



BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA

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<p>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, (U-6874-C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U-6955-C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a).</p>	<p>A.14-04-013 (filed April 11, 2014)</p>
<p>And Related Matter.</p>	<p>Application 14-06-012 (Filed June 17, 2014)</p>

**THE CENTER FOR ACCESSIBLE TECHNOLOGY'S OPENING COMMENTS  
ON PROPOSED DECISION OF ALJ BEMESDERFER**

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## I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Center for Accessible Technology (CforAT) submits these Opening Comments on the Proposed Decision of ALJ Bemesderfer (PD) granting with conditions the application to transfer control to allow the merger of Comcast Corporation and Time Warner Cable. CforAT urges the Commission to reject the PD and deny the pending applications because the proposed merger is not in the public interest, and no conditions, including the proposed conditions in the PD, can adequately mitigate the harm to the public that the proposed merger would cause. The proposed conditions are inadequate in part because they do not go far enough and do not address the anti-competitive harms of the merger. Even so, revisions amending the conditions would be unlikely to solve the problems because of incurable concerns regarding the enforceability of any conditions, the timing of any enforcement efforts, and the impossibility of undoing the merger if the conditions are eventually determined to be inadequate and/or unenforceable.

While CforAT discusses some potential changes to the conditions proposed in the PD, these changes still would not mitigate all the harms of the proposed merger, nor would they address the concerns about enforceability. For this reason, CforAT wishes to be clear that our fundamental recommendation is for the Commission to reject the PD and instead issue a determination that the proposed merger should not be allowed to go forward because it is not in the public interest.<sup>1</sup>

If the Commission declines to deny the merger, it should seriously consider the mechanisms and resources that will be required to ensure that any conditions it attaches to the merger are enforceable and actually enforced. Any potential future harm to the public will not be cured by issuing fines against the mega-entity that will result from this

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<sup>1</sup> Because CforAT believes that the PD errs in reaching its fundamental conclusion that the merger, with any mitigating conditions, is in the public interest, we provide as Appendix A to these comments, consistent with Rule 14.3(c), modifications to Conclusions of Law 6-7 such that the merger would be denied. CforAT does not attempt to provide proposals for modifying the Findings of Fact or Conclusions of law to address improved mitigation or enforcement measures.

merger, and any such fines (which would likely only be issued after extensive and resource-intensive proceedings, beginning only after the occurrence of any harm) would likely only be perceived by the entity as a cost of doing business. The Commission cannot set up a system where such fines are the only possible outcome if its orders are not implemented.<sup>2</sup>

If and only if the easily anticipated difficulties regarding implementation and enforcement of mitigation conditions are considered and addressed would it be appropriate for the Commission to issue conditions as part of a decision allowing the merger to proceed. In such a circumstance, the conditions set forth in the PD that would impact the needs of customers of the merged entities who have disabilities should be strengthened.

## **II. THE COMMISSION SHOULD REJECT THE MERGER**

The Proposed Decision errs in concluding that the proposed merger (with the conditions proffered) is in the public interest. This fundamental error is what allows the decision to find that there is any circumstance in which the merger should be allowed to proceed. However, the harms to the public identified in the proposed decision demonstrate that the proposal would not be in the public interest, and must therefore be denied.

Much of the PD effectively articulates how the proposed merger would not serve the public interest. After setting out the public interest criteria for considering the merger,<sup>3</sup> and setting out the parties' arguments in some detail, the PD appears persuaded

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<sup>2</sup> One possible approach the Commission could adopt is to require Comcast to meet all or most of the conditions prior to the effective date of the decision approving the merger, and to demonstrate that it has done so. This would not address the adequacy of the conditions, but it would prevent the irreparable harm of allowing the merger to go forward before determining whether the conditions could or would be met.

