



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 REPLY COMMENTS ON
PROPOSED DECISION OF ALJ BEMESDERFER**

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I. INTRODUCTION

Pursuant to Rule 14.3, the Center for Accessible Technology (CforAT) submits these Reply Comments on the Proposed Decision granting with conditions the application to transfer control to allow the merger of Comcast Corporation and Time Warner Cable.

Opening Comments submitted in this proceeding show a rare consensus regarding the pending applications. While the reasons offered by the Applicants and intervenors differ, virtually all parties agree that the proposed resolution of the application set out in the PD, approving the requested transfer in conjunction with 25 conditions, is not an appropriate outcome and is not enforceable. As discussed below, the record establishes that the merger would result in various harms identified in the PD but not addressed by any of the numerous conditions. Intervenors also note concerns that various conditions would not be enforceable and would not prevent even the harms they purport to address from occurring. Finally, intervenors detail past experiences to show that Comcast is unlikely to accept or comply with various conditions, which would disrupt the balance sought by the PD and leave no clear path forward.

In their response to the PD, Applicants also reject the idea that the conditions could be enforced to mitigate the harms identified in the record. At the same time, Applicants demonstrate that each of the concerns raised by various intervenors is valid. Applicants make clear that they will oppose all the conditions included in the PD with all resources and tools at their disposal, and further indicate that they view the conditions to be unacceptable and unenforceable. As discussed below, they effectively demand approval of the proposed merger with no conditions except those that the Applicants voluntarily determine to be acceptable. Yet an application to the Commission requesting approval of a merger is not a negotiation, and Applicants must not be allowed to dictate their own terms. The Commission has authority to determine whether a proposed merger is in the public interest, with or without mitigating conditions. Only if it makes such a determination is it authorized to grant approval of an application. If an application is not

in the public interest (or if it cannot be adjusted through conditions so that the overall balance is in the public interest), the Commission must reject it.

Given the consensus in this proceeding that the conditions attached to the PD, as drafted, cannot be effectively enforced, the Commission must now evaluate whether the proposed merger would serve the public interest if some or all of the conditions were removed or found unenforceable (whether due to resource constraints, practicalities, or judicial rulings). Based on the detailed harms identified in the PD, the Commission must find that the merger would not serve the public interest. Thus the only possible response can be to deny the applications.

II. APPLICANTS' REJECTION OF THE PD'S CONDITIONS SHOW THAT THE PD CANNOT BE SALVAGED

In opening comments, CforAT and other intervenors question whether the mitigation measures set out in the PD could effectively reduce the identified harms, even if they could effectively be implemented in full. In light of the clear indications by Applicants in their opening comments that they will vigorously obstruct and challenge the conditions (including the threat of additional proceedings before the Commission and in other forums), the conditions must be taken out of the equation entirely. What is left is the litany of harms and concerns which cannot justify approval of the applications.

Applicants assert that various conditions are outside the Commission's jurisdiction, otherwise unauthorized, unjustified, unnecessary, unenforceable, unconstitutional, or otherwise inappropriate.¹ Overall, they reject each and every

¹ See Applicants' Opening Comments at pp. 4-9 (directly rejecting Conditions 5, 11, 12, 13, 15, 16, 17, 21, 22, and 23 as improper regulation on Broadband and VoIP services); pp. 9-15 (directly rejecting Conditions 1, 2, 4, 6, 9, 10, 14, 18, 19, and 20 as outside the Commission's authority or otherwise unlawful); pp. 16-18 (rejecting findings regarding market power and consumer choice, implicating Conditions 1, 7-8, 15-17), pp. 18-21 (rejecting relevance of FCC's definition of advance telecommunications capability, implicating Condition 16); pp. 22-23 (rejecting concerns regarding overbuilding, implicating Condition 18); pp. 23-26 (rejecting risks regarding edge providers, internet backbone and content, implicating Condition 9), pp. 27-29 (rejecting Condition 2 addressing supplier diversity as unnecessary), Applicants' Opening Comments, pp. 29-30 (rejecting Conditions 3 and 4-6 addressing public safety improvements as unjustified), pp. 30-31 (rejecting Conditions 7 and 8 regarding service to CLECs as erroneous), pp. 31-36 (rejecting Conditions 11-13 improving IE as unjustified), pp. 36-37 (rejecting standalone

condition attached to the proposed decision, as well as the Commission’s authority to apply and/or enforce various measures. While rejecting each of the attached conditions, Applicants make clear that they still wish to proceed with the proposed merger, with the transaction going forward unencumbered by any requirements for Applicants to act in the public interest beyond any steps they choose to take on a voluntary basis.

