



## Appendix A

**FILED**

**Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs** 3-05-15  
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### Findings of Fact:

1. Comcast, TWC, Bright House and Charter filed A.14-04-013 and A.14-06-012 seeking approval of the transfer of control of telecommunications service offered by the affiliates operating under CPUC issued certificates of public convenience and necessity.
2. The applications were protested by ORA, TURN, Greenling, DISH and Joint Minority Parties, among other things contending that the merger was subject to review under Section 854(a) and (c) as well as Section 706 of the Federal Telecommunication Action of 1996 (Section 706).
3. A Scoping Memo and Ruling by the assigned commissioner and ALJ was issued on August 14, 2014, that established the scope and initial schedule for this proceeding.
4. The schedule in this proceeding was suspended due to discovery disputes and a suspension of schedule by the Federal Communications Commission (FCC) of their corresponding proceeding.
5. Various formal actions of the FCC and the United States Circuit Court for the District of Columbia were the subject of motions for official action which were granted.
6. The schedule was initially resumed in this proceeding pursuant to a November 13, 2014 ALJ Ruling Resetting Schedule of Proceeding requiring concurrent opening briefs and evidentiary filings by all parties within eight and a half business days of the schedule resumption, concurrent reply briefs within five business days, and two days of hearing two days later.
7. On November 18, 2014, ORA filed a Motion to Reconsider November 13, 2014 Ruling of ALJ Resetting the Schedule of Proceeding. In that Motion, ORA objected to having to file its opening brief and evidentiary filing without having seen any showing by the Joint Applicants in support of the scope of the proceeding as set by the Scoping Memo.
8. That motion was partially granted on November 26, 2014 and a new schedule was established which provided for the Joint Applicants to file their opening briefs and evidentiary showing on December 3, 2014 and the other interested parties to file their opening briefs and evidentiary showing on December 10, 2014. Parties were required to file motions requesting hearings on December 10, 2014, "specifying in detail all alleged disputed material facts, explaining the relevance of such facts to

- the issues outlined in the scoping memo, stating the names of any proposed witnesses, what evidence would be offered during the hearings...”with the hearings to be held for two days on December 17 and 18, and simultaneous post-hearing briefs due on December 22, 2014.
9. On November 24, 2014, Greenlining, TURN and ORA filed a motion to dismiss, noting that the Joint Applicants had refused to amend their application to present their application in conformance with the scope of the proceeding as set forth in the adopted Ruling and Scoping Memo and the CPUC’s Rules of Practice and Procedure.
  10. In their response to the Motion to Dismiss, the Joint Applicants objected to amending their applications, continuing to challenge the subject matter jurisdiction of the CPUC. No ruling was ever made on the motion to dismiss.
  11. Most proposed conditions, or discussions upon which the ALJ based conditions, were contained in intervenor briefs, declarations and exhibits filed on December 10, 2014.
  12. The December 3, 2014 opening brief, declarations and attachments by Joint Applicants consisted of a 94 page brief and 20 exhibits totaling 450 pages.
  13. The December 10, 2014 opening briefs, declarations and supporting materials were filed by ORA, Greenlining, TURN, Media Alliance, Writer’s Guild of America, West Inc., CforAT, DISH, CALTEL, CETF and Joint Minority Parties.
  14. Joint Minority Parties requested hearings on December 10, 2014, and their request was denied. ORA stated in a Motion filed on December 10, 2014 that while it desired hearings and had requested/suggested them multiple times during this proceeding, which request were not granted, it was presented with a schedule that made any preparation for such hearings impossible and their potential conduct an act of futility.
  15. Hearings were not held.
  16. Joint Applicants’ December 16, 2014, motion to file a reply brief was denied by the ALJ based on the Joint Applicants’ representation their response to the Motion to Dismiss that that they have already created a sufficient record on which the Commission may base a ruling on the applications.
  17. On January 16, 2015, Engine, a non-profit advocacy group representing technology start-ups, filed a brief concurrently with a motion for party status, its delay in filing based on the failure of the application information to provide reasonable notice of the issues in the proceeding.
  18. On January 29, 2015, the ALJ denied Engine’s motion for party status.