<sup>3</sup> CforAT believes that the PD correctly considers the merger under the provisions of §854(c) of the California Public Utilities Code, *see* PD at p. 12, but we do not address this legal issue in detail. We expect that other parties will focus on the appropriate legal standard for review of this application. We do note that the PD correctly states that the factors set forth in §854(c) are relevant as guidance even if the provision does not directly apply to the transaction. PD at p. 15.

by the arguments set out by ORA and multiple intervenors. The PD notes that “Comcast and Time Warner Cable each has an effective monopoly on providing broadband services” within their territories, and further notes the reach of a potential merged entity, which would be “capable of serving over 84% of the homes in California.”<sup>4</sup> The mega-entity would be the only available broadband provider, using the FCC’s benchmark broadband speed, for almost 80% of Californians.<sup>5</sup> The PD then agrees with the concerns raised by merger opponents that the proposed merger could result in declining customer service, reduced content options, problematic privacy issues, and concerns regarding safety and reliability.<sup>6</sup> And there is more. Beyond these concerns about potential harms to customers who currently receive service from Time Warner Cable, the PD further notes that there are potential harms based on Comcast’s poor performance with regard to diversity, and with the loss of an industry “benchmark” that allows both customers and the Commission to consider the performance of different providers within the same industry.<sup>7</sup> This would also be reflected in the loss of a “policy competitor,” who might serve as a maverick in the industry, leading to better results for customers.<sup>8</sup>

Additional harms recognized by the PD include the consolidation of broadband service, with potential negative impacts on voice communications and broadband deployment, which falls under the Commission’s jurisdiction based on the delegation of

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<sup>4</sup> PD at p. 61.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at pp. 62-64.

<sup>7</sup> *Id.* at p. 64.

<sup>8</sup> PD at p. 64. In support of this point, the PD rightly points to the fact that Time Warner Cable has applied to the Commission to offer LifeLine service, while Comcast has not. This is an important example of different thinking in the industry. While the PD includes as a condition a mandate for the merged company to offer LifeLine, *see* Condition No. 1 in Appendix A to the PD, it cannot make the corporate culture of a company that would prefer not to offer Lifeline into a culture that is enthusiastic about doing so.

authority in Section 706 of the federal Telecommunications Act,<sup>9</sup> as well as the potential merger’s likely enhancement of the resulting entity’s market power, which could allow the entity to act in an anti-competitive manner that would result in reduced competition in broadband services.<sup>10</sup> Finally, the PD notes that it is “persuaded by evidence of Comcast’s Internet Essentials program’s weak performance in closing the digital divide in California and fulfilling universal service goals, and thus do[es] not view it as a mitigating factor without additional conditions.”<sup>11</sup>

Notwithstanding these harms, which the PD recognizes as legitimate and troubling, the PD then concludes that they “*may* be mitigated by the imposition of conditions on our approval consistent with our powers under state and federal law.”<sup>12</sup> Because of the extent of the noted harms and the limits of the proposed conditions (or any conditions) to mitigate the harms, this conclusion is in error. The PD should conclude, based on its own evaluation of the harm that will likely result if the proposed merger is allowed to go through, that the protestors and intervenors are correct and that the proposed transaction is not in the public interest.

### **III. IF THE COMMISSION DOES NOT REJECT THE MERGER, IT MUST ADDRESS SERIOUS QUESTIONS ABOUT THE ENFORCABILITY OF ITS CONDITIONS AND MITIGATION MEASURES**

The PD attempts to mitigate the substantial array of harms that it identifies from the proposed merger by imposing 25 conditions to the transfer of control, with these

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<sup>9</sup> PD at p. 19 and pp. 65-66. CforAT believes that the PD correctly concludes that the Commission has jurisdiction to evaluate the broadband aspects of the proposed merger based on Section 706(a) of the 1996 Telecommunications Act, based on the decision by the D.C. Circuit Court finding that the language of this statute constitutes a grant of authority to state commissions to regulate broadband in a manner that is co-extensive with the authority of the FCC. *Verizon v. FCC*, 740 F.3d 623, 638 (D.C. Cir. 2014). As with the jurisdictional issues regarding the applicability of Section 854(c) of the Public Utilities Code, CforAT does not address this jurisdictional issue in detail, but we expect other parties will do so.

