BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CAL

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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 (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).	A.14-04-013 (Filed April 11, 2014)
And Related Matters	A. 14-06-012 (Filed June 17, 2014)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED DECISION

March 10, 2015

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In accordance with Rule 13.11 of the Commission's Rules of Practice and Procedure, The Utility Reform Network ("TURN") hereby submits its Reply Comments on the Proposed Decision ("PD") in the above-captioned proceeding.

I. INTRODUCTION

TURN urges the Commission to adopt the PD's analysis and findings regarding the proposed transaction's substantial competitive harms. The Joint Applicants' comments simply re-argue positions that the Joint Applicants have made previously; provide no new evidence that would alter the PD's conclusions; and fail to substantiate Joint Applicants' allegations of legal and factual errors. Contrary to the Joint Applicants' comments, the PD, based on the record evidence, properly finds that the proposed transaction, as it was filed with the Commission, is not in the public interest. TURN concurs with this conclusion, which withstands the unfounded criticisms put forth in the Joint Applicants' comments.

As TURN explained in its initial comments, although TURN agrees with the PD's finding that the transaction is not in the public interest, TURN disagrees with the PD's finding that, with adequate conditions, the transaction could metamorphose into a merger that would be in the public interest. However, the Joint Applicants' failure in their comments to suggest reasonable modifications to *any* of the conditions suggests an utter lack of good faith on the part of Joint Applicants to work with the Commission and underscores the implausibility of establishing enforceable conditions that offset merger-related harms. The Joint Applicants' comments make clear that Joint Applicants are only willing to cooperate with the Commission in identifying conditions if Joint Applicants can dictate their terms and content and thereby render them palatable to Joint Applicants and likely of little value to consumers. It is entirely implausible that such conditions could possibly render the transaction in the public interest. Furthermore, Joint Applicants' attempt to shift the discussion of conditions to an ex parte process, that necessarily would be far less transparent to intervenors and the public, should be rejected.

In the face of no materially new evidence, and the PD's sound competitive analysis, in TURN's view, the record leads inevitably to a rejection of Comcast's request for authority to acquire Time Warner. TURN does not address Comcast's complete rejection of each and every

condition that the PD proposes because such an effort would be unwarranted and not fruitful. TURN simply reiterates that the Commission should reject the fatally flawed transaction and if, contrary to TURN's recommendation, the Commission decides to approve the transaction, the Commission should ensure that Comcast commits to enforceable, meaningful conditions that address the serious and substantial harms that the transaction poses to California's consumers.

II. THE JOINT APPLICANTS FAIL TO IDENTIFY ERRORS IN THE PD'S COMPETITIVE ANALYSIS AND INSTEAD SIMPLY RE-HASH POINTS THAT HAVE BEEN REBUTTED PREVIOUSLY.

The Joint Applicants' comments fail to identify any factual or legal errors in the PD's analysis of competitive harm, but instead re-argue points that they have made previously, and which intervenors have resoundingly rebutted. TURN illustrates by example some of the flawed reasoning that the Joint Applicants' comments contain regarding the PD's competitive analysis. The PD is correct in its finding of competitive harm.

The Joint Applicants espouse a self-contradicting analysis of broadband Internet access competition.

The Joint Applicants state at page 20 (cites omitted, emphasis in original):

> Excluding all broadband services below 25 Mbps based on this new aspirational policy, as the Proposed Decision does, wrongly eliminates entire parts of the broadband market as consumers experience and enjoy it today. Indeed, the FCC, in recently raising the broadband speed requirement for recipients of federal subsidies in rural areas to only 10 Mbps, recognized that 71% of Americans who can purchase fixed 25 Mbps service today *choose not to do so* and instead are satisfied using lower speeds for their everyday broadband needs.

The Joint Applicants' comments undermine their earlier economic analysis of the purported benefits resulting from Comcast's plan to roll out higher broadband speeds in Time Warner's footprint than now exist. As TURN explained in detail in Ms. Baldwin's reply testimony (pages 22-28), if customers do not want "this new aspirational" speed, then the Applicants' estimate of the purported consumer benefit of Comcast's roll-out of higher speeds in Time Warner's territory should be afforded no weight. Based on the record in this proceeding, either: (1) looking forward, the Commission should acknowledge that consumers do now want and are

increasingly likely to want higher speeds – in which case the PD is "spot on" in its competitive analysis or (2) consumers are content with lower speeds, in which case Comcast's plans to roll out higher speeds in Time Warner's footprint is of minimal benefit to consumers.

The Joint Applicants' reference to "increasing competition from DSL" is mind-boggling.

