

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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).

Application 14-04-013  
(Filed April 11, 2014)

Joint Application of Comcast Corporation, Time Warner Cable Information Services (California), LLC (U6874C) and Charter Fiberlink CA-CCO, LLC (U6878C) for Expedited Approval to Transfer Certain Assets and Customers of Charter Fiberlink CA-CCO, LLC to Time Warner Cable Information Services (California), LLC, Pursuant to Public Utilities Code Section 851.

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

**BRIEF OF THE WRITERS GUILD OF AMERICA, WEST INC.**

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## I. SUMMARY AND INTRODUCTION

Writers Guild of America, West, Inc. (“WGAW”) submits this Brief in the above-referenced proceeding in consideration of the proposed transfers of control between Comcast Corporation and Time Warner Cable Information Services (California), LLC, Bright House Networks Information Services (California) (“Bright House”), and Charter Fiberlink LLC. WGAW’s Brief is in response to the Scoping Memo and Ruling (“Scoping Memo”) promulgated by the Assigned Commissioner and Administrative Law Judge (“ALJ”) on August 14, 2014, the ALJ’s Ruling Resetting Schedule of Proceeding and Granting Official Notice issued November 13, 2014 and the ALJ’s Ruling Granting in Part and Denying in Part Motion of the Office of Ratepayer Advocates to Reconsider the November 13, 2014 ALJ Ruling Resetting Schedule of Proceeding (“Second Scheduling Ruling”), issued November 26, 2014.

Comcast Corporation (“Comcast”), the nation’s largest multichannel video programming distributor (“MVPD”) and Internet service provider (“ISP”), has proposed to acquire Time Warner Cable Inc. (“TWC”), the second largest cable provider of MVPD and ISP services. In a related transaction, Comcast has proposed to swap select markets with Charter Communications Inc. (“Charter”) to enhance regional concentration and, in coordination with Charter, to divest subscribers to a newly formed entity called GreatLand Connections, of which Charter will own 33%. In California, this transaction will see Charter exit the state. Comcast and TWC are the largest cable and Internet service providers in California, and with the acquisition of Charter’s markets, Comcast will reach 82% of California residents post-merger.<sup>1</sup> Allowing Comcast to

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<sup>1</sup> WGAW analysis of National Telecommunications and Information Administration data and 2010 Census Block Data. US Department of Commerce, National Telecommunications and Information Administration, State Broadband Initiative, California (CSV format December 31, 2013); and Missouri Census Data Center, Standard Summary File 1 (2010 Census) Extract Assistant, California, [http://mcdc.missouri.edu/cgi-bin/broker?\\_PROGRAM=websas.sf12010x\\_extract\\_menu.sas&\\_SERVICE=appdev&st=](http://mcdc.missouri.edu/cgi-bin/broker?_PROGRAM=websas.sf12010x_extract_menu.sas&_SERVICE=appdev&st=). (*WGAW Broadband Analysis*)



enhance its dominance within the state by roughly doubling its market share will harm competition, innovation and consumer choice, contrary to the state's public interest goals.

The proposed transfers will have an adverse impact on state and local economies, broadband competition and investment and low income communities, while offering no measures to mitigate such harm. The loss of two ISPs within the state will harm broadband competition by eliminating the potential for competitive overbuilding by any of the companies. In addition, Comcast's increased scale and incumbency advantage will further discourage new entrants, giving a single company substantial control over the broadband market. Comcast's acquisition of TWC will also undermine the availability of standalone broadband offerings because TWC currently offers more affordable standalone broadband plans with unlimited data, providing important benchmark competition that will be lost if this transaction is approved. The transfers are unlikely to enhance California's broadband deployment goals as Comcast and TWC (together with Charter, "Joint Applicants") have reported in documents filed with the California Public Utilities Commission ("CPUC" or "Commission") and the Federal Communications Commission ("FCC") that they have no plans and little incentive to overbuild or enter new markets through network extensions.<sup>2</sup> Finally, these transactions threaten important local economies that have benefitted from the growth of a competitive online video market.

WGAW believes that the CPUC should deny these Applications because they do not advance the public interest goals of the state of California. However, should the CPUC choose to approve the transactions, it must require strong, enforceable conditions to mitigate the

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<sup>2</sup> Opening Brief of Joint Applicants in Application 14-04-013 and 14-06-012, December 3, 2014 (*Opening Brief*); and *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, FCC MB Docket No. 14-57, Gregory L. Rosston and Michael D. Topper, "An Economic Analysis of the Proposed Comcast-Time Warner Cable Transaction," April 8, 2014, ¶173. (*Rosston/Topper Declaration*).

“significant adverse consequences”<sup>3</sup> that will occur absent protections. Such conditions should include:

- Preserving affordable standalone broadband options
- Enhancing Comcast’s Internet Essentials program
- A strong commitment not to interfere with municipal broadband
- Strong, enforceable protections for Net Neutrality
- Resolution of TWC’s existing franchise fee disputes

## **II. WRITERS GUILD OF AMERICA, WEST**

WGAW is a labor organization headquartered in Los Angeles that represents more than 8,000 professional writers of film, television, online video programming, local news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in theaters are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, “WGA”). More than 7,000 Guild members live in California and make significant contributions to the state and local tax base. In 2013, WGAW members reported \$1 billion in earnings and \$373 million in residual compensation from reuse of written material.<sup>4</sup>

WGAW is concerned that Comcast’s acquisition of TWC and Charter systems in California will harm broadband competition and upstream online content markets that rely on ISPs to reach the public. In recent years, Internet distribution of video has created a new market for entertainment content. Online platforms have expanded creative and economic opportunities

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<sup>3</sup> California Public Utilities Code §854(c)(8).

<sup>4</sup> Writers Guild of America West, *Annual Financial Report*, June 6, 2014, [http://www.wga.org/uploadedFiles/who\\_we\\_are/annual\\_reports/annualreport14.pdf](http://www.wga.org/uploadedFiles/who_we_are/annual_reports/annualreport14.pdf), p. 2.

for writers and others in the entertainment industry. WGA members now create original video programs offered by online video distributors (“OVDs”) such as Netflix, Amazon, Hulu and Crackle in this rapidly expanding market. More than two hundred professional writers have worked on original online video programs, generating almost \$10 million in income. Writers have also benefited from the growth in services that make television series and feature films available online. Millions of consumers visit television network websites and Hulu each month to catch up on recent television episodes. For example, 21<sup>st</sup> Century Fox reported in 2013 that 33% of views of the television series *New Girl* and 37% of views of the television series *Family Guy* over a 30-day period occurred on Hulu, Fox.com and set-top box video on demand (“VOD”) services.<sup>5</sup> Writers have earned almost \$70 million in residual income from online services licensing or selling television series and feature films.

Comcast’s growing dominance in the broadband Internet market threatens to stifle the development of the burgeoning OVD market, which is an important new industry segment. Comcast is a vertically-integrated distributor with significant content holdings, which provides incentive to use its control of broadband distribution to harm competing OVDs. Comcast has a history of engaging in such behavior and these acquisitions would allow it to expand harmful practices across a greater share of the broadband market. Such an outcome could halt the positive progress that has been made by the OVD market, which contributes to the state’s economy and enhances consumer choice.

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<sup>5</sup> 21<sup>st</sup> Century Fox Investor Presentation, Presentation of Kevin Reilly, Chairman, Entertainment, Fox Broadcasting Company, August 8, 2013, pp. 79-80, Part 2 of 4 documents, [http://www.21cf.com/Investor\\_Relations/Presentations/](http://www.21cf.com/Investor_Relations/Presentations/).

