

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 Matters.

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

**EMERGENCY MOTION OF THE UTILITY REFORM NETWORK TO
TRANSMIT A COPY OF THE CONFIDENTIAL RECORD TO THE FEDERAL
COMMUNICATIONS COMMISSION [PROPOSED ORDER]**

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February 18, 2015

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I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure (Rules), The Utility Reform Network (TURN) files this emergency motion requesting an order that the confidential versions of all parties' briefs, including all declarations and exhibits, and data request question and responses of these consolidated proceedings be provided to the Federal Communications Commission (FCC) as soon as practicable (Motion to Transmit Confidential Record). This request is

consistent with CPUC’s desire to inform the FCC of the effects of the merger on California on a timely basis.

II. BASIS FOR REQUEST

The Assigned Commissioner and the Administrative Law Judge (ALJ) have made it clear throughout this proceeding that one of the principal goals of the expeditious schedule that has been maintained is to allow the CPUC to inform the FCC of California’s perspective on these consolidated applications in a timely fashion. The August 14, 2014 Scoping Memo and Ruling of the Assigned Commissioner and ALJ (Scoping Ruling) issued in this proceeding stated:

Recognizing these facts [the extent of the Joint Applicants existing facilities and operations and the difficulty of competitors entering markets], the Commission believes that it has a role to play in the discussion about the proposed Merger of the country’s two largest cable companies as it impacts California consumers. The FCC has opened a proceeding to look at the anti-trust and other market-related implications of the Merger and has invited comment from state regulatory commissions. In order to provide meaningful input to the FCC and inform the [California Public Utilities] Commission’s public interest analysis of the transfer of control under Pub. Util. Code § 854, the [California Public Utilities] Commission will require significant factual data from Joint Applicants.¹

The schedule in these consolidated proceedings was temporarily stopped by an ALJ Ruling following a suspension of the FCC’s “merger clock” schedule, of which the CPUC took official notice.² In a ruling restarting the schedule in these consolidated proceedings, the assigned ALJ commented on the stopping and restarting of the “merger clock” and stated:

¹ Scoping Memo at 5-6.

² ALJ’s Ruling Suspending Schedule, Grant Official Notice, and Set Law and Motion Hearing, October 20, 2014.

In the scoping memo that established the timelines for this proceeding it was noted that it is an objective of the Commission to reach a decision on this application (and the related Charter Fiberlink application with which it has been consolidated) with enough time to have meaningful participation in the FCC process. Accordingly, if the Commission is to realize its objective of meaningfully participating in the FCC process then it will be necessary to adopt a final decision around the time the FCC anticipates the conclusion of its proceeding. With that in mind, I am revising the schedule of the remainder of this proceeding as set out below:... ³

It remains unclear to TURN when the FCC may render a decision in this matter. As various intervenors have demonstrated in other motions, due to both discovery issues at the FCC and some corresponding judicial reviews, the date for a decision by the FCC remains difficult to precisely (or even approximately) determine.⁴ While the FCC has a 180-day informal merger clock, that clock is subject to suspension and that has already happened three times during the pendency of their review.⁵

³ ALJ's Ruling Resetting Schedule of Proceeding & Granting Official Notice, November 13, 2014 at 2. At that point the schedule shown was for a Proposed Decision to be issued on January 12, 2015 and an Agenda Decision on February 12, 2015. *Id.* at 3.

⁴ See, e.g., Motion of the Office of Ratepayer Advocates to Take Official Notice, November 24, 2014. As of the date of filing this present motion, the scheduled date for argument before the United States Circuit Court of Appeals for the District of Columbia is February 20, 2015. D.C. Circuit Order Setting Date for Oral Argument, issued December 8, 2014, *CBS v. FCC*, FCC-14-202.

