



**BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

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Joint Applications 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). )

A. 14-04-013  
(Filed April 11, 2014)

And Related Matter, Application No. 14-06-012 )  
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**REPLY COMMENTS OF THE CALIFORNIA EMERGING TECHNOLOGY FUND  
ON THE PROPOSED DECISION**

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ON PROPOSED DECISION**

The California Emerging Technology Fund (“CETF”) respectfully files Reply Comments on the Proposed Decision (PD) on a few critical points argued by Joint Applicants in Their Comments.

**I. The Commission Has Authority to Impose Conditions on Broadband Services**

Joint Applicants err in arguing that Section 710 of the Public Utilities Code<sup>1</sup> limits this Commission in regulating IP-enabled services including broadband and Voice Over Internet Protocol (“VOIP”) services in the state. The statute states an exception for express delegations by federal law or *expressly directed to do so by statute*. The State Legislature has given the Commission clear authority in 3 statutes to act on broadband deployment for unserved and underserved areas, and on broadband adoption particularly for low-income persons.<sup>2</sup> Thus, Section 710 does not bar this

<sup>1</sup> P.U. Code Section 710(a).

<sup>2</sup> Senate Bill (“SB”) 1193 codified into State law the Commission’s California Advanced Services Fund (“CASF”) \$100 million program for “the purpose of encouraging deployment of broadband facilities for use in provisioning advanced telecommunications and voice service in unserved and underserved areas.” SB 1040 added \$125 million to CASF for 3 accounts: the Broadband Infrastructure Grant Account, the Rural and Regional Urban Consortia Account, and the Broadband Infrastructure Loan Account. These statutes cumulatively grant the Commission the authority to oversee deployment of state-of-the-art broadband in underserved or unserved areas. Further, Assembly Bill 1299 created an additional CASF account called the Broadband Public Housing Account, to deploy local area networks and increase adoption rates in publicly-supported housing complexes. This grants the Commission authority to act on broadband adoption issues for low-income persons. (Bill citations in Table of Authorities)

Commission from acting to remedy Digital Divide issues for those who live in rural areas with no or slow broadband or for those who cannot afford regularly-priced Internet access.

CETF is baffled by the Joint Applicants' reliance on the Federal Communications Commission's ("FCC") recent Order to Protect the Open Internet, voted out on February 26, 2015.<sup>3</sup> The FCC's decision has not yet been released to the public as of March 9th, and so it is impossible to know if it will impact issues in this proceeding. All that has been released is a media statement, Fact Sheet, and separate statements of the Commissioners. What can be discerned from these materials is that the FCC relied on Section 706(a) of the 1996 Telecom Act for authority over broadband Internet access service; if the FCC can obtain this authority then the state commissions may also under the same code section. CETF agrees that the FCC made it clear there would be no "common carrier style" regulations; however, none of those things have been requested by CETF in this docket. Thus, nothing in the FCC's Open Internet documents released to date justify removal of any of the proposed conditions in the PD.

## **II. Broadband Infrastructure Build Out Requirements Are Appropriate and Necessary**

For similar reasons as stated above, this Commission has authority to condition the merger on broadband infrastructure build-outs in the PD, to ensure that rural areas have comparable speeds to urban areas, and that such speeds are adequate for modern applications. Given the state's broadband mapping, this Commission has data about the needs within the post-merger service footprint. It has authority to require Comcast as a condition of the merger to expand advanced communications services to adjacent service areas to its facilities that lack broadband at speeds ordered by the Commission. Further, this Commission has an appropriate public interest in ensuring that vital anchor institutions, such as schools, libraries, public safety institutions, and public hospitals, have adequate broadband speeds to serve the public.

<sup>3</sup> Protecting & Promoting Open Internet <http://www.fcc.gov/document/fcc-adopts-strong-sustainable-rules-protect-open-internet>

### **III. Broadband Speeds Are a Critical Issue for Equity**

Joint Applicants argue that this Commission should not adopt the FCC's new benchmark broadband speeds<sup>4</sup> because they are "aspirational." The citation to the FCC's ConnectAmerica Fund Order speeds is not evidence that the FCC believes speeds of 10 Mbps / 1 Mbps are "good enough" for rural residents. The ConnectAmerica decision<sup>5</sup> was issued in December 2014 prior to the FCC Broadband Speed Order. Further, the FCC's Broadband Speed Order in fact finds: "Our data show that 25 Mbps / 3 Mbps capability is unavailable to 8 percent of Americans living in urban areas, compared to 53 percent of Americans living in rural areas and 63 percent of Americans living in Tribal lands and in the U.S. Territories. Thus, we also separately conclude that broadband is not being deployed in a reasonable and timely fashion because it is not yet available to the majority of rural and Tribal Americans and not becoming available quickly enough. Finally, looking at schools, we find that although many schools have access to the Internet, not all schools have access to fiber consistent with goals the Commission set for them. For this reason as well, we separately conclude that broadband is not being deployed in a reasonable and timely fashion."<sup>6</sup> Far from supporting Joint Applicant's arguments that 10 Mbps / 1 Mbps speeds are good enough for rural residents, the FCC found market failure in reasonable and timely broadband deployment.