The Joint Applicants state, at pages 20-21: "The Proposed Decision also wrongly dismisses DSL, wireless, and legitimate overbuilder alternatives from the broadband market. Any analysis of consumer choice for Internet access is fatally incomplete unless it also accounts for the broad and increasing competition from DSL, growing competition from overbuilders like Google Fiber, and ubiquitous wireless choices." The Joint Applicants ignore the unambiguous record evidence that DSL is not providing an *increasing* source of competition. As TURN demonstrated in Ms. Baldwin's opening testimony: "Demand for DSL service, which ILECs offer, has been declining, in absolute and relative terms. DSL service cannot compete with the speeds of cable-based broadband service. Therefore, where there is no U-verse offered by AT&T or FiOS by Verizon, there really isn't any alternative to Comcast's and Time Warner Cable's services in their respective areas for those consumers seeking to purchase broadband Internet access."[1] TURN also has already rebutted the Joint Applicants' repeated attempt to place wireless broadband Internet access into the same product market as wireline broadband Internet market[2] as well as the absence of competition from Google Fiber in California.[3]

Contrary to the Joint Applicants' unfounded assertion to the contrary, the Joint Applicants are monopolists.

The Joint Applicants contend:

> As the record amply demonstrates, Joint Applicants are not "monopolists." Nor will the Transaction create one. There are numerous options for Internet access in the relevant local markets, and more are coming every day. Consumers have, and post-transaction will continue to have, a large and growing set of competitive broadband alternatives, including those offered by telco competitors, Google Fiber, municipal overbuilds, and fixed wireless providers.[4]

[1] Baldwin Opening Testimony (TURN), at 66, footnote omitted. See also id., at 48-49 and 51-57, which further demonstrate DSL's declining role in meeting consumer demand for broadband Internet access.
[2] See, e.g., Baldwin Opening Testimony (TURN), at 57, citing speech by FCC Chairman Wheeler.
[3] Baldwin Opening Testimony, (TURN), at 58.
[4] Joint Applicants, at 21.

The Joint Applicants are wrong that the "record amply demonstrates [that] Joint Applicants are not 'monopolists.'"[5] In Ms. Baldwin's detailed testimony, TURN debunked the Joint Applicants' depiction of purportedly competitive broadband markets.[6] The PD correctly recognized the Joint Applicants' market power. The Commission should reject the Joint Applicants' comments to the contrary because they fail to introduce any new information or to point out any factual errors in the PD's analysis.

The Joint Applicants' continuing protestation that they would not enter each other's footprints is not only unknowable but also simply underscores the barriers to entry that entrench their monopoly power.

The Joint Applicants state, at page 22: "Comcast and TWC have each determined that it would be both cost-prohibitive and ultimately unprofitable to build new cable systems outside their existing geographic footprints, or to make the major investments necessary to enter each other's markets as an out-of-footprint OVD to overbuild one another's current footprints." This point also fails to introduce any new information. This claim simply underscores the absence of broadband competition and the high barriers to entry: If these two companies, with their unique resources,[7] truly cannot enter each other's territories profitably, then who can?

The Applicants persist in misleading by omitting the fact that their Comcast-NBCU-related legal obligation to abide by the FCC's original Open Internet rules expires in less than three years.

The Joint Applicants boast that "Comcast is the only ISP in the country that is currently legally bound by the FCC's original Open Internet rules, which include 'no blocking' and non-discrimination protections," and that these protections "will be extended to millions of additional TWC customers as a result of the Transaction, including consumers in TWC's California footprint."[8] However, Comcast is misleading by omission. Comcast omits to mention that this binding commitment expires in three years and omits to mention that the commitment came

[5] Joint Applicants, at 21.
[6] Baldwin Opening Testimony (TURN), at 58-61; Baldwin Reply Testimony (TURN), at 9-10.
[7] Baldwin Reply Testimony (TURN), at 7-8.
[8] Joint Applicants, at 24, cites omitted.

about as part of its acquisition of NBCU. Moreover, Comcast fails to propose that it extend the commitment indefinitely or to explain why it does not do so.

The Joint Applicants fail to demonstrate why the transaction would not increase their market power.

Most importantly, the Joint Applicants offer no new information to counter the PD's well-reasoned conclusion, based on record evidence, that the merger likely would enhance the Joint Applicants' market power. Edge providers depend on broadband to reach customers. As a near-monopoly provider, Comcast would exercise expanded and uncurtailed power to discriminate against alternative video programming providers, and, by purchasing TW, would control TW's video content.

The Joint Applicants fail to demonstrate that the transaction's deleterious impact on the video programming market would not occur. Comcast's vertical integration of its extensive network of broadband "pipes" with its proposed vastly expanded control of video programming content would enhance Comcast's market power and increase its incentive and ability for discrimination against other content providers. The FCC continues to propound questions regarding video programming, presumably to be able to better analyze the impact of Comcast's proposal to expand the scale and scope of its vertically integrated operations on video competition.[9] Clearly the FCC is troubled by the video market, and if it is not troubled, it is challenged by the unprecedented consequences on broadband and video markets.

III. CONCLUSION

For the reasons set forth in TURN's initial comments and in these reply comments, TURN urges the Commission to reject the proposed transaction. If the Commission, contrary to TURN's firm recommendation to the contrary, approves the merger, it should do so conditionally, based upon the changes to the proposed conditions that TURN discusses in its initial comments.

[9] The FCC issued questions as recently as March 3rd of AT&T, CenturyLink, and Verizon as part of its investigation of the proposed Comcast-Time Warner merger.

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Respectfully submitted,

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