19. Comcast is the dominant supplier of cable-based Internet access in northern California.
20. TWC is the dominant supplier of cable-based Internet access in southern California.
21. The proposed merger would create the largest broadband service provider in the U.S., expanding Comcast's market share to approximately 60%.
22. The proposed merger would more than double the size of Comcast's footprint in California, increasing the number of California households served by Comcast from approximately 33.7% to in excess of 84%.
23. Charter is currently a competitor of TWC in some areas of southern California where their footprints overlap in census blocks containing more than 40,000 households, but would cease to be a competitor if this merger is approved, as a result of Charter's acquisition by Comcast.
24. Comcast and TWC do not presently compete with one another on an infrastructure basis in the provision of the facilities for retail broadband Internet access service, having made a determination that it is not presently consistent with their business interests to do so. There are no constraints to their competing with each other beyond their own business determinations and, absent this merger, future competition would remain a possibility.
25. Comcast and TWC are likely to compete with each other in their pursuit of distribution of provider content both to cable subscribers and to subscribers of broadband-only service.
26. With regard to the merged company maintaining or improving the financial condition of the constituent companies, Comcast has asserted that it has a strong balance sheet, that the transfer of control will generate substantial overall efficiencies and cost savings, estimated at \$1.5 billion in operating efficiencies and \$400 million in capital expenditure efficiencies on a national basis by the third year.
27. Comcast (Executive Vice President David L. Cohen) has stated that it is unlikely that the prices charged to its customers will go down or even go up less slowly following the merger than customers already experience.
28. Comcast's showing on maintenance or improvement of quality of service to customers consisted of various technology "improvements" including extension of enhanced voice services, additional options for obtaining voice services, Wi-Fi hotspots and other capabilities.

29. Comcast and TWC have exceptionally poor customer service as measured objectively in J.D. Powers 2014 Residential Internet Service Provider Satisfaction Study – West, which shows Comcast’s Xfinity service as ranking seventh among the nine largest companies, achieving the lowest available scores in 4 of the 5 categories. TWC was only slightly above at number 6.
30. The American Customer Satisfaction Index shows that Comcast, TWC and Charter received the lowest scores of all Internet service providers in the study and the scores went down from 2013-2014. It also shows that Comcast and TWC are the lowest rated companies compared to not only Internet service providers, but also across all industries and companies included in the study.
31. Comcast has no standards or metrics for ascertaining how well they are servicing their customers.
32. TWC and Charter have existing plans to improve customer service; Comcast does not.
33. TWC and Charter have systematic approaches to assessing service and improving service quality; Comcast does not.
34. Comcast and TWC both fall below the CPUC’s minimum service quality standards on metrics related to voice service installation intervals and service orders completed.
35. Comcast has higher customer complaint rates than TWC.
36. Comcast and TWC assert that both management teams will remain in place following the merger, maintaining the existing quality of management.
37. Comcast and TWC do not indicate how maintaining their entire management teams in place is consistent with the significant operational savings they forecast.
38. Comcast and TWC assert that because the merger will occur at the holding company level, it will have no effect on existing employment relationships.
39. Comcast and TWC do not indicate how they will achieve \$1.5 billion in national operational efficiencies without having any effect on existing employment relationships.
40. There is no evidence showing the effect of the merger on Comcast, TWC and Charter’s California employees in terms of jobs lost, jobs transferred out of state, loss of benefits or on any other basis.