⁵ Letter from William T. Lake, Chief, FCC Media Bureau to counsel for Joint Applicants, October 3, 2014 "...stopping the informal 180-day transaction clock in this proceeding until October 29, 2014, the deadline for commenters to file their Responses, or until Commission staff has determined that your responses to the Commission's information requests are complete, whichever is later." The clock was subsequently further stopped on October 22, 2014. It was not restarted until December 3, 2014. FCC Public Notice, DA 14-1739, Commission Restarts Clock In Comcast-Time Warner Cable and AT&T DirectTV Merger Proceedings and Establishes Dates for Respective Pleading Cycles, MB Docket Nos. 14-57 and 14-90. The FCC pleading cycle and the "merger clock" were again suspended on December 22, 2014 and restarted on January 12, 2015. Letter from William T. Lake, Chief, FCC Media Bureau to counsel for Joint Applicants, October 3, 2014 "...stopping the informal 180-day transaction clock as of

On February 13, 2015, the Assigned Commissioner issued a proposed decision on the CPUC's review of the merger. It is a complex decision in that it approves the merger with 24 conditions, but also makes the following findings:

Even figuring Verizon's FIOS and the high-end AT&T U-Verse products into the mix, Comcast will have significantly expanded market power to act anti-competitively if it so chooses. ...⁶

In more concrete terms, the proposed merger between Comcast and Time Warner reduces the possibilities for content providers to reach the California broadband market.

...⁷

Parties have made a convincing showing of the anti-competitive consequences that Comcast's post-merger market power may have on the deployment of broadband in California, and of anti-competitive harms that would occur in California if the merger is consummated.⁸

There is no certainty as to when Commissioners will have an opportunity to vote or when that vote may actually occur. Because of the complexity of the decision and the importance of the issue, it is very possible that delays on a CPUC vote may occur for various reasons.

Given the compounding of uncertainties that appear to govern the ultimate decision-making clock for the FCC and the CPUC, TURN recommends that in the interim, the CPUC provide the FCC with copies of the full confidential versions of the briefs, including all attached declarations and exhibits, and data requests questions and responses of all parties in these consolidated proceedings, giving the FCC the benefit of the analysis and recommendations of all of the parties on the issues that are critical from

the date of this letter for three weeks until the Commission staff has had an opportunity to review the documents and the revised privilege log for completeness. The clock will restart on January 12, 2015."

⁶ *Proposed Decision of ALJ Bemserderfer Granting with Conditions Applications to Transfer Control* at 67.

⁷ *Id.* at 68.

⁸ *Id.* (citation omitted).

a California-centric perspective. While the issues important to California are similar in nature to those affecting other jurisdictions – federal and other states – the presence of Comcast as the dominant broadband provider in northern California and Time Warner as the dominant broadband provider in southern California exacerbates the impact on California. Furthermore, a direct competitor to a post-merger Comcast, Charter, will be eliminated, if the proposed merger and related transactions are approved. Truly, the impact of this merger on California and its citizens is much greater than on any other state.

The approach proposed here is similar to what the CPUC did in the AT&T/T-Mobile merger proceeding. In the AT&T/T-Mobile proceeding, the CPUC’s Order Instituting Investigation provided specific dates for CPUC Staff to submit the Investigation’s record to the FCC in order to help inform the FCC on a timely basis of the evidence gathered in California .⁹

For these reasons, TURN believes it would be highly beneficial to provide the FCC with the entirety of the substantive confidential record in this proceeding. Providing the confidential briefs, including all declarations and exhibits, and data request questions and responses now will not harm any party and will not in any fashion preclude the CPUC from providing the FCC an explicit recommendation based on a vote of the full CPUC when such a vote is taken. It will ensure, however, that the FCC has the benefit of receiving the record developed to date in California in a timely fashion.

III. CONCLUSION & REQUESTED RELIEF

For the reasons discussed in this Motion to Transmit Confidential Record, TURN specifically requests that the Assigned Commissioner and ALJ arrange to provide the full confidential versions of parties’ briefs, including all declarations and exhibits, and data

⁹ I.11-06-009 at 16.

request questions and responses in these consolidated proceedings as soon as possible to the FCC and its staff conducting the review of this merger.

Respectfully submitted,

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[PROPOSED] ORDER

Having considered the arguments of the parties, and good cause appearing,

It is **THEREFORE ORDERED**:

1. TURN's motion to transmit the confidential record to the FCC is granted.
2. All objections are overruled.

SO ORDERED.

Dated: _____

ADMINISTRATIVE LAW JUDGE