### III. STANDARD OF REVIEW

The standard of review for this proceeding is primarily whether or not the transactions serve the public interest.<sup>6</sup> In addition, under California Public Utilities Code §854(e), the Joint Applicants bear the burden of proving that the standard has been met.<sup>7</sup> The breadth of the proceeding, as outlined in the Commission’s Scoping Memo, is guided by two sets of authority: the California Public Utilities Code §854(c) and Section 706(a) of the 1996 Federal Telecommunications Act.<sup>8</sup> Specifically, the Scoping Memo focuses on §854(c)(6) and (8).<sup>9</sup> Section (c)(6) of the Public Utilities Code requires an analysis of whether the transaction(s) will “Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.” Section (c)(8) asks whether the transaction(s) will “Provide mitigation measures to prevent significant adverse consequences which may result.” The review under Section 706(a) of the Telecommunications Act directs the CPUC to consider the implications of the transaction(s) on broadband deployment, including by use of “measures that promote competition in the local telecommunications market.”<sup>10</sup>

Based on these standards, analysis in this proceeding must focus on the merger and transfer’s effects on competition for broadband services in California, broadband deployment in California, including buildout in unserved and underserved areas, broadband adoption in low income communities, availability of standalone broadband, quality of broadband service, and the impact on state and local economies.<sup>11</sup> To conduct a holistic review of the effects of this

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<sup>6</sup> Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge in Application 14-04-013, p. 8. (“*Scoping Memo*”)

<sup>7</sup> California Public Utilities Code §854(e).

<sup>8</sup> *Scoping Memo*, p. 10.

<sup>9</sup> *Ibid*, p. 13.

<sup>10</sup> *Ibid*, p. 10.

<sup>11</sup> *Ibid*, pp. 13-14; California Public Utilities Code §854(c)(6).

transaction and the related acquisition of Charter's California markets, the CPUC has combined review of both transactions within this proceeding.<sup>12</sup>

#### IV. PROPOSED TRANSACTIONS

Comcast's proposed acquisition of Time Warner Cable will combine the assets of the two largest cable MVPDs and the first and third largest broadband providers in the country. Nationwide, Comcast currently has 21.6 million Internet customers,<sup>13</sup> and TWC has 11.5 million.<sup>14</sup> In addition, Comcast is vertically integrated into upstream content markets through its ownership of NBC Universal, making it one of the largest owners of television networks.<sup>15</sup> In the FCC's review of the Comcast-NBC Universal ("NBCU") merger in 2011, it concluded that this combination of programming and distribution assets would increase Comcast's incentives and ability to interfere with OVDs because online video poses a competitive threat to both Comcast's content assets and its video distribution business.<sup>16</sup> The FCC also established that this harm could be carried out through Comcast's control over broadband.<sup>17</sup> With the proposed acquisition of TWC, Comcast will become an even larger broadband distributor, controlling 40% of the national broadband Internet market of 10 Mbps or greater connections<sup>18</sup> or 50% of the high-

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<sup>12</sup> Per ALJ Bemesderfer's ruling issued August 29, 2014 consolidating proceedings A.14-04-013 and A.14-06-012.

<sup>13</sup> Comcast Corporation, FY14-Q3 Form 10Q for the Period Ending September 30, 2014 (Filed October 23, 2014), from Comcast Corporate website, <http://www.cmcsa.com/secfiling.cfm?filingID=1193125-14-379913>, Accessed November 26, 2014. .

<sup>14</sup> Time Warner Cable Inc., FY14-Q3 Form 10Q for the Period Ending September 30, 2014 (Filed October 30, 2014), from Time Warner Cable website, <http://timewarnercable.q4cdn.com/610eb1c5-83fc-4dd7-9742-fa84a05d0059.pdf>, Accessed November 26, 2014.

<sup>15</sup> *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, FCC MB Docket No. 14-57, April 8, 2014, p. 13. (FCC Application).

<sup>16</sup> *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, FCC MB Docket No. 10-56, January 20, 2011, ¶ 77. (Comcast-NBCU Order).

<sup>17</sup> *Ibid*, ¶ 93.

<sup>18</sup> *Opposition to Petitions to Deny and Response to Comments of Comcast Corporation and Time Warner Cable, Inc., In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, FCC MB Docket No. 14-57, September 23, 2014, p. 146. (Comcast-TWC FCC Opposition)

speed market of 25 Mbps or greater.<sup>19</sup> In California, this transaction will result in even greater control of the broadband market as Comcast will acquire both Time Warner Cable's and Charter's entire California operations.<sup>20</sup>

In California, Comcast's broadband services are available to a population of 12 million individuals.<sup>21</sup> TWC's are available to 14.5 million,<sup>22</sup> and Charter's services are available to 4.2 million.<sup>23</sup> If the transactions are approved, a merged Comcast-TWC would offer cable broadband service to 30.1 million<sup>24</sup> out of 38.3 million Californians, or 82% of residents, and would be the dominant provider of broadband service in every large DMA on the West coast. The breadth of control granted to a merged Comcast-TWC will give the company an unprecedented ability to determine the development of broadband and online content markets.

## **V. TRANSFERS DO NOT ENHANCE BROADBAND GOALS IN CALIFORNIA**

The CPUC is empowered by the FCC's limited authority granted by section 706 of the Telecommunications Act of 1996 to "utilize measures that 'promote competition' and 'remove barriers to infrastructure investment.'"<sup>25</sup> The pending transactions do not serve the public interest goal of enhancing broadband competition. Joint Applicants have made no concrete commitments to build out service into unserved areas or in direct competition with other providers.<sup>26</sup> Instead, the transactions will remove two providers from the state, reducing benchmark competition and the possibility of overbuilding by any of the parties to the transactions. The quality of broadband

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<sup>19</sup> *Petition to Deny of Free Press*, FCC MB Docket No. 14-57, August 25, 2014, pp. 17-18. (*Free Press Petition*)

<sup>20</sup> *FCC Application*, Attachment 2, Chart of "DMAs Involved in Divestiture Transactions."

<sup>21</sup> *WGAW Broadband Analysis*.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*; accounts for overlap between TWC and Charter in a number of census blocks.

<sup>25</sup> *Scoping Memo*, p. 11.

<sup>26</sup> *Opening Brief*, p. 76. "[P]ost-transaction, the combined company will be able to *consider* greater build outs of network facilities..." (emphasis added). See also *FCC Application*.

offerings in California will also suffer from the loss of TWC, a large ISP that offers affordable, standalone broadband Internet without data caps, and the increased dominance of Comcast, which charges higher prices for slower speeds and intends to implement data caps, euphemistically termed usage-based billing (“UBB”), on all subscribers within the next five years.<sup>27</sup> With fewer providers in the state, the likelihood of widespread adoption of the anti-consumer policies of the nation and state’s largest ISP will increase.

*A. Transfers Reduce Benchmark Competition and Potential Overbuilding*

FCC Chairman Wheeler recently documented the lack of competition in the wired broadband market, noting that only 25% of households have access to two or more wired broadband providers offering speeds of at least 25 Mbps.<sup>28</sup> He also noted that roughly 55% of households have only one choice for 25 Mbps wired Internet service.<sup>29</sup> According to WGAW analysis of the National Telecommunications and Information Administration (“NTIA”) data collected through the State Broadband Initiative, the average number of wired broadband providers within California census blocks where Joint Applicants operate is only 2.2. In 63% of census blocks, constituting 21 million residents, the only other choice for wired broadband service is a DSL or copper-based ISP, neither of which can match the increasing speeds of cable broadband. With the lack of direct competition, benchmark competition, or competition based on adjacent service areas’ offerings, becomes the next best alternative. The ability to compare prices across adjacent service areas allows consumers to assess the fairness of a given price/level of

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<sup>27</sup> Josh Lowensohn, “Comcast could mandate a monthly data cap on all customers in the next five years,” *The Verge*, May 14, 2014, <http://www.theverge.com/2014/5/14/5718746/comcast-says-it-could-bring-data-caps-to-home-Internet-service-for-all>; and Comcast website, “What XFINITY Internet Data Usage Plans will Comcast be Launching?,” <http://customer.comcast.com/help-and-support/internet/data-usage-what-are-the-different-plans-launching>, Accessed November 24, 2014.

<sup>28</sup> Tom Wheeler, “The Facts and Future of Broadband Competition,” Prepared Remarks of FCC Chairman Tom Wheeler, September 4, 2014, p. 2, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0904/DOC-329161A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf).