41. Comcast and TWC's assessment on fairness to shareholders is a representation that all pertinent information has been presented to shareholders.
42. Shareholders are able to vote on whether the merger is in their interests.
43. Comcast has already committed to comply with General Order 156.
44. Comcast represents that it intends to continue and expand Internet Essential following the merger.
45. Comcast has stated its commitment to persons with disabilities; however, its Internet Essentials program is not available to persons with disabilities absent the family having school age children and an income below a specified level.
46. Comcast's Internet Essential Program is the result of a condition imposed on Comcast as part of its prior merger with NBC Universal and as of the summer of 2014, Comcast is no longer required to offer Internet Essentials by those merger conditions.
47. Comcast has not achieved the required penetration rates of Internet Essentials under the NBC Universal merger decision, its subscription rate in California being only 14.7 percent of eligible consumers.
48. The evidence shows that both program neglect and restrictive and cumbersome rules have contributed to low enrollment rates in Internet Essentials.
49. Comcast currently prohibits otherwise eligible customers from participating in Internet Essentials if they have been Comcast customers in the previous 90 days.
50. Internet Essentials speed does not qualify as "served" under current California benchmarks of 6 Mbps upload and 1.5 Mbps download speeds and is dramatically below the new FCC definition of broadband.
51. Comcast has no plans to increase the Internet Essentials Speed.
52. Comcast has, throughout these consolidated proceedings, challenged the CPUC's jurisdiction to review this proposed merger.
53. Comcast has, throughout these consolidated proceedings, asserted jurisdictional challenges to discovery by ORA as demonstrated by a review of the discovery materials attached to ORA's declarations and briefs.
54. Comcast asserts that it has an all-digital network for Internet services.
55. TWC has major deployment plans for broadband and voices services.

56. Comcast asserts as a benefit its construction of a “nationwide Wi-Fi network that is available to its customers at no additional charge.
57. This Wi-Fi network is created by Comcast utilizing a portion of the router capacity of its customers for its Wi-Fi network without the customers’ knowledge.
58. Comcast’s Wi-Fi network, as noted by ORA, presents substantial risk of privacy violations as well as compelling customers to pay for excess router capacity they do not personally utilize.
59. Comcast has been sued to prohibit the use of individual customer router capacity for Wi-Fi hot spots.
60. Comcast currently offers customers batteries at a cost to ensure voice usage in power-outage situations.
61. Deficiencies in Comcast’s customer notification and battery backup program have a negative impact on safety and reliability in California.
62. The provision of batteries is required by state law and D.10-01-026. Thus TWC is also required to do this and Comcast’s offer to bring its practice to TWC provides nothing new.
63. According to the staff report attached to D.10-01-026, Comcast previously offered customers replacement batteries at no additional charge.
64. Comcast ceased participating in California LifeLine in 2008.
65. TWC is authorized to offer Lifeline service to its voice customers based on D.14-03-038, adopted March 27, 2014, that designated TWC’s subsidiary TWCIS as an Eligible Telecommunications Carrier.
66. The Joint Applicants make only assertions and claims regarding merger-specific and veritable efficiencies.
67. Comcast and TWC do not compete presently on an infrastructure bases, claiming it is too expensive to overbuild in each other’s territories; yet they also claim their merger is necessary to meet the extensive competition they each face.
68. The Joint Applicants did not provide any evidence in the record on the current levels of competition in the broadband marketplace in California or on the level of competition in the broadband marketplace in California that Comcast will face post-merger.

69. The actual number of homes passed served in California post-merger is in excess of 84%, the higher number being contained in ORA's confidential brief and currently maintained as confidential.
70. Under traditional market analysis, market power is usually measured in terms of concentration, or market share. This is a statistical analysis using the Herfindahl-Herschman Index (HHI) which calculates the sum of the squares of each firm's market share.
71. ORA presented calculations of the HHI with respect to the concentration of the market for fixed broadband. This analysis showed that Comcast's HHI was already highly concentrated before the merger, and becomes much more highly concentrated, nearly three times as concentrated, as a result of the proposed acquisition.
72. Nearby broadband/cable providers, even if not competing directly, provide the opportunity for benchmark comparisons on such items as pricing, service and safety; such benchmark comparisons would be lost with the acquisition of TWC and Charter by Comcast.
73. The FCC recently adopted a standard for broadband service requiring a minimum download speed of 25 Mbps and upload of 3 Mbps.
74. As of June 30, 2014, according to the California Broadband Availability Database, nearly 80% of households in Joint Applicants' territory have no competitors for broadband service at download speed tiers greater than or equal to 25 Megabits per second.
75. For high-speed broadband Internet access offering download speeds of 25 Mbps and above in California, Comcast will have a monopoly except in those few areas where Verizon's FiOS or a high-speed version of AT&T's U-Verse is deployed.
76. AT&T and Verizon are on record as either stopping or slowing down any further investment in fiber to residential consumers.
77. Comcast's executives have noted an intent to move entirely to "usage based billing" throughout its entire footprint; TWC has committed to always give its customers access to unlimited broadband.
78. A post-merger Comcast would have enormous capacity to damage startup activity, online content and new innovations through exploiting their terminating access monopoly power as a result of the post-merger entity's significant increase in market share.