<sup>10</sup> PD at pp. 66-68.

<sup>11</sup> *Id.* at pp. 68-69.

<sup>12</sup> *Id.* at p. 69 (emphasis added).

conditions set out as Appendix A to the proposed decision.<sup>13</sup> While these conditions are extensive, it is unclear whether the Commission has the ability and resources to enforce them, or that any enforcement action taken by the Commission (which would likely consist of an investigation that could potentially result in the imposition of monetary sanctions) would mitigate the harm that could result from the merged entity's failure to effectively implement any of the conditions.<sup>14</sup> Moreover, any Commission enforcement action would only be initiated after the harm has occurred, and would likely conclude long after that, likely rendering the actual harms irreparable.

On February 25, 2015, Assigned Commission Peterman convened an all-party meeting to address the proposed merger, the pending PD, and the proposed mitigation measures. Commissioners Florio, Sandoval and Randolph also attended the all-party meeting, as did most of the active parties to this proceeding. This issue of whether and how any conditions attached to a decision allowing the proposed merger to move forward could be enforced by the Commission, given questions ranging from jurisdictional concerns to recognition of resource limitations, garnered substantial attention at the all-party meeting. These inquiries were well-founded, particularly because a merger cannot be undone if it is found at any time in the future that mitigation measures do not successfully alleviate predicted harms.

Even if they work as intended, many of the conditions included in the PD set a sunset date, after which there would be no obligation on the part of the merged entity to continue to avoid the potential harm that the condition was intended to prevent.<sup>15</sup> Other

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<sup>13</sup> All references below to merger conditions by number are citing to the conditions as identified in Appendix A.

<sup>14</sup> The question of whether the conditions, even if fully implemented, would actually mitigate the harms identified in the PD is addressed in §IV, below.

<sup>15</sup> See Condition No. 2 (requiring the merged entity to report on compliance with the Commission's General Order 156 regarding diversity for five years), Condition Nos. 7-8 (requiring the merged entity to offer Time Warner Cable's business calling plan and carrier ethernet last mile access for five years), Condition No. 8 (requiring the merged entity to offer access to independent video programming platforms for five years), Condition No. 13 (requiring

conditions, while well-intentioned, are so vague as to be virtually impossible to enforce. For example, Condition No. 21 requires the merged entity to “take action to improve customer service including respecting customer choice and competitive choices.” While this condition also mandates compliance with the Commission’s service quality standards as set forth in GO 133-C and a requirement for reports on customer complaints, as well as a requirement that the merged entity “shall not contest Commission jurisdiction” regarding service quality issues for voice customers in California, it is hard to imagine how this condition will actually prevent harm to customers. The limitations of this condition are evident from a review of the record in R.11-02-001, an open Commission proceeding addressing the very service quality standards of GO 133-C that are meant to serve as mitigation to potential customer harm in Condition No. 21. The record in this proceeding shows that carriers who have long been subject to the provisions of GO 133-C have routinely failed to meet the included standards. At this time, the GO has no associated penalties for failure to comply, though such penalties are under consideration in the pending proceeding. Moreover, years of Commission oversight under the provisions of this GO have not resulted in compliance for AT&T or Verizon. This calls into question the idea that a condition subjecting Comcast (which the PD recognizes has a “record of customer service [that] has been heavily criticized by protesters, resulting in a risk of poorer customer service for current Time Warner Cable customers)<sup>16</sup> to the provisions of GO 133-C will necessarily result in improved customer service.

The risk that a merged entity may not comply with the PD’s conditions is not simply hypothetical. For example, consider Condition No. 6, which responds to concerns raised by CforAT regarding public safety as it is impacted by the ability of Comcast’s

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the merged entity to submit plans for effective customer enrollment in Internet Essentials for five years), Condition No. 17 (requiring the merged entity to offer stand-alone broadband service for five years), Condition No. 19 (preventing the merged entity from opposing municipal broadband for five years), and Condition No. 24 (requiring detailed reporting from the merged entity on compliance with the other conditions for five years).