<sup>29</sup> *Ibid.*

service.<sup>30</sup> With Comcast's proposed acquisition of TWC and Charter markets, however, benchmark competition will be eliminated.

The proposed merger and market swaps will enhance geographic clustering, which may reduce the prospect of new entrants expanding into the regions. As Los Angeles County noted in its Petition to Deny in the FCC's review of the Comcast-TWC merger, the FCC "has recognized that clustering reduces the likelihood that overbuilders will enter a market."<sup>31</sup> Independent studies have also found that an increase in the size of a cluster served by the same cable operator significantly decreases the likelihood that an overbuilder will enter the incumbent provider's service area.<sup>32</sup> This includes the most likely potential overbuilder – the adjacent operator. In the context of these transactions, Comcast's acquisition of both TWC and Charter systems eliminates the prospect of overbuilding by either company in LA County.

*B. Transfers Reduce Quality of Broadband in California by Eliminating TWC's Pro-Consumer Broadband Offerings*

The loss of Time Warner Cable and Charter from the California marketplace will undermine broadband competition and the availability of competitive standalone broadband in the state. TWC is an important broadband provider because it offers more affordable and less restrictive Internet service plans than Comcast. Joint Applicants broadly claim that Comcast

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<sup>30</sup> *Petition to Deny of Public Knowledge*, FCC MB Docket No. 14-57, August 25, 2014, p. 48 (*Public Knowledge Petition*), citing *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelfia Communications to Time Warner Cable*, Memorandum Opinion & Order, 21 FCC Red 8203, ¶¶ 78, 83. (*Adelfia Order*) ("adjacent service areas can provide a useful benchmark for consumers to compare price and service.")

<sup>31</sup> *Petition to Deny of Los Angeles County, California; Montgomery County, Maryland; The City of Portland, Oregon; and the Ramsey-Washington Counties (MN) Suburban Cable Communications Commission*, FCC MB Docket No. 14-57, August 25, 2014, pp. 9-10. (*LA County et al. Petition*)

<sup>32</sup> Hal J. Singer, *Does Clustering by Incumbent Cable MSOs Deter Entry by Overbuilders?*, Social Science Research Network, May 2003, p. 4.



offers “better internet service” than TWC,<sup>33</sup> but a review of the actual service offerings reveals that TWC offers a better value and more pro-competitive services. While Joint Applicants tout that Comcast’s most widely-subscribed speed tier is 25 or 50 Mbps, compared to 15 Mbps for TWC,<sup>34</sup> they fail to note that TWC’s 15 Mbps service level is in the process of being upgraded to 50 Mbps as part of the TWC Maxx upgrade initiative, which is already underway in Los Angeles.<sup>35</sup>

Significantly, TWC customers also face no limitations or added costs for data usage on any of TWC’s Internet plans,<sup>36</sup> and TWC has stated that its customers “will always have access to unlimited broadband.”<sup>37</sup> In contrast, Comcast is currently testing usage-based billing models in select markets where Comcast customers are charged for data usage that exceeds certain thresholds. In addition, Comcast’s Executive Vice President has stated that Comcast envisions moving to a “usage-based billing model” for all customers within the next five years.<sup>38</sup> In the FCC’s merger review, Comcast has stated that UBB is “based on the principle that those who use more should pay more.”<sup>39</sup> While this is a sound principle, the reality is that such a system already exists in the form of differentially priced speed tiers. Comcast’s plan to institute usage

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<sup>33</sup> *Opening Brief*, p. 76.

<sup>34</sup> *Ibid.*, pp. 78-79.

<sup>35</sup> Time Warner Cable, “Time Warner Cable Announces Commitment To Transform Customer Experience In Seven Markets,” July 31, 2014, <http://www.timewarnercable.com/en/about-us/press/time-warner-cable-announces-commitment-to-transform-customer-exp.html>.

<sup>36</sup> Time Warner Cable website, “What is Time Warner Cable Essentials Internet?,” <http://www.timewarnercable.com/en/support/faqs/faqs-internet/essentials-internet/plans/what-is-time-warner-cable-esse.html>, Accessed November 24, 2014. Time Warner Cable has some usage-based billing options, but they are applied as optional discounts, as opposed to usage penalties, applicable to the lower Internet tiers, in exchange for accepting a data limit.

<sup>37</sup> Jeff Simmermon, Director, Digital Communications, TWC, “Launching an Optional Usage-Based Broadband Pricing Plan in Southern Texas,” *Time Warner Cable Untangled*, February 27, 2012, <http://www.twcableuntangled.com/2012/02/launching-an-optional-usage-based-pricing-plan-in-southern-texas-2/>.

<sup>38</sup> Josh Lowensohn, “Comcast could mandate a monthly data cap on all customers in the next five years,” *The Verge*, May 14, 2014, <http://www.theverge.com/2014/5/14/5718746/comcast-says-it-could-bring-data-caps-to-home-internet-service-for-all>; and Comcast website, <http://customer.comcast.com/help-and-support/internet/data-usage-what-are-the-different-plans-launching>, Accessed November 24, 2014.

<sup>39</sup> *Comcast-TWC FCC Opposition*, p. 237.

thresholds, therefore, is merely an attempt to double-charge customers who have few alternatives, and to ensure customers do not substitute online video viewing for Comcast's cable television service. For example, Comcast's two highest widely-available speed tiers are 105 Mbps and 150 Mbps,<sup>40</sup> which are offered at promotional rates ranging from \$59.99 to \$89.99 per month. Comcast customers are already paying a high price for this connection but if the average television viewer, who watches 155 hours of television per month, were to use this connection to substitute OVD services for television viewing, that customer would add \$130 to his or her bill, resulting in a monthly bill of \$199.99 to \$219.99.<sup>41</sup> The possibility that this discriminatory practice could be expanded more broadly in the state presents significant harm to California consumers.

TWC also offers more affordable standalone broadband Internet service. For instance, Time Warner Cable offers an extremely valuable service for lower-income consumers: a standalone Internet offering of 3 Mbps for a retail (not promotional) cost of \$14.99 per month, available to anyone without restrictions or eligibility qualifications.<sup>42</sup> Comcast's lowest-priced, widely-available *standalone* Internet offerings in California are \$39.95 per month for 3 Mbps

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<sup>40</sup> SNL Kagan, "Multichannel High-Speed Data Pricing Report (mid-2014)," September 19, 2014, <https://www.snl.com/InteractiveX/doc.aspx?IOP=1&Id=29273972>. As noted above, the highest speed tier of 505 Mbps is available in limited markets. 150 Mbps and 105 Mbps are the highest speed tiers listed in SNL Kagan's mid-2014 Multichannel Pricing High Speed Data report for the following DMAs: Atlanta (105 Mbps), Boston (150 Mbps), Philadelphia (150 Mbps), Chicago (105 Mbps) and San Francisco-Oakland-San Jose (105 Mbps).

<sup>41</sup> *Joint Petition to Deny of Future of Music Coalition and Writers Guild of America, West, Inc.*, FCC MB Docket No. 14-57, August 25, 2014, pp. 56-57. Netflix estimates that an hour of HD video requires 3 GB of data, indicating that a household of two would require at least 930 GB of data to completely substitute online video for television viewing. In the areas where Comcast is currently testing data caps, the company generally charges \$10 for every 50 GB of data over 300 GB per month. The 630 GB over the monthly threshold would equal 13 x 50 MB, or \$130.

