Item 74 (13201)

State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : **August 8, 2014**

To : **The Commission**
(Meeting of August 14, 2014)

From : **Kim Lippi, Legal Division**
Roxanne Scott, Communications Division

Subject : **Filing of Comments with the FCC re Comcast/Time Warner Proposed Merger**

RECOMMENDATION: The CPUC should inform the Federal Communications Commission ("FCC") that California is reviewing the application for, and the potential impact on California, of the proposed transfer of Time Warner Cable Inc. and affiliates ("Time Warner") and the pro forma transfer of Bright House Networks Information Services to Comcast Corporation ("Comcast").[1]

BACKGROUND:
On April 8, 2014, Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") submitted joint applications to the FCC seeking consent to transfer control of various Commission licenses and other authorizations pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended ("Act").1 The proposed Comcast-TWC transfers, if completed, would effectuate the sale of certain cable systems and assets of TWC and its affiliates and related entities to subsidiaries or affiliates of Comcast. Additionally, in connection with the proposed Comcast-TWC transaction, Time Warner Entertainment–Advance/Newhouse Partnership ("TWE-A/N") and Comcast have submitted applications for the transfer to Comcast of TWE-A/N's interest in licenses and other authorizations held by Bright House Networks, LLC ("Bright House").[2]

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[1] 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); dated April 11, 2014.

[2] *See* 47 U.S.C. §§ 214, 310(d); *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations, Applications and Public Interest Statement* (filed Apr. 8, 2014) ("Comcast-TWC Application").

On April 11, 2014, the Comcast/Time Warner/Bright House Networks filed with the CPUC a Joint Application for the transfer of control Time Warner and pro forma transfer of control of Bright House Networks to Comcast Corporation (Application 14-14-013). Among other corporate entities, this application involves three CPCN carriers operating in California: Comcast Phone of California, LLC (U-5698-C); TWCIS (CA) (U-6874-C); and Bright House Networks Information Services (California), LLC (U-6955-C).[3]

Comcast Phone of California, LLC offers wholesale telecommunications services, including switched access service, local interconnection service to retail VoIP providers and intrastate Metro Ethernet transport services.[4] Comcast also is a major provider of internet access service both nationally and in California.

TWCIS (CA) is authorized to provide limited facilities-based and resold interexchange services as a non-dominant interexchange carrier ("NDIEC") and limited facilities-based and resold local exchange services. TWCIS (CA) does not itself provide direct end-user voice services. Rather, TWCIS (CA) offers wholesale telecommunications services, including switched access service and local interconnection service, to retail VoIP providers.[5] Time Warner also is a provider of internet access service in California.
Time Warner Cable also holds an indirect ownership interest in Bright House California, which also has authority to provide limited facilities-based and resold interexchange services as an NDIEC and limited facilities-based and resold local exchange services as a CLEC.

Bright House California Bright House California operates as a wholesale telecommunications carrier providing telecommunications services to its direct parent, Bright House Networks, LLC ("BHN") and other carriers, including backhaul services to wireless carriers.[6]

Currently Comcast offers a low-cost broadband plan to low-income households with school age children. This program, entitled "Internet Essentials", offers qualifying households a $9.95 a month broadband plan, plus a $150 computer voucher.

On July 10, 2014, the FCC released a notice seeking comments on the proposed merger.[7] In the notice the FCC states:

> In their application, Comcast and TWC assert that the proposed Comcast-TWC transaction will generate substantial public interest benefits that would not occur as broadly or as rapidly absent the transaction. In particular, Comcast and TWC

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[3] The transfer of Bright House is a pro forma transfer.

[4] Joint Application, pp.6-7.

[5] See Joint Application, pp. 3-4.

[6] Joint Application, pp.5-6. The transfer of Bright House is a pro forma transfer. The transaction will not result in any actual change of control over the Bright House California licenses and authorizations.

[7] *See* MB Docket No. 14-57 (DA 14-986).

assert that efficiencies and synergies flowing from the transaction will allow the combined company to "forge a faster path to all-digital systems, higher broadband speeds, more advanced video and voice services, a more secure network, better system reliability, and other benefits to consumers, businesses, and the public interest generally….Comcast and TWC assert that TWC customers, in particular, will benefit from the substantial upgrades that Comcast intends to make to the TWC network. In addition, Comcast commits to extending its low-income broadband adoption program — known as "Internet Essentials" — throughout the territories that it is acquiring. Moreover, Comcast also commits to extending to those territories many of the commitments and conditions that it is bound by under the *Comcast-NBCU Order* including, among others, its commitment to comply with the Commission's Open Internet rules and its commitment to offer broadband service on a standalone basis.