<sup>16</sup> PD at pp. 63-64.

voice customers to retain connectivity to the public network during a power outage, and which includes three subparts. Condition 6(b) requires Comcast to “fully implement the guidelines for customer education programs regarding backup power systems adopted by this Commission in Decision (D.) 10-01-026.” The decision referenced in this provision, D.10-01-026, was issued over five years ago in R.07-04-015, which adopted guidelines for customer education programs regarding backup power systems, pursuant to a statute passed by the California legislature. This decision is already binding on Comcast.

Nevertheless, information provided in the record by CforAT demonstrates that Comcast is not currently meeting its obligations under this decision, nor is Time Warner Cable.<sup>17</sup>

While the PD now proposes to make compliance with this past decision a condition of allowing the merger to go forward, there is no new or additional mechanism created to better ensure compliance with its requirements in the future than there has been to date.

If Comcast is not in compliance now, nothing in the PD appears sufficient to bring the merged entity into compliance in the future.<sup>18</sup>

Similar concerns regarding compliance, and the limited range of options available to the Commission if a merged entity does not comply, impact multiple additional conditions. What happens if Comcast nominally offers Lifeline as a tariffed service (consistent with Condition No. 1), but fails to effectively market it to potential customers? What happens if Comcast does not meet the diversity goals of General Order 156 (consistent with Condition No. 2)? And so on.

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<sup>17</sup> See CforAT Opening Brief at pp. 3-8. When this issue was raised at the all-party meeting, Comcast noted that it had submitted an Advice Letter regarding its efforts to comply with this decision. CforAT has no information to evaluate whether Comcast was ever in compliance with the prior decision, but the information provided on the issue in response to data requests in this proceeding and included in the record demonstrate that Comcast is not now in compliance.

<sup>18</sup> CforAT should note that it is possible for the merged entity to take steps to come into compliance with Condition No. 6, and counsel for the Applicants indicated a willingness to do so at the recent all-party meeting. The point here is not that compliance is out of the question. Rather, it is to demonstrate that, if the merged entity does not voluntarily come into compliance, the Commission’s options for forcing it to do so are limited.

The PD makes a gesture at addressing these concerns with Condition No. 25, which states that the Commission may take enforcement action for any noncompliance, and that “Comcast shall not contest the Commission’s jurisdiction for doing so.”<sup>19</sup> Unfortunately, this provision does not provide adequate reassurance. First, the examples above show that existing Commission mechanisms are not always sufficient to guarantee compliance by regulated entities. As the Commission is well aware, enforcement proceedings can be long and complex, even where jurisdiction is not at issue, and there is no doubt that a merged entity would be both adequately resourced such that it could draw out any enforcement proceedings and sophisticated about regulatory proceedings, while also containing a level of internal complexity (based in part on its increased size and footprint) that regulators would potentially have difficulty contending with. Moreover, Commission enforcement actions typically are only initiated after a preliminary determination of harm; they do not prevent harm from occurring.

Finally, there is the question of how the substantial array of conditions would stand or fall if any of them are withdrawn or found inapplicable in any way. The Applicants made clear at the all-party meeting and in comments to the media after the release of the proposed decision that they see some of the conditions to be unacceptable, and that they intend to argue that the Commission does not have jurisdiction to require certain actions. How many of the conditions in the PD might be subject to revision or removal before the overall balance of harms is changed? As set forth above, CforAT believes that even the full array of conditions to the PD is not sufficient to counter the harms of the proposed merger. If the array of conditions is reduced further, the balance of harms to the public interest would only increase.

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<sup>19</sup> The enforceability of this condition asserting authority to enforce all other conditions it, itself, likely to be challenged by the Applicants.

