



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

August 6, 2014

The Honorable Audrey Zibelman
Chair
New York State Public Service Commission
Empire State Plaza
Albany, New York 12223

RE: CASE 14-M-0183, Joint Petition of Time Warner Cable Inc. and Comcast Corporation for Approval of a Holding Company Level Transfer of Control

Dear Ms. Zibelman:

The Office of the Mayor of New York City (“City”) submits this statement in response to the New York State Public Service Commission’s (“PSC” or “Commission”) solicitation of comments related to the joint petition of Time Warner Cable Inc. (“TWC”) and Comcast Corporation (“Comcast”) for approval of a holding company level transfer of control, which would shift the entirety of TWC’s assets to Comcast.

Pursuant to an amendment to Section 222 of the Public Service Law (“PSL” or “Law”) enacted earlier this year, TWC and Comcast must demonstrate to the Commission that the contemplated transfer would—in addition to comporting with existing law, regulations and standards—be in the public interest.¹

The City has engaged in a constructive dialogue with Comcast and has noted the efforts the company has made to improve its offerings and demonstrate its commitment to the public interest. Nonetheless, the City continues to have concerns. These comments set forth criteria by which the Commission should evaluate the implications of the transfer for New Yorkers. Because guaranteeing access to high-speed, affordable broadband services is chief among the City’s priorities and a key strategy for reducing inequality, these comments place particular emphasis on the impact of the transaction on those New Yorkers who are most in need of such services. With this in mind, the City recommends that the proposed holding company level transfer of control only be deemed consistent with the public interest if Comcast makes substantive, transparent and, where possible, enforceable commitments in the following areas:

- Affordable access for low-income and other underserved residents, including the elderly and persons with disabilities;

¹ See PSL § 222(3)(b).

- Transparent accounting of rate changes;
- Improved customer service and notification;
- Timely upgrading of infrastructure to fiber optic cable;
- Expansion of affordable broadband infrastructure and services to geographic locations where they are lacking;
- Support for municipal access and resiliency initiatives;
- Meaningful and stable support for public, educational and government channels; and
- Protection and promotion of an open Internet, through Net Neutrality commitments.

The Office of the Governor has demonstrated particular interest in the impact of the merger on efforts to expand broadband, the needs of low-income customers, consumer pricing and competition in the telecommunications sector.² These comments address these important questions and conclude with a series of recommendations for the Commission.

I. Comcast Must Demonstrate its Commitment to the Public Interest

The contemplated transfer will necessarily impact public interests related to access, affordability and a range of other consumer priorities. Currently, the City has a number of questions related to the impact of the transaction on these important public purposes. Comcast may demonstrate its dedication to these goals by making concrete, measurable commitments in the following areas and by publicly reporting on its progress with respect to such commitments on a regular basis.

A. Deploy an Expanded and Improved Internet Essentials Program and Create New Lower-Cost Options for Consumers

The City is concerned about the merged entity's readiness to provide affordable, high-quality service options for low-income New York City residents. Comcast has pointed to the Internet Essentials program, a reduced-cost offering for low-income individuals in its service areas, as indicative of its commitment to serving the public interest.³ This is a meaningful program and the City applauds Comcast for creating it. However, Comcast must ensure that those who are eligible for low cost services actually receive them, and the program should be expanded to reach all those who could benefit from its features.

To date, only 12% of eligible families have signed up for the program.⁴ The City applauds Comcast's recent efforts to increase enrollment levels and address the concerns of those who have been critical of Internet Essentials' design and implementation. For example, the company has created an amnesty program for otherwise eligible individuals with unpaid charges

² See Office of the Governor of NY, "Governor Cuomo Announces Review of Comcast, Time Warner Merger Underway" (May 19, 2014) available at <https://www.governor.ny.gov/press/05192014Comcast-Time-Warner-Merger>.