79. Comcast and TWC currently compete with other providers of so-called “backhaul” services in their respective service territories including incumbent local exchange carriers and owners of dedicated fiber optic systems.
80. Unlike TWC, Comcast is not committed to continuing to provide resold voice and Internet or last mile carrier Ethernet services to CLEC customers and is unlikely to continue offering wholesale inputs to carriers, thus diminishing competition in this area.
81. Prior to the announcement of the merger Comcast offered wholesale carrier Ethernet on a take-it-or-leave-it basis with onerous terms and conditions.
82. TWC has and continues to offer wholesale inputs to CLECs that would otherwise only be available from ILECs thereby providing terms and conditions benchmarks.
83. Comcast acknowledges that its corporate policies and practices will supplant those of TWC if the merger occurs; to the extent TWC customers currently have better customer service, they will suffer post-merger.
84. The CPUC and parties will lose “policy competitors” as a result of the merger, being unable to see different practices in action.
85. The proposed merger reduces the possibilities for content providers to reach the California broadband market.
86. While the FCC’s recently adopted net neutrality rules to preserve and protect and open Internet.
87. Proposed Condition 1 establishes a requirement for which there is no penalty indicated for a failure to achieve that goal.
88. Proposed Condition 1 does not mitigate any of the identified harms resulting from the merger.
89. Proposed Condition 2 requires Comcast to do what they have already committed to do but have thus far failed to do.
90. Proposed Condition 2 establishes a multiyear reporting requirement and goals for which there is no penalty for failure to achieve the established goals.
91. Proposed Condition 2 does not mitigate any of the identified harms resulting from the merger.
92. Proposed Condition 3 requires Comcast to do what it is already partially required to do and does do, although it is unclear what languages Comcast utilizes. The



FCC is evaluation backup power in an NPRM on a national IP-transition of telecommunications networks and has been advised of California rules and practices.

93. Proposed Condition 3 does not mitigate any of the identified harms resulting from the merger.
94. Proposed Condition 4 is unclear as to its purpose or problem to be solved, what skill set the Communications Division has to supervise it, what standards it is intended to meet, how it is to be objectively determined that it has complied and what penalty may attach for a failure to comply.
95. Proposed Condition 4 does not mitigate any of the identified harms resulting from the merger.
96. Proposed Condition 5 requires information formats, some of which may already be required.
97. Proposed Condition 5 does not mitigate any of the identified harms resulting from the merger.
98. Proposed Condition 6 requires Comcast to provide information already required by D.10-01-026 and only requires free backup batteries for new installations.
99. Proposed Condition 6 does not mitigate any of the identified harms resulting from the merger.
100. Proposed Condition 7 requires Comcast to offer to interested CLECs certain facility capabilities that are currently offered by TWC, but only for a 5 year period.
101. Proposed Condition 7 does not mitigate any of the identified harms resulting from the merger but rather requires it to retain services TWC already offers.
102. Proposed Condition 8 requires Comcast to offer to interested CLECs TWC' Carrier Ethernet Last Mile Access Product, but only for a 5 year period.
103. Proposed Condition 8 does not mitigate any of the identified harms resulting from the merger but rather requires it to retain services TWC already offers.
104. Proposed Condition 9 requires Comcast to offer all of its customers the ability to use specified independent video programming platforms on the same

basis currently offered by TWC, but only for a 5 year period. Comcast already allows Roku to be used.