<sup>42</sup> Time Warner Cable website, "High Speed Internet Plans and Packages," <http://www.timewarnercable.com/en/internet/internet-service-plans.html>, Accessed November 19, 2014. This speed was recently increased as a part of TWC's system upgrades. See Time Warner Cable, "Time Warner Cable Bringing Incredibly Fast Internet Plans Across its Entire Austin Service Area," February 20, 2014, <http://www.timewarnercable.com/en/about-us/press/twc-bringing-incredibly-fast-internet-to-austin.html>.

and \$49.95 per month for 6 Mbps.<sup>43</sup> Comcast's 6 Mbps offering was a condition required by the FCC when it approved Comcast's acquisition of NBC Universal. It should be noted that Comcast failed to adequately market this offering and was fined \$800,000 by the FCC in 2012, which also extended the condition an additional year, until February 21, 2015.<sup>44</sup> Comcast vaguely claims that since that condition has become a core part of its business, it will "maintain its commitment to offering consumers the option to purchase broadband service on a standalone basis,"<sup>45</sup> but makes no promises, leaving California customers without a firm long-term commitment to affordable standalone service. In contrast, TWC currently offers California customers 10 Mbps service for \$29.99 per month or 50 Mbps service for \$34.99 per month.<sup>46</sup>

In addition to higher prices for standalone broadband, Comcast also engages in the anti-competitive practice of heavily discounting bundled services. The New York Public Service Commission ("NY PSC"), in its review of the proposed merger, has documented how Comcast aggressively discounts the price of its bundled video and Internet packages in comparison to its standalone Internet products. Comcast's bundled discounts range from just over \$10 per month to over \$60 per month, averaged over 24 months to account for promotional rates.<sup>47</sup> The price of a Comcast Internet and video bundle is sometimes even less than the cost of the relevant standalone video product.<sup>48</sup> In comparison, TWC's discounts for purchasing more than one service are minimal.<sup>49</sup> Such behavior has the effect of limiting the attractiveness of standalone

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<sup>43</sup> Comcast website, "New Customer Offers in San Francisco, CA," <http://www.comcast.com/>, Accessed November 19, 2014.

<sup>44</sup> Stacey Higginbotham, "Comcast pays \$800,000 to U.S. for hiding stand-alone broadband," *Gigaom*, June 27, 2012, <http://gigaom.com/2012/06/27/comcast-pays-800000-to-u-s-for-hiding-stand-alone-broadband/>.

<sup>45</sup> *Opening Brief*, p. 92.

<sup>46</sup> Time Warner Cable website, "High Speed Internet Plans and Packages," <http://www.timewarnercable.com/en/internet/internet-service-plans.html>, Accessed November 19, 2014.

<sup>47</sup> *Comments of the New York Public Service Commission*, FCC MB Docket No. 14-57, August 25, 2014, p. 8.

<sup>48</sup> *Ibid*, p. 9.

<sup>49</sup> *Ibid*, p. 8. The NY PSC's data show TWC's discounts consistently under \$10 per month.

broadband and substitution of OVD services for cable television, and demonstrates that the merged entity would be less likely than TWC to make standalone Internet easily accessible.

*C. Transfers are Not Needed To Enable Broadband Investment and Upgrades*

In multiple review proceedings, Comcast has claimed that the increased scale offered by this merger and system transfers will enable more investment and innovation, benefitting local economies.<sup>50</sup> Joint Applicants have drawn comparisons to prior transactions such as Comcast's purchases of AT&T Broadband and Adelphia in order to claim that the economies of scale and the geographic clustering that will result from this transaction will enable larger fixed cost investments and the deployment of advanced services.<sup>51</sup> The FCC's evaluations in the past have not given significant weight to these claims, and neither should the CPUC when assessing the proposed transactions. In those prior transactions, the FCC did not find that increased scale and geographic clustering would provide significant and quantifiable public benefits, but rather that upgrades and deployment would only have occurred more slowly absent the transactions, for transaction-specific reasons. In the AT&T-Broadband merger, the FCC found that AT&T lacked capital to invest in deployment of broadband services and that Comcast was likely to accelerate deployment in AT&T service areas.<sup>52</sup> In the Adelphia transaction, the FCC's conclusion that the transaction was likely to accelerate the provision of advanced video services was based on Adelphia's bankruptcy status, which indisputably would have delayed large-scale upgrades and service improvements, absent acquisition by a solvent corporation.<sup>53</sup>

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<sup>50</sup> *Opening Brief*, pp. 13, 49; and *Comcast-TWC FCC Opposition*, p. 60.

<sup>51</sup> *Opening Brief*, p. 13, fn. 39; and *Comcast-TWC FCC Opposition*, p. 82.

<sup>52</sup> *In the Matter of Applications of Comcast Corporation and AT&T Corp. For Consent to the Transfer of Control of Licenses*, Memorandum Opinion and Order, FCC MB Docket No. 02-70, November 13, 2002, ¶¶ 217-218. (*AT&T-Comcast Order*).

<sup>53</sup> *Public Knowledge Petition*, p. 48, citing *Adelphia Order*, ¶ 259.

In the instant proceeding, it is dubious that the benefits that the Joint Applicants claim to be enabled by scale are transaction-specific or unlikely to occur without the merger. TWC's network upgrades are already underway:<sup>54</sup> Its "Maxx" initiative to enhance the network and complete the conversion of all television channels from analog to digital across 75% of its footprint was announced at the close of the 2013 fiscal year. The conversion frees up bandwidth, allowing TWC to increase Internet speeds up to 300 Mbps. To accomplish these goals TWC is investing \$100 million each year in network maintenance<sup>55</sup> and almost \$4 billion each year in capital expenditures for, among others things, network line extensions and enhancements.<sup>56</sup> In addition, TWC's 2013 net income was \$1.954 billion on revenues of \$22 billion, indicating the company's financial strength.<sup>57</sup>

#### *D. Transfers Do Not Enhance Competition*

The proposed transactions do nothing to enhance broadband competition because Joint Applicants are simply consolidating, rather than expanding service to new areas. Direct, local competition between cable and fiber broadband providers has been shown to be the key incentive for increased investment in network upgrades, speed increases and price decreases. FCC Chairman Wheeler recently stated that "only fiber gives the local cable company a competitive

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<sup>54</sup> Time Warner Cable, "Time Warner Cable Completes "TWC MAXX" Rollout in Los Angeles and New York City," November 13, 2014, <http://www.timewarnercable.com/en/about-us/press/twc-completes-twc-maxx-rollout-in-la-and-nyc.html>.

<sup>55</sup> Time Warner Cable Earnings Call, A4, 2013 Results, January 30, 2013, Transcript courtesy of Seeking Alpha, <http://seekingalpha.com/article/1981291-time-warner-cable-management-discusses-q4-2013-results-earnings-call-transcript?part=single>. Comments of Arthur Minson, CFO and EVP, "To achieve all this, we plan to increase total capital spending to \$3.7 billion to \$3.8 billion a year in each of the next 3 years and to invest an incremental \$100 million a year in operating expense in proactive maintenance of the network and Max [sic] rollout activities."

<sup>56</sup> Time Warner Cable, "TWC Operational and Financial Plan," January 30, 2014, [http://ir.timewarnercable.com/files/4Q13/TWC\\_Operational%20and\\_Financial%20Plan\\_vFINAL.pdf](http://ir.timewarnercable.com/files/4Q13/TWC_Operational%20and_Financial%20Plan_vFINAL.pdf), slide 18.

<sup>57</sup> Time Warner Cable Inc., "SEC Form 10-K," Filed February 18, 2014, For period ending December 31, 2013, [http://www.sec.gov/Archives/edgar/data/1377013/000119312514056642/d640670d10k.htm#toc640670\\_23](http://www.sec.gov/Archives/edgar/data/1377013/000119312514056642/d640670d10k.htm#toc640670_23).

run for its money,”<sup>58</sup> and the response of Comcast and TWC to fiber competition confirms this. Comcast and TWC, when implementing upgrades to faster broadband speeds, have prioritized the markets where they face fiber competition. For example, in 2012, Comcast introduced a 305 Mbps tier (“Extreme 305”) to match Verizon’s 300 Mbps offering.<sup>59</sup> Extreme 305 was offered in select Northeast cities including Baltimore, Boston, D.C., Hartford and Philadelphia, all of which are FiOS markets.<sup>60</sup> In 2013, two months after Verizon launched a 500 Mbps tier, Comcast began offering 505 Mbps (“Extreme 505”) through a fiber to the premise network. Comcast again introduced Extreme 505 in select Northeast markets that were served by FiOS: Baltimore, Boston, DC, Hartford, Philadelphia and Richmond.<sup>61</sup>

TWC has also prioritized its TWC Maxx initiative of speed upgrades in markets where it faces fiber competition, including Austin, Los Angeles and New York City.<sup>62</sup> Austin has been prioritized because of Google Fiber’s entrance into the market, and Google’s \$70 gigabit service has prompted competitive offerings from multiple ISPs in Austin.<sup>63</sup> TWC has completed network upgrades in Austin and is now offering 300 Mbps, AT&T is planning to offer a \$70

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<sup>58</sup> Tom Wheeler, “The Facts and Future of Broadband Competition,” Prepared Remarks of FCC Chairman Tom Wheeler, September 4, 2014, p. 5, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0904/DOC-329161A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf).

