from voluntary participation in Commission programs (e.g., CASF). The representatives also stated that contrary to the statements made by certain of the intervenors, Comcast has an excellent track record of complying with merger conditions, providing as an example Comcast's history of compliance with the numerous conditions imposed by the Federal Communications Commission ("FCC") in the context of the NBCUniversal transaction. In that context, the representatives explained (consistent with Joint Applicants' reply comments on the Proposed Decision) that of the more than 150 separate, specific requirements in the *Comcast/NBCUniversal Order*, the FCC has only found it necessary to investigate *one* issue, which was quickly resolved (and that was three years ago).<sup>1</sup> In addition to factual and legal concerns, Comcast representatives explained certain of the 25 conditions in the Proposed Decision were written in a manner that was vague and confusing. As a result, these conditions would be difficult to comply with from an operational perspective and could create challenges for Commission staff assessing compliance. Comcast described how the conditions in the Proposed Decision could be improved by revising

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<sup>1</sup> In 2012, Comcast made a good faith effort to comply with the standalone broadband condition as it understood the requirement, but the FCC questioned whether the service should have been rolled out in a different way. The FCC investigated Comcast's implementation of the condition. Comcast promptly resolved the FCC's concern, and there was no finding of a violation. The dispute between Comcast and Bloomberg TV referenced by certain intervenors involved a disagreement over the proper interpretation of a "neighborhooding" condition in the *Comcast/NBCUniversal Order*—not a compliance issue. Both parties asked the FCC to clarify the requirement. Once the FCC did so, Comcast followed the agency's interpretation.

them to be within the parameters of Commission programs with preexisting rules or by establishing metrics that are clearer and easier to measure than what has been proposed. During the meeting the representatives provided some of their initial ideas along these lines to enhance the conditions contained in the Proposed Decision and to address jurisdictional limitations described in detail in their comments. Comcast also emphasized that providing such feedback in meetings with Commissioners and their staff is permitted by the Commission's rules and would promote a fair and transparent process—especially given the fact that other parties to the proceeding had been and would be afforded an equal opportunity to have similar meetings, and because the content of those meetings would be memorialized in written *ex parte* filings.

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**LifeLine (Condition 1); Privacy, Customer Service, and Reliability (Conditions 20-23).** Comcast reiterated the commitment it had made in the Application to continue to provide LifeLine service offered in the Time Warner Cable territory. Comcast also noted (consistent with its comments filed on the Proposed Decision) that the Commission could not mandate that Comcast provide LifeLine in its territory or the Charter territory because: (a) section 710 precludes regulation of VoIP; and (b) such a mandate would not fall within any interpretation of Commission authority under section 706, since such a mandate does not promote the deployment of broadband. Comcast representatives noted that these jurisdictional limitations could be *voluntarily* addressed by Comcast's choosing to become a LifeLine provider in Comcast and Charter territories and subjecting itself to the LifeLine rules consistent with the approach taken by Time Warner Cable. Such an approach—within the context of a comprehensive resolution—would be consistent with Commission precedent (since the Commission has already permitted

other VoIP providers including Cox and Time Warner Cable to offer LifeLine in this manner) and would address any concerns about enforceability since the Commission already has a framework in place to enforce the LifeLine rules for VoIP providers (and is working on updating those rules in a pending rulemaking). This potential option would address concerns that low-income customers have an additional LifeLine option that could be used to purchase wireline voice. Moreover, because (under Commission precedent relating to Time Warner Cable) Comcast could be required—in conjunction with its LifeLine offering—to migrate all of its residential VoIP customers to its regulated CLEC subsidiaries, all of the merged entity’s residential VoIP operations (both LifeLine and non-LifeLine) in California would be subject to the CPUC’s regulation. Such regulation would include existing rules applicable to all CLECs including those governing slamming, cramming, privacy, E-911 and service quality—thus obviating the need for much of what is proposed in Conditions 20-23. To ensure adequate time to prepare for such an application and the ultimate launch of these new services, Comcast would need additional time to file an application with the CPUC and to launch LifeLine services after approval of the application (at least 6 months for each). As part of a comprehensive resolution, Comcast could consider not filing to relinquish the LifeLine certification for 3 years from the date the services are launched.

**G.O. 156 (Condition 2).** Comcast voluntarily participates in the Commission’s supplier diversity program, and has already committed to extend its compliance to the acquired Time Warner Cable and Charter systems, neither of which participates in the program today.