³ See, generally, John P. Horrigan, *The Essentials of Connectivity: Comcast's Internet Essentials Program and a Playbook for Expanding Broadband Use and Adoption in America* (2014) available at http://corporate.comcast.com/images/Final_IE_Research_Full_Paper.pdf.

⁴ See Holmes, Allan, Center for Public Integrity, "Comcast-Time Warner Deal May Hinge on Anemic Low-Cost Internet Plan," available at http://www.publicintegrity.org/2014/05/28/14808/comcast-time-warner-deal-may-hinge-anemic-low-cost-internet-plan?_ga=1.117165126.1947510859.1401296456.

that are at least one year old. Comcast has also offered six months of free service to households that enroll between early August and mid-September of 2014.⁵

The City remains concerned, however, that its low-income residents may not get the services they need. For example, eligibility requirements—even as expanded by the company in response to criticism—remain too narrow and effectively limit the ability of large numbers of low-income individuals to enroll. The requirement that households include a free or reduced-priced lunch-eligible child, for instance, prevents enrollment by others, such as elderly individuals who are disproportionately likely to have limited incomes and also increasingly require high-speed Internet for transactions as important as Social Security benefits access. Similarly, persons with disabilities stand to benefit tremendously from access to the Internet.

The City is also concerned about the speed of the connections offered through the Internet Essentials program. Comcast, while initially offering participants service at a speed of 1.5 megabits per second (“Mbps”) subsequently increased download speeds to up to 5 Mbps.⁶ This is an important improvement. However, 5 Mbps is slow and may even be insufficient to complete the online training programs made available to participants as part of the initiative.⁷ Arguably, the even slower upload speeds of up to 1 Mbps may discourage Internet Essentials customers from producing content for distribution online, relegating them instead to the status of passive users of the Internet.

The limits of the Internet Essentials program, the record of its implementation in other cities and the lack of affordable options beyond the program all suggest that low-income New Yorkers may not be effectively served by the contemplated merger. To address the shortcomings of the Internet Essentials program and its more general efforts to serve underserved communities, Comcast must commit to taking the following steps.

- Lower barriers to entry for low-income, immigrant, elderly, disabled and other residents;
- Increase upload and download speeds for the Internet Essentials program;
- Partner with community-based organizations to build widespread awareness of the program;
- Support the provision of high-speed Internet service at community institutions as well as efforts by community-based organizations to develop high-quality programming and training modules; and
- Track and publicly report on the number and location of enrolling households so that the program’s impact can be assessed.

In addition, while Internet Essentials is Comcast’s primary program for low-income consumers, it need not be the only offering. The company could take a number of steps to make

⁵ See Comcast, “Comcast to Offer Six Months of Free Internet Essentials Service and Announces Amnesty Plan for Back Due Balances,” available at <http://corporate.comcast.com/comcast-voices/comcast-to-offer-six-months-of-free-internet-essentials-service-and-announces-debt-forgiveness-plan>.

⁶ See, Horrigan, *supra* note 3.

⁷ See Kate Cox, *Consumerist* blog, *How Comcast Uses Low-Income Families To Look Good For Regulators*, Mar. 29, 2014, available at <http://consumerist.com/2014/03/29/how-comcast-uses-low-income-families-to-look-good-for-regulators/>.

its services, most notably high-speed Internet connections, more affordable. Comcast could, for example, make its commitment to serving the public interest clear by expanding its range of lower-cost offerings, enabling households that may not qualify for Internet Essentials—even if the changes recommended herein are instituted -- to access voice, telephone and broadband services at more affordable rates. Importantly, all low-cost packages—including the Internet Essentials package--must provide upload speeds sufficient to enable subscribers to be creators of content, not mere consumers of material produced by others.