<sup>59</sup> Karl Bode, “Exclusive: Comcast Prepping 305 Mbps Tier; To Counter Verizon’s New Quantum FiOS Offerings,” *DSL Reports*, July 19, 2012, <http://www.dslreports.com/shownews/Exclusive-Comcast-Prepping-305-Mbps-Tier-120450>.

<sup>60</sup> Steve Donohue, “Comcast expands 305 Mbps tier to Boston, Philadelphia, New Jersey, D.C.; touts fastest wireless gateway,” *FierceCable*, September 18, 2012, <http://www.fiercecable.com/story/comcast-expands-305-mbps-tier-boston-philadelphia-new-jersey-dc-touts-faste/2012-09-18>.

<sup>61</sup> Jeff Baumgartner, “Comcast Raises Top-End Residential Broadband Tier to 505 Mbps,” *Multichannel News*, September 17, 2013, <http://www.multichannel.com/news/distribution/comcast-raises-top-end-residential-broadband-tier-505-mbps/261241>; and Alan Breznick, “Comcast Zips Past Verizon,” *Light Reading*, September 18, 2013, <http://www.lightreading.com/cable-video/comcast-zips-past-verizon/d/d-id/705720>.

<sup>62</sup> Time Warner Cable, “Time Warner Cable Announces Commitment To Transform Customer Experience In Seven Markets,” July 31, 2014, <http://www.timewarnercable.com/en/about-us/press/time-warner-cable-announces-commitment-to-transform-customer-exp.html>; and Michael Theis, “Austin fiber wars continue as Time Warner boosts Internet speeds,” *Austin Business Journal*, June 3, 2014, <http://www.bizjournals.com/austin/blog/techflash/2014/06/austin-fiber-wars-continue-as-time-warner-boosts.html>.

<sup>63</sup> Michael Theis, “Austin fiber wars continue as Time Warner boosts Internet speeds,” *Austin Business Journal*, June 3, 2014, <http://www.bizjournals.com/austin/blog/techflash/2014/06/austin-fiber-wars-continue-as-time-warner-boosts.html>.

gigabit connection and Grande Communications is planning a \$65 gigabit service.<sup>64</sup> In Los Angeles, TWC recently announced that it would be able to deliver gigabit speeds by 2016 in response to the City Council's initiative to partner with an ISP to develop a citywide broadband network capable of delivering 1 Gbps.<sup>65</sup> In New York City, TWC faces a number of competitors with high-speed offerings including Cablevision (101 Mbps), RCN (110 Mbps) and Verizon (500 Mbps). These proposed transactions promise no new broadband deployment, fiber or otherwise, for California, and are therefore unlikely to spur this kind of competitive response. It is clear that competition from fiber overbuilders is what prompts network investment and upgrades. This merger and the related system transfers neither provide nor promote such competition, and are unlikely to produce any of the related benefits.

Despite arguments that the transaction will accelerate investment in and deployment of broadband services, Joint Applicants specifically decline to commit to build out their combined network post-transaction. Instead, the transfers promise to remove benchmark competition and the potential for overbuilding, and to eliminate TWC's pro-consumer broadband offerings from the California market.

## **VI. TRANSFERS WILL HARM UPSTREAM CONTENT MARKETS**

Joint Applicants have emphasized the lack of local service overlap in an attempt to downplay the competitive concerns arising from this merger.<sup>66</sup> While the merger may not reduce consumer choice locally, Comcast's increased concentration of state and national broadband

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<sup>64</sup> Karl Bode, "Time Warner Cable Says 300 Mbps 'Maxx' Austin Upgrades Complete," *DSL Reports*, October 8, 2014, <http://www.dslreports.com/shownews/Time-Warner-Cable-Says-300-Mbps-Maxx-Austin-Upgrades-Complete-130789>.

<sup>65</sup> Ryan Faughnder, "Time Warner Cable promises one-gigabit Internet for L.A. in 2016," *LA Times*, July 18, 2014, <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-time-warner-cable-internet-20140717-story.html>.

<sup>66</sup> *Opening Brief*, p. 9.

markets does pose a competitive threat. This concentration is relevant because upstream online video content markets that rely on broadband for distribution are national. Comcast is a vertically-integrated provider of competing upstream video services with both the ability and incentive to use its power as a distributor to limit competition, and such incentive and ability will increase should the merger be approved. The result would be a national ISP market where approximately half of high-speed broadband connections are controlled by Comcast, and as such, this merger presents significant competitive concerns for unaffiliated online video distributors (“OVDs”). The resulting concentration will disproportionately impact California because of the important contribution of the entertainment industry to the state economy and the unique role Los Angeles plays as an incubator for online content startups.

*A. The OVD Market is National*

Precedent for a national market for delivery of broadband content was established in the Department of Justice’s (“DOJ”) analysis of relevant markets in the 2000 merger of AT&T and MediaOne. The proposed AT&T-MediaOne merger would have combined the two largest broadband providers in the nation, giving AT&T control over roughly 40% of the market.<sup>67</sup> The merger’s circumstance was similar to the proposed Comcast-TWC merger because there was a lack of local competitive overlap between AT&T and MediaOne’s broadband services, yet the DOJ found that substantial anti-competitive effects would result from the combined company’s control over the national market “for aggregation, promotion, and distribution of residential broadband content.”<sup>68</sup> The DOJ considered the effect of the transaction on producers of content

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<sup>67</sup> Brian Fung, “14 years ago, DOJ said letting one broadband company run half the country was a bad idea,” *Washington Post*, August 28, 2014, <http://www.washingtonpost.com/blogs/the-switch/wp/2014/08/28/14-years-ago-doj-said-letting-one-broadband-company-run-half-the-country-was-a-bad-idea/>.

<sup>68</sup> Competitive Impact Statement, *United States v. AT&T*, No. 1:00-cv-01176, at §1 (D.D.C. May 25, 2000), <http://www.justice.gov/atr/cases/f4800/4842.htm>.



for broadband distribution, noting that such providers rely on national distribution to maximize revenue.<sup>69</sup> The DOJ found that through its increased level of control over broadband nationally, “AT&T could make it less attractive for unaffiliated or disfavored content providers to invest in the creation of attractive broadband content, and thereby reduce the quality and quantity of content available.”<sup>70</sup> Comcast’s proposed expansion of control of broadband distribution through this merger presents the same concerns.

The FCC has also found in other proceedings that some cable programming networks are national, an analysis that extends to OVDs.<sup>71</sup> OVDs make an appropriate comparison to a national cable network that “offer[s] programming of broad interest and depend[s] on a large, nationwide audience for profitability.”<sup>72</sup> Like USA and TNT, which the FCC placed in this category of national cable networks, OVDs such as Amazon or Netflix offer both licensed and original programming across a variety of interest areas. They also depend on nationwide distribution to remain viable. Recent industry developments, in addition, confirm that the OVD market is national. Pay television network HBO’s recent decision to offer the on demand service, HBO Go, as a standalone subscription to Internet subscribers demonstrates that the OVD market operates similarly to cable television networks. As such, an affected market in this transaction is the national market for Internet distribution of content. Joint Applicants’ argument that, because they serve distinct geographic areas, there is no competitive impact from the merger, is not supported by precedent or market realities.