**IV. IF THE COMMISSION CAN ENSURE THAT ITS CONDITIONS AND MITIGATION MEASURES WILL BE ENFORCABLE, IT SHOULD STRENGTHEN THE MEASURES THAT IMPACT CUSTOMERS WITH DISABILITIES**

If the Commission determines that the overall balance of harms and the enforceability concerns set forth above are not sufficient reasons to deny the proposed merger, then the actual conditions set forth in the PD should be revisited to better address the identified concerns raised by the parties. CforAT notes that the same enforceability concerns described above would also apply to revised conditions, which means that there is no guarantee that these mitigation measures would successfully address the harms they are intended to cure. Nevertheless, if the Commission goes forward down the path of mitigation measures, it should make the effort to ensure that the adopted measures, if implemented, would successfully improve the outcome of the merger for consumers.

While CforAT believes that numerous mitigation measures could be improved, we focus below on the measures that are most relevant to our constituency of customer with disabilities, who have distinct needs regarding telecommunications and broadband. As previously noted by CforAT, customers with disabilities are more likely than average to be low-income; at the same time, these customers are highly dependent on reliable service to support their ability to live independently, conduct activities of daily living, and protect their safety in an emergency situation. Thus, the most relevant mitigation measures for the disability community concern public safety, accessibility, and the Internet Essentials program, which is intended to provide low-cost broadband for low-income customers.<sup>20</sup>

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<sup>20</sup> Because disability is prevalent throughout all communities, some people with disabilities are likely to be affected by each and every condition. In particular, conditions that attempt to address issues of service quality and customer choice, such as Condition No. 9 (regarding access to independent video programming platforms), Condition No. 10 (prohibiting Comcast from interfering with customer access to voice services), Condition No. 17 (requiring the merged entity to offer stand-alone broadband), and others, will impact customers with disabilities as well as non-disabled customers. Because of space limitations and CforAT's expectation that other parties will address these general concerns, we focus on the conditions that have more direct relevance to the disability community in particular. The one measure directly relevant to the

**A. Public Safety Measures**

Condition No. 3 addresses battery back-up power and Condition No. 6 (as discussed above) further addresses backup batteries and customer education regarding backup power systems, consistent with concerns raised by CforAT in our Opening Brief in this proceeding. It appears, though it is not entirely clear, that Condition 3 is primarily meant to provide notice to existing customers of Comcast and Time Warner Cable, while Condition 6 is primarily intended to address communication with new customers of the merged entity. With regard to current customers and the requirements of Condition No. 3, CforAT appreciates the requirement that the notice be made available in a variety of languages and formats. However, it is not clear how customers will be informed of the availability of information in anything other than the standard form unless they have somehow already been identified by their current provider as needing an alternative language or format. In R.10-02-005, the Commission previously approved including a multi-language, large print insert in with a standard print mailing in English (informing customers of an energy utility that they were at risk of service disconnection due to nonpayment, and that there were options available to assist them) in order to effectively reach customers who would not understand a the standard notice. Potentially, a similar insert could be developed here.

Condition No. 6 also needs improvements to ensure that it effectively serves its intended purpose. In briefing, CforAT noted that potential new customers of the merged entity should be informed about the need for battery back-up power at the time they first order service, not at installation. This will allow a customer who was unaware of the reliability issue to make a different decision on service without being under pressure from a service provider ready to install equipment. This timing requirement for notice should be included. Additionally, the enforcement concerns identified above regarding the

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disability community but not addressed below is Condition No. 1, requiring the merged entity to offer Lifeline service to its voice customers. CforAT supports this condition.

customer education requirements adopted five years ago in D.10-01-026 must be fully resolved. Finally, while the PD finds “CforAT’s discussion of the merger’s impact on safety and reliability” to be persuasive,<sup>21</sup> neither Condition 3 nor Condition 6 address some of the identified problems such as limitations in battery monitoring, lack of audible alerts, and some customers’ need for assistance in locating and changing batteries. Unless these concerns are addressed in a meaningful and enforceable manner, voice service by cable providers will continue to create safety risks that many consumers do not adequately understand.