B. Commit to Increased Transparency Regarding Rates

In addition to creating a more robust Internet Essentials program and other lower-cost tiers of service, Comcast must take steps to ensure that rates and services for all consumers are transparent. If the transaction is allowed to move forward, the company will assume control of an estimated 40% of the national broadband market and will become the provider to 30% of subscription television customers.⁸ This will consolidate in the newly-merged entity inordinate influence with respect to key service features—most notably rates. With few alternatives available to consumers, the expanded Comcast will have incentives to drive rates further upward. Given the limited competition in the cable TV and broadband access markets, this is likely to trigger increases across providers with negative impacts for all New Yorkers.

The steady pattern of rate increases in the telecommunications and information sectors in recent years establishes the reality of this concern. Cable rates, for example, have increased at more than twice the rate of inflation over the last 17 years.⁹ The City is particularly concerned about the impact that similar rate increases for broadband services would have on its affordability and adoption goals. Comcast, unfortunately, has been clear that consumers should not expect rates for its services to decrease or increase less rapidly as a result of the merger.¹⁰

The City is also deeply concerned about the impact of increased rates on businesses. New York City takes seriously the needs of small businesses, start-up companies and larger enterprises for affordable, reliable, high-speed Internet access. Business leaders from across the spectrum have expressed concern about the high-rates charged by TWC in the past, as well as the impact of the transfer on future rates.

In addition, transparency regarding rates remains a significant issue for consumers of telecommunications and information services. The Federal Communications Commission (“FCC”) has noted sharp discrepancies between advertised and actual charges,¹¹ and similar

⁸ See Gautham Nagesh and Steven Perlberg, Comcast Argues for Time Warner Cable Deal (April 8, 2014) *available at* <http://online.wsj.com/news/articles/SB10001424052702304819004579489331473528424>. Timothy Stenovec and Ben Hallman, Comcast Complaints Detail Nightmarish Customer Experience, Huffington Post (Apr. 10, 2014) *available at* http://www.huffingtonpost.com/2014/04/10/comcast-complaints_n_5120383.html.

⁹ See Federal Communications Commission, Report on Average Rates for Cable Programming Service and Equipment (May 16, 2014) *available at* <http://www.fcc.gov/document/report-average-rates-cable-programming-service-and-equipment-2>.

¹⁰ See *id.* Edward Wyatt, As Services Expand, Cable Bills Keep Rising, NY Times (Feb. 14, 2014) *available at* <http://www.nytimes.com/2014/02/15/business/media/as-services-expand-cable-bills-keep-rising.html>.

¹¹ Protecting and Promoting the Open Internet, 79 Fed 37448 at 37457 (proposed July 1, 2014) *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-07-01/pdf/2014-14859.pdf>.

inconsistencies have been documented here in New York.¹² One analysis suggests that Time Warner Cable customers have been confronted with bills containing charges that are over 20 percent higher than advertised prices.¹³

While the Commission cannot regulate rates, it may certainly use these proceedings as a platform to assure that Comcast, upon expansion of its presence in the New York market, would provide fully accurate information about rates to consumers and clearly explain discrepancies between advertised rates and actual charges when they arise.

C. Improve Customer Service, Addressing TWC's Past Challenges and Its Own

Both TWC's performance as a provider of cable and broadband services for residents of Brooklyn, Manhattan, Queens and Staten Island, as well as Comcast's performance in other markets, raise serious questions about the newly-merged entity's ability to effectively serve the needs of New Yorkers.

Among all of New York City's cable franchisees, Time Warner Cable has the highest ratio of complaints to cable subscribers. TWC's apparently insufficient staffing of call centers leads to delays in the handling of such complaints and frustrations for consumers. FCC regulations require that cable companies meet specific telephone availability benchmarks. According to the federal guidelines, calls to cable systems must be answered -- including wait time -- within 30 seconds after the connection is made. If the call is transferred, the transfer time may not exceed 30 seconds. These standards must be met at least 90 percent of the time, measured quarterly, under "normal operating conditions."¹⁴ While performance has improved, TWC consistently falls far short of this standard and behind fellow cable franchisees in the City.