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<sup>69</sup> Complaint, *United States v. AT&T*, No. 1:00-cv-01176, at 9 ¶ 23 (D.D.C. May 25, 2000).

<sup>70</sup> *Ibid*, at 13 ¶ 34.

<sup>71</sup> *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferees, For Authority to Transfer Control*, FCC MB Docket No. 03-124, January 14, 2004, ¶ 57; and *Adelphia Order*, ¶ 66.

<sup>72</sup> *Adelphia Order*, ¶ 66.

*B. The OVD Market has Expanded Creative and Economic Opportunities and Enhanced Consumer Choice*

In less than a decade since the start of the OVD market, launched by the creation of YouTube in 2005, the market has evolved from primarily user-generated, short-form videos to a diverse and robust slate of original programming. The popularity of OVDs has forged new creative and economic opportunities for writers and others working in the entertainment industry. The emerging online video market has expanded consumer choice, enhanced competition among video distributors, created new employment opportunities for Californians, and has ultimately brought new, compelling content to national audiences. These transactions pose a direct threat to these positive developments because, post-transactions, Comcast will have increased ability and incentive to stifle online video competition.

Data on online video consumption illustrates the market's rapid growth. Between January 2007 and December 2013, the number of online videos Americans viewed each month grew from 7.2 billion to 52.4 billion.<sup>73,74</sup> The growth is not limited to a subset of Internet users. The segment of Americans who watch or download videos has grown from 69% of adult Internet users in 2009 to 78% in 2013.<sup>75</sup> Internet traffic patterns further illustrate the popularity of online video, with YouTube and Netflix now accounting for half of all downstream Internet traffic in North America.<sup>76</sup> The number of people signing up for online video subscriptions is yet another

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<sup>73</sup> comScore, "Primetime' U.S. Video Streaming Activity Occurs on Weekdays Between 5-8 P.M.," March 21, 2007, <http://www.comscore.com/Insights/Press-Releases/2007/03/Primetime-US-Online-Video>.

<sup>74</sup> comScore, "comScore Releases December 2013 U.S. Online Video Rankings," January 10, 2014, <http://www.comscore.com/Insights/Press-Releases/2014/1/comScore-Releases-December-2013-US-Online-Video-Rankings>.

<sup>75</sup> Kristen Purcell, "Online Video 2013," Pew Research Center, October 10, 2013, <http://www.pewinternet.org/2013/10/10/online-video-2013/>.

<sup>76</sup> Sandvine, *Global Internet Phenomena Report: 2H 2013*, <https://www.sandvine.com/downloads/general/global-internet-phenomena/2013/2h-2013-global-internet-phenomena-report.pdf>.

indicator of consumer demand for new, innovative video offerings. Hulu Plus now counts more than 6 million paying subscribers and Netflix has 36 million customers in the U.S.<sup>77,78</sup>

The growth of the online video market has created new opportunities for writers and new competition in television programming. 2013 marked the debut of original television-length programming from outside the television ecosystem as Netflix and Amazon began offering original drama and comedy series directly to consumers. Yahoo!, with two half-hour sitcoms coming in 2015, and Playstation, with its soon to be released drama *Powers*, are among the next OVDs to offer such programming.<sup>79</sup> Original online series represent significant investment on the part of the distributors with Netflix and Amazon spending an estimated \$1 billion on original programming in 2014.<sup>80</sup> And the Netflix original series' *Orange is the New Black* and *House of Cards* were nominated for 12 and 13 Television Emmy nominations in 2014, respectively.

*C. The Proposed Transfers will Increase Comcast's Ability and Incentive to Harm Competition in OVD Market*

If the transactions are approved, Comcast will have increased incentive and ability to foreclose competition in the vibrant upstream market for online content. The acquisition of NBC Universal ("NBCU") made Comcast a large, vertically integrated MVPD and ISP and the FCC

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<sup>77</sup> Mike Hopkins, "Welcome Jenny Wall, SVP Marketing," Hulu Blog, May 13, 2014, <http://blog.hulu.com/2014/05/13/welcome-jenny-wall-svp-marketing/>.

<sup>78</sup> Shalini Ramachandran and Tess Stynes, "Netflix Shares Plunge as Growth Disappoints," *The Wall Street Journal*, October 15, 2014, <http://online.wsj.com/articles/netflix-reports-disappointing-number-of-new-subscribers-1413403954>.

<sup>79</sup> Mike Shields, "First Netflix and Amazon. Now Yahoo to Get Into TV Programming Game," *The Wall Street Journal*, April 5, 2014; and Marc Graser, "Sony 'Powers' Up its First Scripted TV Series on Playstation," *Variety*, November 18, 2014, <https://variety.com/2014/digital/news/sony-powers-up-its-first-scripted-tv-series-on-playstation-1201359472/>.

<sup>80</sup> Samantha Bookman, "A closer look at the billions of dollars Netflix, Amazon and Hulu are spending on original content," *FierceOnlineVideo*, June 4, 2014, <http://www.fierceonlinevideo.com/special-reports/closer-look-billions-dollars-netflix-amazon-and-hulu-are-spending-original>.

found that, as a result, Comcast had increased ability and incentive<sup>81</sup> to hinder competition from OVDs through “its exercise of control over consumers’ broadband connections.”<sup>82</sup> Since the NBCU acquisition, Comcast has developed several OVD offerings that compete with unaffiliated online distributors, which include Xfinity OnDemand, the Xfinity TV Go app, the Xfinity TV Store, and Xfinity Streampix.<sup>83</sup> As Comcast increases its scale as a video and broadband provider through the proposed transactions, and online video competition becomes more robust, Comcast’s incentive to use its control over broadband distribution to harm unaffiliated OVDs will also increase.

Joint Applicants’ economists claim that they are constrained from taking actions that would harm OVDs in the form of degrading their consumers’ access to OVD content because the consumers would switch to other providers.<sup>84</sup> They cite a Comcast-commissioned survey from Global Strategy Group to claim that “customers would, in fact, switch to broadband alternatives in large numbers should Comcast degrade access to edge providers.”<sup>85</sup> However, a recent survey found that 47% of broadband users report that it would be difficult to find a broadband ISP in their neighborhood that offers the same quality as their current service,<sup>86</sup> highlighting the reality

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<sup>81</sup> *Comcast-NBCU Order*, ¶ 110.

<sup>82</sup> *Ibid.*, ¶ 93.

<sup>83</sup> Comcast, “Xfinity TV Go Network Roster Tops 50 With Latest Update,” March 19, 2014, <http://corporate.comcast.com/news-information/news-feed/comcast-customers-can-now-stream-more-than-50-live-channels-anytime-anywhere>; and Comcast website, “X1: Live TV and On Demand Streaming FAQs,” <http://customer.comcast.com/help-and-support/cable-tv/live-tv-streaming/>, Accessed November 6, 2014.

<sup>84</sup> Opening Brief of Joint Applicants in Application 14-04-013 and 14-06-012, December 3, 2014, Exhibit D, Mark A. Israel, et al., “Economic Analysis of the Effect of the Comcast-TWC Transaction on Voice and Broadband Services in California,” ¶ 59. (*Israel et al. Declaration*)

<sup>85</sup> *Israel et al. Declaration*, ¶60, fn. 102, citing *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, FCC MB Docket No. 14-57, Mark A. Israel, “Economic Analysis of the Effect of the Comcast-TWC Transaction on Broadband: Reply to Commenters,” September 22, 2014, § III.C.4. (*Israel FCC Reply Declaration*)

<sup>86</sup> John B. Horrigan, *Consumers and choice in the Broadband and wireless markets*, November 2014, p. 2, [https://www.publicknowledge.org/assets/uploads/blog/Consumers\\_and\\_choice\\_in\\_the\\_Broadband\\_and\\_wireless\\_markets.pdf](https://www.publicknowledge.org/assets/uploads/blog/Consumers_and_choice_in_the_Broadband_and_wireless_markets.pdf).

that many consumers may not have a reasonable alternative should Applicants behave in such a manner.