CETF further requests that this Commission disregard Joint Applicant's argument that 71% of Americans who can purchase 25 Mbps service today choose to buy lower speeds instead for "everyday broadband needs." Consumers seek value for speeds and the lack of bandwidth within the networks, including anchor institutions, constrain practical demand. Absent a scientific survey to determine actual reasons for purchase choices, this factoid proves nothing.

<sup>4</sup> <http://www.fcc.gov/document/fcc-finds-us-broadband-deployment-not-keeping-pace-0> (FCC Broadband Speed Order) (Feb. 4, 2015)

<sup>5</sup> <http://www.fcc.gov/document/fcc-increases-rural-broadband-speeds-under-connect-america-fund> (Connect America Order) (issued Dec. 11, 2014)

<sup>6</sup> Id. at para. 6 (footnotes removed).

#### **IV. Internet Essentials Program Requires Goal, Expansion and Effective Management**

Joint Applicants challenge all the PD's corrective conditions to improve Internet Essentials (IE) and persist in defending their past performance while rejecting a future goal, confirming their inability to effectively manage the program to achieve significant results. Population trends reflect the absence of focused efforts while the experts cited have no experience working in low-income communities.<sup>7</sup> IE must address all 3 barriers to broadband adoption (cost, relevance, digital literacy) with a reasonable goal, expansion to all low-income households, dedicated funding to support experienced community-based organizations (CBOs) do outreach in language/culture, digital literacy training, and complete IE sign-ups. CETF provided evidence that a 45% goal is reasonable,<sup>8</sup> further supported by the Commission's planning for a 45% participation rate for the Telephone Lifeline wireless program. CETF provided documentation<sup>9</sup> justifying \$480 per sustainable adoption because of challenges with the existing process, but estimated that the amount could be driven down to \$250 plus management not to exceed 10% (\$25) which equals the recommended \$275 in the PD. Notwithstanding that the ALJ found this amount reasonable and Comcast has rejected it, the payback period for such an investment will be less than 3 years (each IE subscriber pays \$120 per year, generating \$360 in 3 years)—thus, every last dime comes back to Comcast if the program is administered on a performance basis (IE sign-ups) as proposed by CETF. As a result of the questions from Commissioners regarding enforceability during the All Parties Meeting on February 25, 2015, CETF reaffirmed its original recommendation that an independent fund be established (capitalized at \$275 per eligible household in an adopted goal) and that a fund manager be selected by a State agency through an open competitive process to ensure performance, transparency and accountability.

<sup>7</sup> Joint Applicants March 5, 2015 Reply Brief Public Version, at 34.

<sup>8</sup>As of March 10, 2015, Comcast reports 20% penetration in California, leaving 25% more to be signed up in existing service areas. See <http://corporate.comcast.com/comcast-voices/internet-essentials-year-four-progress-report>. Experienced CBOs testified to the ability and willingness to achieve the 45% goal with requisite resources (CETF December 10, 2014 Reply Brief Attachment D).

<sup>9</sup> CETF October 19, 2014 Comments, at footnote 27.

Also, CETF delineated the requirements of an Annual Plan as proposed in the PD, beginning with specification of data sources and methodology for identifying eligible households. This imperative is underscored by Comcast's use of 84% market share as a gross percentage to estimate the number of low-income households in the new service territory. CETF school-by-school compilation of students eligible for free-or-reduced lunch and census tract analysis of incomes reveals that 87% of all low-income households in California (3,334,822) will live in Comcast service areas (vs. 2,250,000 estimated by Comcast<sup>10</sup>). CETF stands behind all the data submitted to this Commission.

## **V. Conclusion**

This corporate consolidation is the ballgame for California. The goal of enrolling 45% of all low-income households (including families with children on free-or-reduced lunch) is reasonable and doable according to CETF experience and testimony from CBOs with a track record in the target communities. The PD-proposed commitment by Comcast of \$275 per eligible household in the adopted goal also is reasonable and justifiable with a payback period of less than 3 years. The Commission has the authority to require the conditions of approval in the PD with the refinements recommended by CETF in order to secure a significant public benefit. The circumstances and the opportunity compel action now to measurably close the Digital Divide in California.

*/s/ Sunne Wright McPeak*

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<sup>10</sup> Joint Applicants March 5, 2015 Reply Brief Public Version, at 35. CETF analysis estimates 45% goal will enroll 1.5 million households requiring an investment of \$412.5M from Comcast with a payback period of less than 3 years.

## Table of Authorities

Codes	Page Numbers
47 U.S.C. Section 1302(a), Section 706(a) of the Telecommunications Act of 1996	2
Cal. Pub. Utils. Code 710(a).	1
<b>Federal Communications Commission Orders</b>	
<i>Connect America Fund</i> , Report and Order, 29 FCC Rcd 15644 (Dec. 11, 2014)	3
<i>2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment</i> , FCC 15-10 (adopted Jan. 29, 2015, rel. Feb. 4, 2015) (Broadband Speed Order)	3
<i>Protecting and Promoting the Open Internet</i> , GN Docket No. 14-28 (Adopted Feb. 26, 2015) <a href="http://www.fcc.gov/document/fcc-adopts-strong-sustainable-rules-protect-open-internet">http://www.fcc.gov/document/fcc-adopts-strong-sustainable-rules-protect-open-internet</a>	3
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