



**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).

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

And Related Matter.

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

**COMMENTS OF THE JOINT MINORITY PARTIES ON THE PROPOSED DECISION
GRANTING WITH CONDITIONS APPLICATION TO TRANSFER CONTROL**

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INTERDENOMINATIONAL ALLIANCE,
and LOS ANGELES LATINO CHAMBER OF
COMMERCE

Dated: March 5th, 2015

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I. Introduction

Pursuant to Rule 14.3 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the National Asian American Coalition, the Ecumenical Center for Black Church Studies, the Jesse Miranda Center for Hispanic Leadership, the Los Angeles Latino Chamber of Commerce, Christ Our Redeemer AME Church, Orange County Interdenominational Alliance, and the National Hispanic Christian Leadership Conference (collectively “Joint Minority Parties” or “JMP”) respectfully submits its comments on Administrative Law Judge (ALJ) Bemserfer’s February 13, 2015 Proposed Decision Granting with Conditions Application to Transfer Control (Proposed Decision or PD).

In these Comments, the Joint Minority Parties assert that the proposed transaction may not in its present form be in the public interest and that some of the proposed conditions should

be modified to cure some of the harms of the transaction. Additionally, modifications might be necessary to better ensure that some of the twenty-five conditions listed out in the Proposed Decision are actually feasible to comply with and enforceable by the Commission.

II. Discussion

a. The proposed conditions regarding diversity are inadequate

While the JMP fully supports the intent behind condition #2 that Comcast achieve a diversity goal at least equal to the average of AT&T's and Verizon's prior year achievements across all GO-156 subcategories¹, it might not be structured in the best way to ensure that Comcast makes sustainable improvements to its supplier diversity goals. In 2013, of the \$64 million Comcast spent in supplier diversity, only a little over \$23 million went to minorities.² Broken down, 6.2% of the total diversity spend went to Asian-Americans, but only a trivial 1.5% went to Latinos, and only an even more minuscule 0.4% to African Americans.³ Comcast in its GO-156 filings also reported the number of billable hours WMDVBE attorneys at non-WMBVBE firms billed on Comcast California matters. In 2013, not a single billable hour was attributed to an Asian-American attorney.⁴ It is therefore unquestionable that when it comes to supplier diversity Comcast has much room for improvement.

The JMP fully supports the need for yearly GO-156 reporting by Comcast and Comcast has admirably reached out to the JMP and the National Diversity Coalition⁵ on the challenges it

¹ Proposed Decision at 75.

² 2013 Supplier Diversity Annual Report & Annual Plan, COMCAST, pg. 25, available at <http://www.cpuc.ca.gov/NR/rdonlyres/E5E76D2D-1C77-4FF8-9DE4-CA6DCAD128AC/0/Comcast2013GO156Report.pdf>

³ *Id.*

⁴ *Id.*, at 28.

⁵ All members of the JMP are part of the National Diversity Coalition (NDC). The NDC's membership includes the leadership of 40,000 Latino evangelical churches, 5,000 African Methodist Episcopal churches, the largest minority business chamber in California, and the largest pan Asian American organization advocating before regulatory bodies for lower consumer rates, along with many other minority focused groups.

faces when it comes to scaling supplier diversity and how it would be open to providing more detailed reports. Currently, the dollar amount of Comcast's supplier contracts are almost exclusively with larger companies and account for most of their qualified spend, making it difficult to quickly separate and divide out their current supplier business to more diverse vendors. In order to allow Comcast to find sustainable methods of supporting minority owned business, the JMP suggest giving Comcast an extra year, for a total of three years, to achieve a diversity goal at least equal to the average of AT&T's and Verizon's prior year achievements across all GO-156 subcategories.

Additionally with this increased time Comcast could also work on improving its GO-156 reporting by providing more detailed breakdowns of its supplier diversity data, which would be beneficial in locating areas for further improvement and greater California job creation. For example, Comcast has discussed with the JMP the concept of including specific data on the revenue of the businesses it awards contracts to (split into three categories: \$1 million and under, \$5 million and under, and \$10 million and under), as well as creating a separate GO-156 category for returning veterans from Iraq and Afghanistan who have been honorably discharged whether or not they have been disabled. Additionally, they are also open to the idea of possibly separating the reporting for in-state and out of state businesses⁶

i. More diversity in customer support languages needed

Conditions #21-24 are moves in the right direction in ensuring that customer support needs are met.⁷ However, as this Commission well knows, minorities, particularly recent immigrant groups, rarely file complaints with government agencies as demonstrated by CPUC

⁶ AT&T and Verizon already voluntarily do so for small businesses and this Commission in the past has looked into having companies report in-state vs. out-of-state contracting.