By rejecting mitigation measures while demanding the right to go forward with the merger, Applicants essentially continue their ongoing effort to restructure the Commission process to their own liking. Throughout this proceeding, as ORA has repeatedly noted,² they have declined to follow the formal application process and affirmatively address their burden to show that the transaction is in the public interest. Now, in addition to rejecting the conditions attached to the PD, Applicants blatantly state that they intend to pursue their interests not through hearings and presentation of evidence in a public forum, but through closed-door meetings with policymakers using the ex parte process.³ After articulating this plan, Applicants confidently conclude that they “do not expect the final decision to include objectionable conditions.”⁴

In light of current public concerns about the Commission being too cozy with regulated utilities, as well as Comcast’s poor record in complying with requirements of prior mergers and respecting customer privacy and other interests, the worst possible action for the Commission to take would be to engage in backroom conversations that result in a weakened decision allowing the proposed merger to go forward without regard to the harm it will cause to the public.

broadband requirement, including Condition 17), pp. 38-42 (rejecting concerns regarding service quality, safety and reliability including Conditions 21 and 23), pp. 42-43 (rejecting “benchmark competition” theory including Condition 24), pp. 44-45 (rejecting Condition 25 regarding enforcement of all other conditions). In addition to rejecting them for other reasons as noted above, Applicants oppose conditions regarding diversity requirements (Condition 2) and restrictions on opposing municipal broadband (Condition 19) as unconstitutional. Applicants’ Opening Comments at pp. 10-11, 13-14.

² ORA Opening Comments at pp. 10-11 and associated footnotes.

³ Applicants’ Opening Comments at p. 2.

⁴ Applicants’ Opening Comments at p. 45.

CforAT agrees with Applicants that the record in this proceeding supports the issuance of a final decision that does not include problematic conditions. The way to achieve this result is to deny the merger application. Any other outcome will result in ongoing litigation, at the Commission or elsewhere, without any assurances that the public will receive any meaningful or enforceable protection from the identified harms established in the record.

To the extent that the Commission disagrees with CforAT's recommendation and continues down the path of considering whether the proposed merger can be made to comport with the public interest through use of enforceable conditions (a path that CforAT opposes), the only appropriate mechanism for such a result must be through action on the record, with equal consideration given to the opinions of all parties. As ORA has noted,⁵ the proposed conditions in the PD were not included in the Application (and indeed are rejected by Applicants), and parties were not given an opportunity to examine them or comment on them extensively at any time. If the Commission continues to consider adopting a decision approving the merger with conditions, it must re-open the record, allow discovery, hearings and briefing on relevant issues, and then issue a new proposed decision based on the enhanced record at that time.

III. THE LOSS OF SPECIFIC MITIGATION MEASURES THAT WOULD IMPACT PEOPLE WITH DISABILITIES ALONE WOULD JUSTIFY REJECTION OF THE PROPOSED MERGER

While CforAT generally believes that the Commission cannot effectively mitigate harm to the public interest through enforceable mitigation measures, we note below the specific risks to our constituency of people with disabilities.

Public Safety Conditions: The record supports the PD's findings that Applicants are not in compliance with D.10-01-026, and that they do not adequately address issues

⁵ ORA Opening Comments at p. 11.

concerning availability and reliability of service in an emergency,⁶ which are within the Commission's jurisdiction.

Accessibility Conditions: The record shows that Comcast's website, while better than TWC, does not meet accessibility standards. Additionally, many important customer communications are not provided in accessible format.⁷ The Commission has jurisdiction to ensure that Comcast communicates effectively with its disabled customers.

Internet Essentials: Comcast's arguments that extending the existing IE program to TWC territory is a substantial benefit completely fail to acknowledge the significant weaknesses of the program demonstrated in the record.⁸ The PD's proposed expansion of IE, while still falling short on key issues such as speed, would be the only meaningful benefit to people with disabilities. Without effective and immediate IE expansion, this vulnerable community receives nothing at all from the merger while facing real harm.

Lifeline: Comcast's flat rejection of including Lifeline means that the low-income service risks losing a carrier, while gaining nothing. This limits options for low-income people with disabilities who need affordable and reliable service to live independently.

IV. CONCLUSION

For the reasons set forth above as well as in CforAT's Opening Comments and the Opening Comments of other intervenors, 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 it is not denied in its entirety, the record should be re-opened and parties should have the opportunity to address potential mitigation measures and their effectiveness based on discovery, testimony and hearings.

⁶ PD at p. 59, citing CforAT's Brief and DR responses showing limited and confusing information on backup power, and that such information is not delivered in a prominent or accessible manner.

⁷ *Id.* at pp. 59-60, citing CforAT's Brief and DR responses.

⁸ PD at pp. 69-70, citing multiple intervenor briefs on problems with IE.

Respectfully submitted,

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