**B. Accessible Communication**

Condition No. 4 and Condition No. 5 directly address the accessibility of customer communications following a merger. This issue is of particular importance for customers with sensory disabilities. At the all-party meeting, counsel for Comcast cited these conditions as examples that Comcast could “work with” in conjunction with merger approval. Consistent with our concerns about enforceability as set forth above, CforAT does not see these conditions as the initial step in a negotiation with Comcast regarding accessibility. Rather, the conditions as written should be clarified to more explicitly state what it means to provide accessible communication, and the Commission should be prepared to effectively enforce the revised conditions.

Condition No. 4 addresses accessibility of the merged entities’ website, largely consistent with recommendations made by CforAT in briefing. Web accessibility standards are well defined at this point, and Comcast has already initiated efforts to provide web accessibility. Thus, a 12 month period to provide full compliance is reasonable, though there would be no basis to allow for longer. In order to better serve the goal of ensuring web accessibility, the condition should specify that the website must comply with WCAG 2.0 AA, which is the standard already in use by Comcast.<sup>22</sup> The

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<sup>21</sup> PD at p. 63.

<sup>22</sup> See CforAT’s Opening Brief at p.17 and footnote 32.

condition should also specify that third-party content provided as part of the Comcast website is also required to comply with the same standard. Finally, the condition should make clear that any website optimized for mobile usage and/or any Comcast app for mobile devices must also meet accessibility standards.<sup>23</sup>

Condition No. 5 addresses additional issues regarding accessible customer communication. Consistent with recommendations by CforAT, this condition requires written communications to be available in alternative formats for customers with disabilities, and requires key information in standard print materials to be included in large print. To ensure that these materials are made available to those customers in need of them, the condition should also mandate that the merged entity must inquire whether customers can use standard print materials and ensure that they are aware of the availability of alternative formats. Additionally, key documents such as contracts and “welcome kits” must be readily available in alternative formats without delay for new customers. Finally, the condition should specify what constitutes “large print,” while there is no legal definition, the disability community generally understands this requirement to be satisfied through use of 14 point, sans serif font.

### C. **Internet Essentials**

The PD contains multiple measures to expand and improve Internet Essentials (IE), the low-income “broadband” offering currently provided by Comcast, and to direct the merged entity to better serve the low-income population within its service territory. These conditions include expanding the eligibility criteria for the program (Condition No. 12), increasing the speed of internet connections for IE customers (Condition No. 11), including a Wi-Fi router so that multiple devices can use the IE service (Condition No.

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<sup>23</sup> CforAT proposes the following revised language for Condition No. 4: “Comcast shall review the design and presentation of information available on its web site, [including any separate website optimized for mobile use, and on any mobile apps](#), and certify to the Director of the Commission’s Communication Division compliance with ~~best in practice web access~~ [WCAG 2.0 AA standards for all content and functionality, including third-party content and functionality](#), within 12 months following the effective date of the parent company merger.”

11), and setting both penetration goals and spending goals to ensure expanded participation (Condition No. 13). Without any quantifiable metrics, the conditions also require Comcast to include in its enrollment plan “process improvements to speed enrollment and reduce wait times and the burden on the household trying to enroll” (Condition No. 13).

The breadth and reach of these mitigation measures demonstrate the extent to which the record shows inadequacies in the existing IE program, which Applicants argue would provide a public benefit simply by being extended with no modifications into TWC’s territory. Yet Applicants have made clear at the all-party meeting and in other public comments since the release of the PD that they oppose the conditions regarding IE. At minimum, Comcast has vigorously opposed the penetration and spending goals set forth in Condition No. 13.

The IE program and the conditions regarding IE bring forward a complex set of concerns that illustrate the difficulty in addressing public harms and benefits through conditions to a proposed merger. CforAT’s proposals to improve the conditions relating to IE do not purport to overcome the limits and weaknesses of this approach; nor does CforAT believe that even an improved expansion of IE can overcome the public harm from the merger overall.<sup>24</sup> That said, if the merger is allowed to move forward, improvements to the IE expansion must be incorporated.