⁷ Proposed Decision at 82-83.

complaint data over the last decade. The JMP and National Diversity Coalition are presently working closely with both the Federal Trade Commission and Consumer Financial Protection Bureau on correcting this problem. However, a partial solution might be requiring Comcast to offer customer support in languages other than just English and Spanish. The JMP suggest having Comcast offer customer assistance in Chinese, Japanese, Korean, Tagalog, Vietnamese, and any other languages where there are more than 250,000 speakers in Comcast's service territory. Please note that AT&T provides customer service in over 160 different languages.⁸ It is likely that if customer assistance is offered in their own languages, minority groups will feel more comfortable voicing any issues or complaints they might have, enabling improvements to be made.

Comcast has reached out to the JMP to indicate that it is willing to provide greater engagement and focus on handling minority complaints. We commend Comcast for its proposed outreach to underserved minority communities and willingness to make improvements in this area.

b. The Federal Communications Commission's (FCC) latest net neutrality rules, adopted February 26th, 2015 do not mitigate some of the anti-competitive harms of the proposed transaction.

i. The FCC net neutrality rules do not address the issue of data caps

One weakness of the newly adopted FCC net neutrality rules is that they do not address the issue of data caps. Though Comcast and TWC do not compete in the same territory, the fact that they are both major ISPs in California provides a helpful comparison point for consumers. In

⁸ *AT&T Offers Customer Service in More Than 160 Languages*, AT&T (Sept. 26, 2007), <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=24448>.

the past, TWC has promised to never institute mandatory data cap plans for broadband.⁹ On the other hand, Comcast has already started implementing mandatory data cap plans in certain parts of California.¹⁰ Data cap plans are in a way discriminatory against other forms of content. As Comcast is both a broadband and content provider it has every incentive to ensure its own products are consumed before other types, such as Hulu or Netflix. If Comcast is allowed to adopt a tiered pricing only model for broadband in its service areas, it would shut other content providers out of the market. Not only would other content providers be affected, but consumers as well. The tiered pricing models hurt all consumers as it puts a limit on how much data one can access online and would actually worsen the digital divide as areas where there is no viable competition would be forced to accept mandatory data cap plans, while areas where there is more competition would be free from such plans. Areas that are more expensive to wire, such as rural areas, currently have little to no competition, while metropolitan areas have maybe one or two choices.¹¹ The digital divide between rural and urban California would most likely worsen if mandatory data cap plans are allowed.

Mandatory data cap plans benefit no one. Comcast claims that that data cap plans serve as a cheaper option for those who do not use the internet constantly¹², but there are already cheap internet plans available where people sacrifice speed for cost savings. Having them sacrifice quantity in addition to quality would further worsen the divide between the internet haves and have nots. Furthermore, the new data usage plans are not substantially cheaper as customers have

⁹ Phillip Dampier, *Time Warner Cable Recommits: No Mandatory Usage Caps As Long As Company Remains Independent*, STOP THE CAP (October 30, 2014), <http://stopthecap.com/2014/10/30/time-warner-cable-recommits-mandatory-usage-caps-long-company-remains-independent/>.

¹⁰ *What XFINITY Internet Usage Plans will Comcast be Launching*, COMCAST (Dec. 05, 2014), <https://customer.comcast.com/help-and-support/internet/data-usage-what-are-the-different-plans-launching?ref=1>.

¹¹ This could likely be an issue in regards to Verizon's sale of landlines to frontier communications, application pending

¹² *Id.*

to pay for additional gigabytes in increments of 50 GBs for \$10 each on top of already existing plans.¹³ As such, the Commission should consider adding a condition or modifying a current condition to address this issue.

ii. The proposed transaction threatens harms across a variety of markets that fall outside net neutrality rules entirely, such as discrimination against independent video streaming platforms

1. Discrimination against independent video streaming platforms

Condition #9 requires Comcast to offer California customers the ability to use Roku or other independent video programming platforms, on the same basis that Time Warner did prior to the merger.¹⁴ Roku is not the only the video streaming platform that has been discriminated against, for example it is well known that the Comcast customers cannot stream HBO Go from their PS3s and PS4s¹⁵ in spite of the fact that a Department of Justice consent decree prohibits Comcast from striking deals that would limit online video distribution.¹⁶ The inability to stream HBO Go content from PlayStation devices is not a technical issue, as other ISP customers can stream without any problems, but a conscious choice by Comcast to prevent their customers from using a third party streaming platform to stream content that their customers has paid for. Additionally, one can never predict the course of technological advancement. For example, Amazon just released the Fire Stick last year, another video streaming platform.

¹³ *Id.*

¹⁴ Proposed Decision at 78.

¹⁵ Karl Bode, *Comcast Blocks HBO Go From Working on Playstation 4, Won't Coherently Explain Why*, TECHDIRT, Mar. 05, 2015, <https://www.techdirt.com/blog/netneutrality/articles/20150303/12433530200/comcast-blocks-hbo-go-working-playstation-4-wont-coherently-explain-why.shtml>.

¹⁶ United States et al. v. Comcast Corp. et al., Civil Action No. 1:11-CV-00106-RJL, available at <http://www.justice.gov/atr/cases/f274700/274713.pdf>.