105. Proposed Condition 9 does not mitigate any of the identified harms resulting from the merger but rather requires it to retain services TWC already offers its customers
106. Proposed Condition 10 prohibits Comcast and its affiliates or intermediaries from interfering with its customers' ability to place voice calls or to degrade a user's ability to originate or complete calls.
107. Proposed Condition 10 is repetitive of existing requirements, including the recently adopted FCC Net Neutrality rules.
108. If Proposed Condition 10 is even necessary, as it prohibits Comcast from deliberately harming its customers, it exemplifies the harms otherwise resulting from this merger.
109. Proposed Condition 11 requires Comcast to expand the Internet Essentials program to TWC customers, operating at specified speeds and to include a router.
110. Proposed Condition 11 maintains the Internet Essentials program at speeds below that identified as broadband by recent FCC order.
111. Proposed Condition 11 does not appear applicable to customers previously served by Charter.
112. Proposed Condition 11 does not mitigate any of the identified harms resulting from the merger.
113. Proposed Condition 12 requires a modification and expansion of the eligibility requirements for Internet Essentials.
114. Proposed Condition 12 does not mitigate any of the identified harms resulting from the proposed merger.
115. Proposed Condition 13 establishes a target penetration rate for Internet Essentials, requires a plan for achieving that penetration rate to be provided for CPUC approval, and establishes marketing plans and budgets and equipment requirements.
116. Proposed Condition 13 establishes a target penetration rate that Comcast has publicly indicated (All Party Meeting, 2/25/15) it cannot achieve.

117. Proposed Condition 13 is not so much a mitigation of conditions resulting from the present proposed merger but an effort to remedy failures to comply with merger conditions from Comcast's prior merger with NBC Universal.
118. Proposed Condition 14 requires a 4 year program for Comcast to provide service to schools and libraries in unserved and underserved areas and to provide a plan for CPUC approval showing how that will be achieved.
119. Proposed Condition 14 does not mitigate any of the identified harms resulting from the proposed merger.
120. Proposed Condition 15 requires Comcast to offer broadband services to all California households where the Joint Applicants currently only provide cable service, with broadband defined by the condition as 10 Mbps download and 1 Mbps upload.
121. Proposed Condition 15 requires significant clarification in that it is unclear that there are customers with cable service for whom the defined broadband service is not available.
122. Proposed Condition 15's definition of broadband service is not in compliance with the FCC's definition of broadband service.
123. Proposed Condition 15 does not mitigate any of the identified harms resulting from the proposed merger.
124. Proposed Condition 16 requires Comcast to within 5 years provide broadband service at the level currently defined by the FCC as broadband service.
125. Proposed Condition 16 does not mitigate any of the identified harms resulting from the proposed merger and, in fact, has nothing to do with the merger, being a current FCC standard.
126. Proposed Condition 17 requires Comcast to offer to all customers of the merged company for a 5 year period standalone broadband of the same quality and on the same terms as currently offered by TWC.
127. Proposed Condition 17 is unclear in that the prices terms identified in the PD are different that those indicated to ORA in data requests responses for similar services.
128. Proposed Condition 17 does not mitigate any of the identified harms resulting from the merger.

129. Proposed Condition 18 requires Comcast to build “10 new broadband facilities” in locations difficult to ascertain and to provide a plan to the CPUC for accomplishing this.
130. Proposed Condition 18 is impossible to evaluate since it does not adequately describe the purpose, nature or location of the proposed facilities and for that reason does not appear to mitigate any of the identified harms resulting from the proposed merger.
131. Proposed Condition 19 prohibits Comcast for a period of 5 years from opposing, directly or indirectly, nor funding opposition to any municipal broadband development plan in California or any CASF or CTF application within its service territory.
132. Proposed Condition 19 is impossible to monitor for compliance and therefore of no value or merit.
133. Proposed Condition 20 requires Comcast to respect customer privacy and to within 6 months of the effective date of the merger advise the CPUC of violations of customer privacy, including such things as listing unlisted numbers.
134. Proposed Condition 20’s requirement to respect customer privacy is not be necessary to be ordered by the CPUC as it is already required by Public Utilities Code Sections 2890 and 2891.1.
135. Proposed Condition 20’s admonition related to privacy complaints such as the listing of unlisted numbers is a problem already the subject of a formal complaint proceeding at the CPUC and should not be considered a condition or benefit of the merger.
136. Proposed Condition 20 does not adequately mitigate any of the identified harms resulting from the merger and if a requirement to respect customer privacy is necessary, that indicates an independent basis to reject the merger.
137. Proposed Condition 21 requires Comcast to take action to improve customer service including respecting “customer choice and competitive choices” (which is unclear what that might mean), achieving a level as good as TWC for certain General Order 133 standards relating to voice, reporting within 6 months (a one- time requirement) of customer complaints and not contesting CPUC jurisdiction with respect to complaints by complaints by California voice customers.
138. Proposed Condition 21 endeavors to address one area of harm identified but falls short of accomplishing any benefits, i.e., subjecting TWC customers to Comcast’s documented poor customer service.