Consistent with its comments, Comcast explained, however, that mandating achievement of specific G.O. 156 diversity goals and imposing penalties is akin to setting quotas which the Commission had already determined violates state law. That said, Comcast indicated that it

would be willing to consider committing to work towards different diversity benchmarks (possibly those that are reflective of AT&T's and Verizon's entire business operations in California—i.e., not just their regulated ILEC operations). Comcast noted that it would need additional time to meet such benchmarks. As part of its reporting, Comcast representatives indicated that the company may also be willing to voluntarily commit to submit more granular information in its annual reports, including information regarding small business suppliers, as recommended by the Joint Minority Parties.

**Backup Batteries (Conditions 3 and 6).** Comcast acknowledged that the portions of these conditions that would require compliance with D.10-01-026 were within the authority over VoIP expressly delegated to the Commission by the legislature under section 710. Accordingly, as a general matter the company has no objection to the portions of Conditions 3 and 6 that are tied to the requirements of that decision (although Comcast respectfully notes that the languages listed in Condition 3 are not coextensive with the relevant languages that Comcast markets in, as promulgated in D.10-01-026, and it would avoid confusion if the condition instead were to refer to the requirement in the order).<sup>2</sup> However, Comcast representatives noted that the provision of batteries for free or at cost was not required by D.10-01-026 and thus would exceed the Commission's jurisdiction. That said, Comcast indicated that it would be willing to consider

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<sup>2</sup> Comcast also clarified in the meeting that contrary to the allegations by some of the intervenors about Comcast's lack of compliance with D.10-01-026, Comcast makes information available to customers consistent with D.10-01-026; submitted its Advice Letter describing its D.10-01-026 compliance plans in 2010; and has received *no* indication from the Commission in the intervening five years that the compliance plans do not satisfy D.10-01-026. *See* Joint Applicants' Comments at 29 & nn.108-109; Comcast's Advice Letter No. 129.

voluntarily committing, post close, to provide a free battery for all new voice installations for disabled customers, upon request.<sup>3</sup>

**Accessibility (Conditions 4 and 5).** These conditions as written exceed the scope of the Commission's jurisdiction, for the reasons set forth in the Joint Applicants' comments, and are vague. However, in an effort to try to address concerns raised by the PD, for its voice services Comcast would consider a voluntary commitment to perform accessibility testing of *new and updated* content and functionality on [www.comcast.com](http://www.comcast.com) and provide test reports to the Director of the Commission's Communication Division that demonstrate support for web accessibility best practices within 12 months following the close of the transaction. Best practices are based on the Web Content Accessibility Guidelines (WCAG) Version 2.0 from the Web Accessibility Initiative of the World Wide Web Consortium (W3C). Consistent with its current policy, Comcast would commit to provide billing statements for its voice customers in braille or large print upon request through the Comcast support center for customers with disabilities. Comcast would also consider performing an accessibility audit of printed customer communications for voice services and establish a policy within 12 months of the close of the transaction: (i) to ensure delivery of account- and service-specific information in an accessible format upon request by the customer, and (ii) to make available an audio readout of printed account- and service-specific information.

**Internet Essentials (Conditions 11-13).** During the meeting, the Comcast representatives explained (consistent with the points outlined in the Joint Applicants' comments) that Conditions 11-13 exceed the CPUC's jurisdiction, are infeasible, and are commercially

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<sup>3</sup> Customers would be responsible for obtaining replacement batteries, which would not be provided at cost.

unreasonable. The representatives reiterated Comcast's commitment to extend its *Internet Essentials* program, which CETF acknowledges is "unmatched by any other major broadband provider," for 5 years from launch to serve low-income students and families in the acquired Time Warner Cable and Charter areas. Comcast explained that while the penetration rate proposed by CETF was arbitrary, infeasible, and difficult to measure, the company would consider committing to reasonable connection targets in the Time Warner Cable and Charter areas (e.g., connect a certain number of customers within a particular timeframe). With respect to an expansion of the eligibility criteria for *Internet Essentials* to all low income households, Comcast respectfully maintains that it would be anticompetitive and commercially unreasonable to ask one provider to offer unsubsidized, reduced-price broadband to all low-income households in its service territory, and that such a requirement would be unprecedented. Towards this end, the Comcast representatives noted that the examples cited by CETF in support of expanded eligibility, including Cal Fresh-SNAP and the federal LIHEAP program, involve fully- or partially-subsidized state and federal public assistance programs that span entire industries and business segments.

However, Comcast indicated its willingness to discuss a more targeted expansion of eligibility criteria within 6 months of close, noting its proven track record in already voluntarily expanding eligibility beyond its original NBCU voluntary commitment. Additionally, as the Joint Minority Parties suggested in their comments in response to the Proposed Decision, in order to ensure that all Californians have the opportunity to take advantage of a Lifeline-like program for broadband, the Commission should invite all interested parties to the table to discuss whether and/or how such a program might be created. Comcast would be happy to participate in such an industry-wide proceeding.