In addition, Joint Applicants are careful not to outline the actual dearth of options their California consumers would have should they wish to switch broadband providers. Of the more than 30 million California residents within census blocks served by Joint Applicants, 69% will have only one wired broadband alternative in the form of a DSL or other copper-based technology provider, both of which are inferior to cable broadband. DSL and copper broadband providers are unable to match the faster speeds of cable and fiber-based Internet service because data signals get weaker, and speeds diminish, the further they have to travel. Copper networks require ongoing investments but deliver a less attractive product for subscribers. For example, AT&T offers DSL in many markets throughout the United States and in California, but households must be within three miles of the telephone office and can only receive speeds of 6 Mbps.<sup>87</sup> The result is that DSL's share of broadband subscribers has fallen from 35.7% in 2009 to only 19.2% in 2013.<sup>88</sup> AT&T and Verizon also see copper networks as a fading technology and have petitioned the FCC for regulatory approval to decommission copper plant.<sup>89</sup> As mentioned in the previous section, only fiber-based broadband can compete with the speeds of cable broadband providers. Unfortunately, only 17% of residents within census blocks served by Joint Applicants have the choice of a fiber-based alternative.

With a larger share of the broadband distribution market in California and nationally, Comcast will have increased ability to implement practices that make its affiliated video

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<sup>87</sup> *In the Matter of Applications of AT&T Inc. and DirecTV for Consent to Assign or Transfer Control of Licenses or Authorizations*, FCC MB Docket No. 14-90, June 11, 2014, p.12, fn. 4.

<sup>88</sup> Simon Flannery, "Wireline Broadband – High Fiber Regimen," *Morgan Stanley*, October 13, 2014. See also *Free Press Petition*, pp. 30-33.

<sup>89</sup> AT&T Inc., 2013 Annual Report, Feb. 10, 2014, p. 36, [http://www.att.com/Investor/ATT\\_Annual/2013/downloads/ar2013\\_annual\\_report.pdf](http://www.att.com/Investor/ATT_Annual/2013/downloads/ar2013_annual_report.pdf).

products and services more attractive than unaffiliated OVDs. Usage-based billing, anti-competitive standalone pricing policies, and use of interconnection agreements to extract payments from competing OVD services will enable Comcast to significantly harm competition in upstream markets by discouraging customers from substituting online video viewing for traditional cable viewing. The lack of competitive alternatives to cable broadband further enhances Comcast's ability to engage in harmful behavior.

For example, Comcast has already shown a willingness to use its role as a terminating access monopoly that controls access to a large portion of broadband subscribers to extract tolls from online video providers such as Netflix. In late 2013, Comcast customers began experiencing difficulty streaming Netflix content. Netflix later reported that the quality of its service was degraded because Comcast refused to make sufficient interconnection capacity available to Netflix and its transit providers.<sup>90</sup> Comcast would only make sufficient capacity available to Netflix after it agreed to pay for interconnection.<sup>91</sup> The exchange of Internet traffic between networks has historically been done without compensation, but as media analyst Richard Greenfield wrote, "Comcast was willing to use its size and scale to force Netflix's hand."<sup>92</sup> Netflix Vice President Christopher Libertelli also wrote in a letter to U.S. Senator Al Franken,

"Comcast is already dominant enough to be able to capture unprecedented fees from transit providers and services such as Netflix. The combined company would possess even more anti-competitive leverage to charge arbitrary interconnection tolls for access to their customers."<sup>93</sup>

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<sup>90</sup> Ken Florance, Vice President, Content Delivery, Netflix, Inc., "The Case Against ISP Tolls," *Netflix US and Canada Blog*, April 24, 2014, <http://blog.netflix.com/2014/04/the-case-against-isp-tolls.html>.

<sup>91</sup> Christopher Libertelli, Vice President, Global Public Policy, Netflix, Inc., "Letter to Senator Al Franken," April 23, 2014, <http://www.franken.senate.gov/files/letter/140424NetflixResponse.pdf>. (*Netflix Letter*)

<sup>92</sup> Dawn C. Chmielewski and Meg James, "Netflix-Comcast Deal Ends Internet Consumption Dispute," *LA Times*, February 25, 2014, <http://articles.latimes.com/2014/feb/25/entertainment/la-et-ct-comcast-netflix-20140225>.

<sup>93</sup> *Netflix Letter*.

A recent Open Technology Institute (“OTI”) White Paper notes that, during the recent stand-off between Comcast, Netflix and Cogent, “consumers were caught in the middle for at least nine months. Until the press picked up on the issue, and even long after, the companies were not clear with consumers about what was going on.”<sup>94</sup> Comcast’s ability to act anti-competitively towards OVDs by interfering with consumer broadband connections was and is unchecked by competitive constraints and the profitability of such strategies will increase with the company’s size if it is allowed to acquire additional broadband systems.

*D. Comcast’s Ability to Harm the OVD Market will Have a Disproportionate Impact in California*

Comcast’s increased control of Internet distribution will have a specific and negative effect on California’s economy. The entertainment sector is a significant source of state employment, accounting for 165,000 jobs and \$77.6 billion in economic output in 2012.<sup>95</sup> And, as the City of Los Angeles noted in the FCC’s merger proceeding, “Los Angeles is the creative capital of the world and its economy reflects the vitality of its creative community.”<sup>96</sup> While those jobs have traditionally been concentrated in film and television, new media is a growing segment of LA’s creative economy. In recent years, more than 200 writers have worked on original online programming, accruing nearly \$10 million in income. Writers have also earned

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<sup>94</sup> Open Technology Institute, ‘*Beyond Frustrated: The Sweeping Consumer Harms as a Result of ISP Disputes*, November 2014, p. 3. (*OTI Interconnection Paper*)

<sup>95</sup> Los Angeles County Economic Development Corporation, *2013 Otis Report on the Creative Economy*, p. 56, [http://laedc.org/wp-content/uploads/2014/02/2013\\_Otis\\_Report\\_Creative\\_Economy.pdf](http://laedc.org/wp-content/uploads/2014/02/2013_Otis_Report_Creative_Economy.pdf).

<sup>96</sup> *Comments of the Office of the Mayor of the City of Los Angeles*, FCC MB Docket No. 14-57, August 25, 2014, p. 7. (*City of LA Comments*)

almost \$70 million in residual income from online services including Amazon, Netflix and iTunes.<sup>97</sup>

Tech companies that have entered the entertainment industry have taken up residency in Southern California, representing an important subset of the commercial office market and bringing new investment capital to the region. Silicon Beach, the informal name given to the west side of Los Angeles where technology-focused entertainment companies are located, has become a tech hub. Silicon Beach houses established firms such as Google, which opened a 100,000 square-foot (sf) campus in Venice, and YouTube, which built 41,000 sf of production and office space in Los Angeles. Yahoo Studios, Amazon Studios and Maker Studios, in addition, all have office and production space in west Los Angeles. Silicon Beach is also home to many startups, 800 of which have raised \$1.3 billion in funding since 2011.<sup>98</sup>

Internet distribution has created a new segment of the entertainment industry, occupied by video bloggers. This segment emerged from the user-generated world of YouTube. Multi-channel networks (“MCNs”), which are networks of owned and independent video channels typically distributed on YouTube, have helped professionalize video blogging by attracting ad revenue and facilitating investment in content. Many such networks exist but AwesomenessTV, DanceOn, Tastemade and Maker Studios are examples of successful MCNs that have attracted investments from established media companies. AwesomenessTV, acquired by DreamWorks for \$33.5 million in 2013, focuses on the tween audience and has 50 million subscribers across its network. DanceOn, an MCN vertical dedicated to dance, has 9 million subscribers and over 2 billion network views. After launching in 2010, DanceOn CEO Amanda Taylor quickly moved

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<sup>97</sup> WGAW analysis of reported earnings and residuals

<sup>98</sup> Kate Pickert, “Silicon Valley Goes to the Beach,” *Time*, April 10, 2014, <http://time.com/#57159/silicon-valley-goes-to-los-angeles/>.