139. Proposed Condition 21 adopts TWC's average service for installation intervals and completed installations for both voice and broadband as a benchmark standard when TWC itself has not met such standards; with the exception of broadband installation intervals.
140. Proposed Condition 21 has only a one time reporting requirement.
141. Proposed Condition 21 is largely unenforceable in terms of the standard being "Comcast shall take action...", rather than Comcast shall achieve with penalties for non-compliance.
142. It is not possible to envision the enforcement of a condition that prohibits Comcast from contesting CPUC jurisdiction when they have consistently done that even in the context of a merger proceeding where they desired a favorable outcome.
143. Proposed Condition 22 requires Comcast to "work to improve" its telephone and broadband service to "ensure that service is adequate to support 911/e911 standards."
144. Proposed Condition 22 is not appropriate as a merger mitigation condition; it should be a condition for all providers of telecommunications services to meet the most basic public safety needs of their customers.
145. The standards for satisfying Proposed Condition 22 lack detail definition as to be incapable of enforcement.
146. Proposed Condition 23 requires Comcast to report to the CPUC every six months on its efforts to improve reliability, improve customer service, 'to comply with the CPUC's rules, order, decisions, and the California Public Utilities Code', commitment to protect privacy "in accordance with the California constitution's privacy protection, and the Commission's General Order requiring telephone corporations to protect customer privacy."
147. Proposed Condition 23, while it might be suggested that it is aimed at mitigating a harm from the proposed merger, requires nothing more than Comcast explaining how it is doing in its efforts to comply with current California law; it does not require compliance with the law.
148. Beyond a reporting requirement, Proposed Condition 23 requires nothing more than is currently required.
149. Proposed Condition 24 is a condition that requires a report on how Comcast is doing in meeting the other 23 proposed conditions; it requires certain specified reports and assessments to be part of its overall report.

150. Proposed Condition 24 does not require compliance with any conditions beyond filing an annual report and therefore does not mitigate any of the identified harms resulting from the proposed merger.
151. Proposed Condition 25 is not, in fact a condition; it states that if Comcast fails to comply with the other conditions “the public, or the Commission may take enforcement action against Comcast based on the Commission’s rules, orders, and decision, and the California Public Utilities Code, and Comcast shall not contest the Commission’s jurisdiction to do so.”
152. Proposed Condition 25 does not compel the CPUC to take action for violation of any or all of the prior conditions, but makes such action optional.
153. Proposed Condition 25’s requirement that Comcast not contest jurisdiction is impossible of enforcement and may well be unlawful; it is certainly unenforceable if “the public” seeks to enforce the conditions.
154. Taken as a whole, there is no way to verify compliance with many of the proposed conditions, and for many, compliance consists of reporting on efforts, not achieving objective compliance with standards.
155. The level of supervision, audit and, potentially, enforcement effort required to ascertain what level of compliance has been achieved will be enormous.
156. As demonstrated throughout the PD, Comcast has a poor record of compliance with conditions, even those imposed by the FCC.
157. There is no basis to assume that a larger, admittedly monopolistic entity with documented poor customer service will readily avail itself to the jurisdiction of the CPUC for compliance activities; they have demonstrated in this proceeding their unwillingness to avail themselves to the CPUC jurisdiction, challenging it at every opportunity.
158. There are no explicit or self-actuating penalties for Comcast failing to comply with any of the proposed conditions.
159. Comcast does not have to comply with any conditions prior to this decision approving the proposed merger taking effect.