**Broadband Deployment (Conditions 14-16 and 18).** The Comcast representatives indicated that although the company was supportive in concept of these conditions, certain of the conditions would need modification because they are vaguely drafted and difficult to measure (Condition 14 and 18), would run afoul of existing law and have unintended consequences (Condition 14),<sup>4</sup> and/or were too open ended (Condition 16). Comcast respectfully suggested that the proposed conditions might be enhanced to address these and any jurisdictional issues<sup>5</sup> as follows: *Condition 14:* Comcast could consider as a voluntary commitment a certain amount (e.g., \$25 million) over 5 years to support competitive bids on E-Rate Form 470 and RFPs within the combined California service territory, with a focus on the schools the Governor’s office identified as requiring upgrades to support the Common Core State Standards. *Conditions 15 and 16:* Within 5 years from the close of the transaction, Comcast could consider committing to upgrade the facilities throughout the California service territory to offer at least 25 Mbps download and 3 Mbps upload broadband speeds—including in current video-only systems.<sup>6</sup> *Condition 18:* Also within 5 years from the close of the transaction, Comcast could consider voluntarily committing \$25 million to build out new broadband facilities with a focus on CASF priority areas that are adjacent to or near the combined company’s service territory.<sup>7</sup> Comcast

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<sup>4</sup> The representatives noted that based on their current understanding of the E-Rate rules, if Comcast were to build facilities for a school or library for free, it may not be able to bid to serve that location.

<sup>5</sup> To the extent that the Commission has authority under section 706 (which Comcast does not concede), these conditions would appear to be the type of conditions designed to promote broadband deployment that could be within the Commission’s jurisdiction. However, to remove any question about their enforceability, Comcast respectfully suggests that they could be addressed as part of a voluntary commitment that would be part of a comprehensive resolution.

<sup>6</sup> The 5-year timeframe is needed because some of the legacy systems may use microwave facilities that would need to be replaced in order to provide 25/3 Mbps broadband speeds. Some areas may also be located a significant distance away from existing high speed broadband facilities.

<sup>7</sup> This \$25 million commitment is more than half of what all providers combined have contributed to CASF projects in California to date. See

<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/CASF/Default.htm>.

would apply for CASF support to enhance these deployments. Each of these voluntary commitments would involve a sizeable financial obligation and a significant contribution of other company resources, all of which would promote high-speed broadband deployment throughout California.

**Wholesale Services (Conditions 7-8).** Although time was short, the Comcast representatives also noted in passing that as was reflected in CALTEL's recent *ex parte*, Comcast is conversing with CALTEL and hopes to be able to resolve their concerns by agreeing to offer Standalone Internet Access and Ethernet products throughout the combined territory, which would be available to wholesale providers.

The Comcast representatives were not able to address the remaining conditions during the meeting. However, Comcast's position on these conditions is set forth briefly below. Regarding *Reporting and Enforcement (Conditions 24-25)*, Comcast could commit to report annually on its compliance with the conditions for a period of 5 years, and would also comply with any other generally applicable industry-wide requirements, such as LifeLine reporting obligations. Comcast would also agree to the Commission's continuing jurisdiction to enforce the conditions that are either within the CPUC's jurisdiction or reflect Comcast's voluntary commitments. *Condition 9 (Roku)*, *Condition 10 (no interference with voice)*, *Condition 17 (maintain Time Warner Cable pricing for standalone broadband)*, and *Condition 19 (no muni/CASF opposition)* all exceed the Commission's jurisdiction and the scope of the proceeding. Additionally, *Condition 10* is vague (Comcast is not sure what it would require), and *Condition 19* is unconstitutional and contrary to CPUC precedent. That said, Comcast has already committed to offer standalone broadband throughout the merged territory.

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The Comcast representatives closed their presentation by highlighting the main arguments contained in the Joint Applicants' opening brief and their comments and reply comments on the Proposed Decision regarding market power. They reiterated that the appropriate market definition from the consumer's perspective is the local market—i.e., where I live, how many options do I have? After the proposed transaction closes, consumers will have the same number of options that they do today; therefore, if the Horizontal Merger Guidelines are applied correctly, the change in HHI from the transaction is *zero*. To the extent that the concern is that the merged entity will have “terminating monopoly power,” with “gatekeeper” ability to restrict access to content and to harm edge providers (which the representatives disputed), this is decidedly an interstate (and an international) market outside the Commission's jurisdiction, contrary to ORA's assertions that there is a “statewide market” for over-the-top services. This aspect of the Proposed Decision should be revised accordingly to reflect the absence of any state-specific harm that requires CPUC mitigation.

Respectfully submitted,

/s/ Suzanne Toller

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