In addition, TWC has in the past failed to provide required notice to subscribers regarding changes in programming. In some cases, TWC has removed programming, furnishing consumers with notice only after the fact. In others, it has failed to inform consumers about implications of disputes with programming providers for services.¹⁵

Finally, the City is concerned about the impact of the merger on workers. Currently, TWC maintains two call centers in the New York City area. It is essential that these centers remain in New York City. This is critically important, not only for the workers who are currently employed by these call centers, but also for consumers who are generally better served by local customer-service professionals who tend to have a better understanding of context than those in distant locations. In addition, the aforementioned customer service concerns suggest that it may be necessary to increase staffing levels at these locations.

¹² See Bruce Kushnick, *New Networks, Special Section: Time Warner and the Social Contract* at 5, available at <http://www.teletruth.org/docs/timewarnercomcast.pdf>.

¹³ See *id.*

¹⁴ FCC Customer Service Standards—Guide, available at <http://www.fcc.gov/guides/customer-service-standards>.

¹⁵ See Mike Ozanian, *CBS Pummels Time Warner Cable On Wall Street During Carriage Dispute*, *Forbes* (Aug. 23, 2013).

Comcast must commit to making concrete, measurable improvements in TWC's customer service and to providing the PSC and the public more generally with quarterly reports on its progress. Among these should be a commitment to training and hiring additional City residents to provide much-needed customer service capacity.

D. Follow Through on Its Commitment to Upgrade the Existing TWC Network & Related Infrastructure

In recent years, the City has developed serious concerns about TWC's network and the resultant quality of its services. The City has received numerous complaints regarding the quality of TWC's video and Internet services, which it believes have their roots in the company's inadequate investment in its infrastructure. Indeed, Comcast itself has suggested that TWC has failed to keep up with prevailing technological developments.¹⁶

First, Comcast must also ensure that access to its services is available to all consumers within its footprint. Constituents have indicated, for example, that cable and broadband connections are unavailable on certain blocks in Williamsburg and the Rockaways. Addressing such gaps is critically important for low-income, elderly and disabled individuals who reside in these uncovered areas and whose access to educational, health and other services available online is currently limited. Such gaps in access are of particular concern to the City given its goal of guaranteeing universal, affordable broadband across the five boroughs.

In addition, the City believes the deployment of fiber deeper within the TWC network, among other important investments, would improve the quality and reliability of the company's services. By replacing coaxial cable with fiber, the newly merged entity could reduce the degradation that results from the transmission of data between the two, thereby improving service to end users. Moreover, such investments would ensure the longer-term resiliency and technological flexibility of the network infrastructure.

While Comcast has indicated that it will, subsequent to the transfer, "fully upgrade" TWC's network providing "highly reliable and secure service,"¹⁷ it is critically important that the PSC demand specific, measurable, time-bound commitments on infrastructure investment including commitments to identify and address unserved communities within the footprint. Specifically, Comcast must commit to upgrading 100% of its network to the last amplifier in every node from coaxial cable to fiberoptic cable by July 2020.

E. Furnish Meaningful Support for New York City Access and Resiliency Initiatives

Comcast may also demonstrate its commitment to the public interest by offering support for the City's efforts to provide universal, affordable broadband as well as those currently underway in other cities across the state. The City is deeply committed to ensuring that all City residents are able to reap the benefits of high-speed Internet, and to that end, is advancing a

¹⁶ See Comcast, Comcast and Time Warner Cable File Applications and Public Interest Statements with the FCC, available at <http://corporate.comcast.com/comcast-voices/comcast-and-time-warner-cable-file-applications-and-public-interest-statement-with-fcc>.

¹⁷ See *id.*

series of initiatives designed to increase access. Comcast should take the following steps to illustrate its dedication to the public interest.

- Expand free public wifi, with the goal of having free public wifi hotspots available within a quarter mile of 50 percent of residences in TWC’s service area by 2020;
- Eliminate time limitations on free public wifi service in City parks within its service area; and
- Assist in the City’s efforts to catalyze innovative new enterprises through super high-speed connections.