### **Conclusions of Law**

1. As a result of the failure of the Joint Applicants to amend their applications to reflect the correct scope and request for these proceedings in keeping with the Scoping Memo, the public and potentially some interested parties may not have received adequate notice of these applications. This constitutes legal error.
2. The rules established by the administrative law judge for requesting hearings made impossible any request to hold hearing on the testimony of intervenors or otherwise address potential conditions that were proposed. This constitutes legal error.
3. The denial of Engine's motion for party status, in light of the failure of the applications as filed to be amended and provide adequate notice of the true subject matter and issues in the consolidated proceedings was erroneous and constitutes legal error.
4. The CPUC examines proposed mergers, acquisitions, or transfers of control on a case-by-case basis to determine the applicability of Section 854.
5. Section 854(a) applies to this merger.
6. Section 854(b) was preliminarily determined to not apply to this merger due to its explicit applicability to utilities with California jurisdictional revenues in excess of \$500 million. Its applicability may be appropriate to revisit in light of the recent decision of the FCC placing Internet facilities under Title II of the Telecommunications Act of 1934 as utilities, although absent a released final order, any resulting impact to jurisdiction at the state level is not known.
7. Section 854(c) is applicable to this transaction since Comcast and TWC, not just their voice affiliates, are parties to the merger and they meet the jurisdictional requirements; therefore, to obtain approval of the proposed transfers, Applicants must demonstrate that they meet the requirements of Section 854(a) and (c).
8. Section 854(d) requires the CPUC to "consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal."
9. Section 854(e) requires that the Applicants must prove by a preponderance of the evidence that the requirements of Section 854(c) are met.
10. The CPUC is required to consider antitrust and competition concerns in its analysis of mergers, whether or not the CPUC has explicit jurisdiction and whether or not the issue is raised by any of the parties.

11. The overriding determination to be made includes considering the elements from Section 854(c), considerations of safety, consumer benefits, broadband infrastructure and competitive issues at all levels and constitutes the appropriate scope of this proceeding to determine whether the merger is in the public interest.
12. Section 706 requires the CPUC to examine the implications of the proposed merger of the parent companies on broadband deployment in California and to take necessary measures that enhance broadband deployment.
13. The authority granted to the CPUC by Section 706 satisfies the requirement of express delegation under federal law set out in Section 710 of the Pub. Util. Code.
14. Consideration of video programming is within our authority to consider both under the delegated authority of Section 706 and under the directive of *NCPA v. CPUC* which requires the CPUC to consider the anticompetitive elements of matters before us whether or not raised by the parties and whether or not we have direct jurisdiction to address.
15. Any improvement in the merged company's financial condition will inure exclusively to the benefit of shareholders and/or employees and not to customers and thus Section 854(c)(1) may not be satisfied.
16. Comcast's list of new technology offerings does not offset the terrible customer service its customers currently experience.
17. Comcast is unlikely to maintain, let alone improve, the quality of service to customers in California and thus there is no demonstration that Section 854(c)(2) is satisfied.
18. The evidentiary record is insufficient to determine that the quality of the management following merger will be improved, let alone maintained, therefore Section 854(c)(3) is not satisfied.
19. The assertion of very large operational savings resulting from the merger, absent any information on the impact on Comcast, TWC or Charter's California employees as to the retention or transfer of jobs or alteration of benefits, does not allow the CPUC to determine that Section 854(c)(4) is satisfied.
20. If shareholders were provided sufficient information to exercise due diligence prior to voting for the merger, we may find that Section 854(c)(5) is satisfied.
21. Given the lack of information on effects on employment following the merger, the record of poor customer service, the indication that Comcast will not use the merger operational savings to reduce or even slow down the rates of rate increases to customers and the lack of any other information, the existing poor implementation rates for Internet Essentials and the lack of any evidence to