The greatest concern regarding IE expansion as proposed in the PD is that it would cement in place a second-class level of service for low-income customers because the conditions, while requiring increased speeds for IE customers, fall short of the new broadband requirements adopted by the FCC. While Comcast would generally be

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<sup>24</sup> Notwithstanding our concerns regarding the limitations of IE, CforAT finds the argument articulated by counsel for Applicants at the all-party meeting, asserting that any effort to expand low-income broadband should be done for the industry as a whole, to be disingenuous unless Comcast is actively requesting that the Commission open such a rulemaking. What is before the Commission now is a specific application; it is appropriate to require action by the actual parties to the proposal without regard to the rest of the industry at this time.

required to increase the speed of its offerings to 25 Mbps down and 3 Mbps up (Condition No. 16), the speed requirements for IE are limited to 10 Mbps down and 1 Mbps up (Condition No. 11). This discrepancy alone renders the IE provisions inadequate.

If the speed requirements are improved, other conditions set forth in the PD are helpful to expand the reach of the program. CforAT supports the requirement to include a Wi-Fi router as part of IE service (Condition No. 11). CforAT also supports expansion to all households with incomes equal to 150% of the federal poverty level or less (Condition No. 12), which is consistent with the eligibility standards for the California LifeLine program. To ease enrollment, CforAT also recommends that a household should be able to enroll in IE by showing that they are enrolled in LifeLine or in any of the other public benefit programs that support categorical eligibility for LifeLine. While Comcast may argue that these conditions constitute changes in the program, they are changes that the Commission is authorized to require as a condition for allowing the merger to go forward. They are also examples of changes that could be initiated at Comcast prior to any decision allowing the proposed merger to go forward.

Finally, CforAT anticipates that Condition No. 13 will be the subject of substantial dispute. CforAT believes that the provision requiring “process improvements to speed enrollment and reduce wait times” is too vague to ensure that the identified problems are remedied in any way. At the same time, CforAT expects that Comcast will object to various obligations incorporated into Condition No. 13, including the penetration rate, and the spending requirements. The final recommendation “encouraging” Comcast to cooperate with CETF and other CBOs is unlikely to cure the other flaws in this condition; in particular, the record in this proceeding shows that CETF and CBOs such as CforAT, which previously worked to enroll clients in IE, have a very different view of what is needed to make the program effective compared to other CBOs

who spoke at the all-party meeting and did not note the existing program flaws documented in the PD.

Overall, the expansion of IE could potentially be the most meaningful “benefit” to vulnerable populations if the merger is allowed to go forward; yet it is also likely to be one of the most contested issues, and the mechanism for ensuring effective implementation among the weakest. If Comcast were to fail to meet the enrollment goal, or spend the appropriate amount on outreach (or even to provide speeds at the level specified), what action is the Commission prepared to take to ensure compliance? As the record indicates, Comcast sees its existing program as a great success. Other parties (including CforAT) and the PD see it as much more problematic in terms of closing the digital divide and fulfilling universal service goals. Without a clear path to ensure effective expansion of the program, at speeds that meet FCC standards, IE cannot serve to balance the merger’s harms to the public interest.

## **V. CONCLUSION**

For the reasons set forth above, the PD approving the proposed merger between Comcast and Time Warner Cable with conditions should be rejected, and the proposed merger itself should be denied because it would not be in the public interest.

If the Commission declines to reject the merger, it should provide greater detail and specificity as to how it will ensure that all merger conditions are enforceable and how they will actually be enforced. Additionally, the conditions should be modified consistent with the recommendations above, in order to reduce the likely harm of the merger on vulnerable customers, including customers with disabilities.

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Respectfully submitted,

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## Appendix A

Consistent with CforAT's argument that the PD errs in finding the merger to be in the public interest, even with mitigation measures, CforAT recommends the following revisions to the Conclusions of Law:

COL 6. ~~As modified by this decision,~~ The proposed transfers do not meet the requirements of §854(a) and (c) and are not in the public interest.

COL 7. The approval denial of the transfer of control between parties to this merger ~~and the conditions applied herein~~ is consistent with the requirements of Section 710 of the Public Utilities Code and consistent with the Commission's jurisdiction expressly delegated by applicable federal law and statute.