Divestiture Applicants assert that the Divestiture Transactions will not reduce — and in some cases will enhance — the public interest benefits detailed in the Comcast-TWC Application. In particular, they assert that the Divestiture Transactions will allow them to better rationalize their geographic footprints by filling in gaps within the existing Comcast and Charter footprints….Applicants assert that Charter customers being acquired by Comcast will enjoy many of the same benefits as TWC customers being acquired in the Comcast-TWC transaction, including, among others, the extension of Comcast's conditions and commitments from the NBCUniversal transaction. Divestiture Applicants further assert that SpinCo — with nearly 2.5 million video subscribers — will have sufficient scale post-transaction to compete as a standalone company, and through its services agreement with Charter, it will provide its customers with access to Charter's industry-leading broadband products and services.

…Comcast and TWC assert that the proposed Comcast-TWC transaction will not result in any public interest harms….Comcast and TWC further argue that, given consumer demand for edge provider offerings, as well as the competitive nature of the broadband market, the combined company will have neither the incentive nor the ability to restrict access to its high-speed Internet customers. Finally, Comcast and TWC assert that the transaction complies fully with the Communications Act and all Commission rules.

Divestiture Applicants similarly contend that the Divestiture Transactions will not create any public interest harms. In particular, they assert that Comcast, TWC, and Charter each serve distinct geographic markets today, and therefore the Divestiture Transactions — like the Comcast-TWC transaction — will not reduce the number of competitive choices for consumers. In addition, they assert that the Divestiture Transactions do not pose any vertical integration concerns as no national programming assets will be changing hands. Moreover, they argue that Comcast's enhanced regional presence following its acquisition of Charter systems will not increase its incentive or ability to withhold programming, or to demand higher prices, because Comcast will see only modest increases in subscriber share within the footprints of its affiliated O&O broadcast stations and its English-language RSNs.

The Divestiture Applicants also state that the Divestiture Transactions will not result in the violation of any provision of the Communications Act or the Commission's rules.

Comments/Petitions in Opposition are due to the FCC on August 25, 2014.

RECOMMENDATIONS:

Staff recommends the CPUC inform the FCC that the CPUC is reviewing the application for and any potential impact on California of the proposed merger between Comcast and Time Warner. Staff further recommends that the CPUC submit to the FCC any information gathered in the course of, as well as the result(s) of, the CPUC's proceeding that may be pertinent to the FCC's deliberations, and the comments should so inform the FCC.

Staff also recommends that the CPUC urge the FCC to require the applicants to show why the claimed merger benefits– such as higher broadband speeds, more advanced video and voice services, a more secure network, better system reliability – could not be provided by Comcast and Time Warner if they remain separate entities.

In addition, the CPUC should urge the FCC to require Comcast to justify its statement that the merger of two of the largest cable providers and broadband providers in the nation would not result in any public harm given that the merger would reduce the potential for competition between the two companies going forward.

The CPUC should also recommend that the FCC review closely Comcast's implementation and administration of its "Internet Essentials" program ("CIE") to determine if the program is truly meeting Comcast's commitments. The California Emerging Technology Fund and other California entities have submitted to the FCC in this proceeding, comments which allege that there are serious problems with the way Comcast is administering this program, including the following:

- Comcast makes the sign-up process long and cumbersome.

- Comcast enrolls oldest child in the program. When a potential CIE customer calls, the Comcast representative often attempts to sign up the oldest child eligible for the program, even if there are younger eligible children in the household. This means the family will be "kicked out" sooner because the discount only lasts as long as the registered child is in school and on the lunch program.

- Comcast market-rate customer representatives don't know about Internet Essentials.

- Comcast conducts credit checks for some customers, contrary to CIE rules. Comcast specifically states and advertises no credit check is needed for CIE.

- Comcast records show erroneous information for some customers.

- Comcast modems often are not compatible with computing devices issued by schools.

- Comcast Internet Essentials online application process does not work.

Staff seeks authority to file comments consistent with these recommendations.

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