- indicate that the failure to achieve the merger will alter either Comcast or TWC's philanthropic activities in their respective service territories, there is little to indicate any benefits to the state and local economies from the merger and therefore Section 854(c)(6) is not satisfied.
22. Comcast's activities in this merger proceeding and its condition compliance failures following the NBC Universal merger approval cast skepticism on whether a post-merger Comcast would properly adhere to the jurisdiction of the CPUC and allow the CPUC to effectively regulate and audit its activities as allowed by law, and therefore Section 854(c)(7) is not satisfied.
  23. Comcast's nationwide Wi-Fi network program lacks customer authorization and may present a substantial risk to customer privacy.
  24. The evidentiary record clearly shows that in virtually every respect, with the possible exception of "fairness to shareholders" that this merger is not in the public interest and should not be approved.
  25. Consideration of the various merger conditions proposed by various intervenors or otherwise proposed by the ALJ are a violation of the due process rights of the parties:
    - by being introduced after a failure of the Joint Applicants to demonstrate that the merger is otherwise in public interest as required by law
    - do not mitigate the substantial harm that will flow from the merger, and
    - for being considered for adoption without the opportunity to develop an adequate evidentiary record on the proposals, their impacts and their implementation challenges.
  26. Evidentiary hearings are a valuable tool to evaluate the merits of disputed material issues of fact, of which there are many in this record.
  27. Comcast's representations of improvements in technology, service quality and other benefits post-merger are, as noted in the body of the decision, nothing more than assertions and either lack any factual underpinnings or are contrary to the record as established in this proceeding.
  28. Post-merger Comcast will enjoy a monopoly in the provision of broadband service, as defined by the FCC, for most of California.
  29. While the recent FCC net neutrality order appears to bar discrimination in the provision of broadband services at either the retail customer level or the content provider level, the official FCC press release does not indicate that the FCC is imposing any pricing restrictions on broadband providers.
  30. The merger would lead to the loss of a valuable industry benchmark, depriving the CPUC and customers of a valuable source of information.

31. Comcast has performed poorly in terms of supplier diversity.
32. Comcast's proposal to turn each subscribing customers home router into a public Internet Wi-Fi hot spot is not in the public interest.
33. Comcast's customer notification and battery backup program is deficient.
34. Problems identified by various parties as to how the proposed merger falls short are inappropriate to be taken as proposals for how to turn the merger into something that is in the public interest. Doing so undermines the concept of an applicant having the responsibility of demonstrating their entitlement to relief by a preponderance of the evidence.
35. The proposed merger conditions do not mitigate the harm the merger presents to competition whether at the retail customer level or the wholesale content provider or interconnection level.
36. The proposed merger conditions do not mitigate the documented poor quality of service to customers in California.
37. The proposed merger conditions do not mitigate any of the other significant adverse consequences that will result.
38. The proposed merger conditions do not preserve the jurisdiction of the CPUC and the capacity of the CPUC to effectively regulate the merged company.
39. The PD's proposed conditions, whether individually or in any combinations do not alter the fact that the proposed merger is not in the public interest.
40. The PD must consider reasonable options to the Joint Applicants' proposed merger, including no merger.
41. The legal standard to be applied is whether the proposed merger is **in** the public interest, not whether a random collection of conditions, unrelated to the substantial harms identified lead to a situation in which the public interest might be found, assuming that all of them are perfectly complied with over a multi-year period
42. The Joint Applicants have failed to show that the proposed merger is in the public interest and therefore the proposed merger should be denied.
43. To ensure that the CPUC's view on this merger are implemented to the greatest extent feasible, the CPUC should advise the FCC and the United States Department of Justice that the CPUC opposes this merger and that it should be denied for the reasons detailed in this decision.

### **Ordering paragraphs**

1. Pursuant to the authority of the CPUC under Public Utilities Code Section 854(a) and (c) and Section 706(a) of the Telecommunications Act, the proposed merger of Comcast Corporation, Time Warner Cable Inc. on behalf of itself and its wholly-owned subsidiary Time Warner Cable Information Services (California), LLC (U-6874-C), Bright House Networks Information Services (California), LLC (U-6955-C), and Charter Fiberlink CACCO, LLC is denied.
2. As soon as possible, the General Counsel of the CPUC shall file comments or a motion in the FCC's proceeding on the proposed transaction, MB Docket No. 14-57, and shall attach to those comments or motion this decision and the full evidentiary record of this proceeding, including all briefs, declarations and supporting documents, and also all data request questions and responses, including supporting material.
3. The General Counsel of the CPUC shall provide a copy of all of this decision and the full evidentiary record of this proceeding, including all briefs, declarations and supporting documents, and all data request questions and responses, including supporting material, to the Deputy Attorney General in charge of the Antitrust Division of the U.S. Justice Department and shall actively participate in associated proceedings to take all steps appropriate to oppose this merger.
4. This decision is effective today.
5. This proceeding is closed