Instead of singling out the Roku as a specific example and limiting what Comcast must do, to only what TWC did previously, the JMP recommend simply changing condition #9 to require Comcast to allow all California customers the ability to use any independent video streaming platforms.

c. The proposed conditions regarding Internet Essentials (IE) are both inadequate and unfeasible

i. The conditions involving Internet Essentials are unfeasible.

An expansion to IE would benefit a great number of Californians, from the elderly to those who live from paycheck-to-paycheck. While the JMP fully agree with the intent behind the expansion of IE, to ask one company to completely shoulder the burden of creating such an expansive program without significant subsidies is both unfeasible and unsustainable.

Expanding eligibility to all those equal to or below 150% of the federal poverty level¹⁷ is an admirable goal and the testimony at the all-party meeting only emphasizes the need for a lifeline-like program for broadband. However, this program would be limited to only the areas Comcast provides services to. In order to ensure that all Californians have the opportunity to take advantage of a life-line like program for broadband, the Commission should invite all interested parties to the table to discuss how such a program might be created.

Our proximity to Silicon Valley gives us the opportunity to work with a wide diversity of technology companies in order to create a lifeline-like program for broadband. Comcast has reached out to the JMP and indicated that it is open to the idea of joining, if not leading, a roundtable discussion with other ISPs and companies to coordinate on how to create a truly sustainable lifeline-like program for broadband that will benefit all Californians. The JMP urge

¹⁷ Proposed Decision at 78.

the CPUC to sponsor such a meeting and to preside over it at the Commissioner level. For example, there could be an en banc Commissioner hearing inviting all appropriate and interested parties to participate.

ii. The conditions concerning IE would not close the digital divide even if implemented.

Even if Comcast acquiesced to the conditions regarding IE, the conditions would not close the digital divide. Traditionally, minorities and lower-income households have demonstrated lower levels of access to and knowledge of information and communication technologies. Even though African-American and Latino populations have made substantial gains in internet use over the last decade¹⁸, both populations still trail behind White populations in terms of internet use, broadband adoption, and ownership of desktop computers.¹⁹ Some of these differences can be attributed to the fact that African-American and Latino populations are more likely to have lower household incomes when compared to White populations and the strong correlation between household income and internet use.²⁰

Ensuring those with household incomes equal to or less than 150% of the federal poverty level have access to IE is a good step, but as discussed above in c(i), as proposed, the new IE conditions would only benefit those in Comcast's service territory and all Californians outside those territories would be left out.

¹⁸ From 2000-2010, the proportion of African-American and Latino internet users nearly doubled from 11% to 21%. See Aaron Smith, *Technology Trends Among People of Color*, PEW RESEARCH CENTER (Sept. 17, 2010), <http://www.pewinternet.org/2010/09/17/technology-trends-among-people-of-color/>.

¹⁹ See Aaron Smith, *Trends in Broadband Adoption*, PEW RESEARCH CENTER (Aug. 11, 2010), <http://www.pewinternet.org/2010/08/11/trends-in-broadband-adoption/>; See *Id.*

²⁰ See Gretchen Livingston, *Latinos and Digital Technology, 2010*, PEW HISPANIC CENTER (Feb. 09, 2011), <http://www.pewhispanic.org/files/reports/134.pdf>.

Furthermore, the speeds required under condition #11, 10 Mbps download and 1 Mbps upload,²¹ are inadequate and would worsen the digital divide. The current Federal Communications Commission’s definition for broadband is 25 Mbps for downloads and 3 Mbps for uploads.²² For a family of four, with children who are considered to be digital natives, having multiple internet capable devices in a house is not unusual. If all members of the family were on the internet at the same time on a 10 Mbps download speed plan, internet speeds within the house would slow to a crawl. Requiring IE speeds to be 10 Mbps in comparison to the current 5 Mbps speeds is an improvement, but it does not go far enough. So while internet usage rates might improve with the implementation of an expanded IE program, broadband adoption rates would most likely not and thus, minorities will continue to trail behind White populations in terms of broadband adoption, creating a two-tier system between those with broadband and those without.

d. Miscellaneous Issues

i. Footnote Error

There is a minor error on page 57 of the proposed decision at footnote 153. Instead of “Id., at 14” it should be “Reply Brief of the Joint Minority Parties at 14”.²³

III. Conclusion

Overall, as the Commission has determined in its own findings of fact, the anti-competitive effects of this merger, absent any mitigation, will hinder broadband development in

²¹ Proposed Decision at 78.

²² Steve Lohr, *F.C.C. Sharply Revises Definition of Broadband*, N.Y.TIMES (January 29, 2015), <http://nyti.ms/1yR84p5>.

²³ Proposed Decision at 57.

California. However, some of the currently proposed mitigation measures are either inadequate or infeasible and will not directly address the harms inherent in the proposed transaction. Thus, in order to ensure that the public interest is adequately protected, this Commission should modify some of its proposed conditions and consider the suggestion by the JMP to bring together all interested parties to discuss creating a lifeline-like program for broadband

Dated: March 5th, 2015

Respectfully Submitted,

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/s/ Jessica Tam
Jessica Tam, Staff Attorney