In addition, Comcast could make a powerful statement about its commitment to the public interest by, as other New York City operators already have, formally agreeing to cooperate with other providers during natural disasters and emergencies.

F. Provide Meaningful and Stable Support for Public Interest, Educational and Government Providers

In addition to questions related to affordable options for low-income and other underserved New Yorkers, rate transparency, customer service and network technology investment, the City has concerns about the implications of the contemplated transfer for public educational and government (“PEG”) channels. TWC’s lackluster history of supporting these providers—which provide unparalleled opportunities for media education and content production for City residents—raises serious questions about whether the newly-merged entity will partner effectively with these institutions.

Specifically, the City is concerned that in recent years TWC has shifted numerous PEG providers to higher channel numbers that have decreased visibility. These channel shifts create significant challenges for PEG providers, who lack the resources to develop and distribute notification materials and who risk losing audience members with every switch. In addition, PEG providers have had to struggle with TWC and other providers to secure access to the high-quality recording and transmission technologies—such as high definition—that are available to other content providers.

Comcast must commit to maintaining PEG channel capacity at levels in current franchise agreements, guaranteeing identical quality for PEG and commercial providers and keeping PEG channels in easily accessed, stable locations. In addition, Comcast must commit to providing meaningful and stable financial support for public access services regardless of shifts in the cable markets driven by the concentration of market power.

G. Support Strong Protections that Ensure Net Neutrality

Finally, the City is concerned that the contemplated merger—by giving Comcast control over unprecedented market share—will inhibit the public’s access to content. The newly merged entity will have inordinate influence over what millions of Americans see online. This may occur through choices about what channels Comcast will or will not carry. Alternatively, this influence may be exercised through “paid prioritization” agreements allowing the company to

expedite content produced by providers who are willing to pay additional fees. This will make it more difficult for City residents to access information from a wide range of sources and to share content of their own creation with others. It will have particularly serious implications for our public schools and public libraries, which play an especially important role as access points and drivers of adoption for residents who lack high-speed connections in their homes and which also make a wide array of content available to via the Internet.

Comcast has already stated its support for Net Neutrality and its willingness to expand its compliance with FCC requirements in this area to TWC systems for a limited time period.¹⁸ At this critical juncture, however, Comcast must reaffirm and extend this commitment. Specifically, Comcast must pledge full support for FCC adoption of the strongest possible rules to protect and promote the open Internet across the industry. Moreover, the City urges Comcast to reconsider its opposition¹⁹ to the reclassification of broadband as a telecommunications service subject to regulation under Title II of the Communications Act.

II. Conclusion

The contemplated merger is of tremendous import for all New Yorkers, but it has the potential to have a particularly powerful impact on those who are currently least likely to have access to high-speed Internet—among them the City’s low-income, elderly and disabled residents and residents of color. With the interests of these residents in mind, the City urges the Commission to seize the opportunity created by this review. The Commission should compel Comcast to make the aforementioned commitments publicly and in writing and to commit to a process of regular reporting, before the PSC and the broader public, in order to guarantee accountability. If Comcast does not do so, we urge the Commission to find that the corporation has failed to demonstrate that the proposed transaction is in the public interest.

The Commission has already recognized, with its rule change, that the degree of consolidation in the telecommunications and information sectors has reached alarming levels. Newer and more aggressive approaches must be brought to bear if the interests of all New Yorkers are to be protected. We offer these comments and recommendations with the goal of informing such approaches. The City is grateful for the opportunity to submit these comments to the Commission and is eager to engage in ongoing conversation on these matters.

Sincerely,



Bill de Blasio
Mayor

BDB:bs

¹⁸See David Cohen, FCC Begins Process to Establish Strong Legally Enforceable Open Internet Rules,(May 15, 2014) available at <http://corporate.comcast.com/comcast-voices/fcc-begins-process-to-establish-strong-legally-enforceable-open-internet-rules>.

¹⁹ See *id.*