her company from New York to Los Angeles to be closer to talent and the online video industry.<sup>99</sup> Tastemade, an MCN food vertical, reaches 18 million people each month. Tastemade has a 7,000 sf production studio in Santa Monica and just closed \$25 million in funding from a group of investors including Liberty Media and Scripps.<sup>100</sup> Maker Studios was acquired by Disney for \$500 million in March 2014. These local startups have taken advantage of Internet distribution to develop an entirely new segment of the entertainment industry, and the Los Angeles economy benefits from these new offerings.<sup>101</sup>

The rise of locally produced, television-length Internet series has also been a positive development that counters the decline in locally-produced feature films and television dramas. Permitting data from FilmLA demonstrates the importance of online series to the local entertainment sector. There were 1,800 permitted production days for new media projects in 2013, a 353% increase from only 400 days in 2008.<sup>102</sup> Online series filmed locally include Hulu's *East Los High* and *Quick Draw*, Amazon's *Bosch*, *The After* and *Transparent*, Crackle's *Chosen* and the fourth season of *Arrested Development*, which was produced for initial distribution on Netflix. Amazon's investment in new media content is especially notable because series such as *Bosch* carry an estimated budget of \$2.5 million an episode.<sup>103</sup> As the state legislature recently grappled with the issue of runaway production, state representatives specifically acknowledged the importance of online content. In adopting AB 1839, the legislature

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<sup>99</sup> Lori Kozlowski, "A Digital Place for the Global Dance Community," *Forbes*, September 7, 2012, <http://www.forbes.com/sites/lorikozlowski/2012/09/07/a-digital-place-for-the-global-dance-community/>.

<sup>100</sup> Tim Peterson, "With New Funds From TV Companies, YouTube Net Tastemade Adds Shows," *Ad Age*, June 26, 2014, <http://adage.com/article/digital/youtube-net-tastemade-raises-25-million-debuts-shows/293898/>.

<sup>101</sup> Todd Spangler, "Maker Studios Says Disney Acquisition is Approved by Shareholders, Who Reject Relativity Bid," *Variety*, April 14, 2014, <http://variety.com/2014/biz/news/relativity-offers-up-to-900-million-for-maker-studios-in-bid-to-outflank-disney-1201156736/#>.

<sup>102</sup> Film L.A. Inc., *Filming On-Location in Los Angeles, 1993-2013*, p. 18, [http://www.filmla.com/data\\_reports.php](http://www.filmla.com/data_reports.php).

<sup>103</sup> Richard Verrier, "Amazon is a Rising Star in Hollywood," *LA Times*, September 17, 2014, <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-onlocation-amazon-hollywood-20140917-story.html>.

not only increased the amount of the subsidy pool but expanded eligibility to Internet projects for the first time.<sup>104</sup>

The proposed transaction threatens the burgeoning OVD market, and could cause significant harm to California's creative economy. Although Comcast claims it has no incentive to discriminate against OVDs, and that such practices would be harmful to its business because customers "place a high premium on being able to access any Internet content they want"<sup>105</sup> the reality is that Comcast is insulated from head to head competition in many markets and therefore has little reason to fear that consumers would respond to such discrimination by switching to other providers. In addition, as we have described above, Comcast has a history of using its control of broadband distribution to harm competing video providers such as Netflix. With increased control over broadband distribution nationally and in the state of California, the company will have the ability to implement such practices on a large scale.

The increased competition from new content providers and online distributors also increases Comcast's incentive to engage in anticompetitive behavior. The result is that OVDs may be forced to pay arbitrary tolls to access Comcast customers, leaving less capital to invest in content. Smaller OVDs and independent producers may be unable to pay. Practices that raise the cost to consumers of using OVD services, such as usage-based billing, expensive standalone broadband, and even interconnection fees to the extent they are passed onto consumers, may also discourage further growth of this market, which will ultimately impact California's economy.

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<sup>104</sup> Entertainment Partners, Production Incentives State Overview for California, <http://www.ep.com/EPPdfViewer.aspx/CA?id=8979>, Accessed November 20, 2014. "20% tax credit for feature film, MOW, miniseries, and new TV series for basic cable. Effective July 1, 2015, new program allows new TV series for *any distribution outlet*." (emphasis added)

<sup>105</sup> *FCC Application*, p. 6.

## VII. TRANSFERS DO NOT PROMOTE BROADBAND ACCESS FOR UNSERVED AND UNDERSERVED COMMUNITIES

The public interest review in this proceeding includes an examination of the transactions' effect on "low income outreach and adoption of broadband services that are accessible, affordable, and equitable in a manner that is enforceable and will help close the digital divide."<sup>106</sup> In addition, the Commission's grant of authority from Section 706(a) of the Federal Telecommunications Act enables it to examine the implications of the transactions on broadband deployment. Based on the existing record, WGAW believes that this merger and related system transfers will support neither broadband adoption nor deployment, and will provide little benefit to the low income communities of California.

As the CPUC is aware, broadband access lags greatly in low-income areas, communities of color and rural areas. In Los Angeles, for instance, overall broadband penetration is 75%, but some census tracts in South Los Angeles have penetration rates below 45%.<sup>107</sup> The CPUC's June 2012 California Broadband Report notes that the low penetration rate "is less a function of broadband access than it is of other factors such as affordability..."<sup>108</sup> The urban-rural divide constitutes a 30% difference in the adoption rates for Californians who live in rural areas vs. large urban areas, and roughly one quarter of this difference is estimated to be due to lack of access.<sup>109</sup>

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<sup>106</sup> *Scoping Memo*, p. 13.

<sup>107</sup> California Public Utilities Commission, *June 2012 California Broadband Report: A Comparative Summary of Broadband Adoption for June 30, 2011 and June 30, 2012*, pp. 7-8, <http://www.cpuc.ca.gov/NR/rdonlyres/858DE52A-1967-4CD4-9526-545AF570FDF6/0/CABroadbandReportJune2012.pdf>. (*CPUC Broadband Report*)

<sup>108</sup> *Ibid*, p. 5.

<sup>109</sup> *Ibid*, pp. 1-2.

While there is significant need to increase broadband deployment in rural California and improve broadband adoption in low income areas throughout our state, these transactions do little to address either issue. As the County of Los Angeles noted in its Petition before the FCC to deny the Comcast-TWC merger, the goals of broadband expansion and adoption in the Comcast-NBCU transaction were primarily “addressed” with Internet Essentials, a flawed program with low adoption rates in California and in Comcast markets across the country.<sup>110</sup> In this proceeding, Comcast has championed Internet Essentials as its main response to queries about the ability of this transaction to close the digital divide and support broadband adoption.<sup>111</sup>

The Internet Essentials program, while commendable in theory, is fundamentally inadequate to address the serious issue of the digital divide. The inadequacies of this program have been pointed out in myriad forums.<sup>112</sup> It is a public relations offering that costs Comcast little to provide, requires no additional buildout, and is of limited effect because it includes numerous eligibility criteria. The focus on the National School Lunch Program makes the program overly restrictive, with qualifying families unable to take advantage of Internet Essentials once their children are grown, while the needs of families without school-aged children and older individuals are ignored. The recent expansion of the program to include a portion of customers with long overdue bills does little to change these fundamental problems. In short, this program serves the function for which it was created, which is to serve only a small fraction of the addressable low income population and to prevent any existing low-income customer of Comcast’s from reducing their costs. In comparison, Time Warner Cable’s

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<sup>110</sup> *LA County et al. Petition*, pp. 21-23.

<sup>111</sup> Comcast Responses to Communications Division’s First Set of Data Requests, Q-1:61, p. 69; and *Opening Brief*, p. 50.

<sup>112</sup> See, for instance, Comments of the California Emerging Technology Fund, *Joint Applications of Comcast Corporation, Time Warner Cable, et al*, before the California Public Utilities Commission, Application No. 14-06-012, October 19, 2014. (*CETF Comments*)

standalone Everyday Low Price Internet costs \$14.99 per month, is available on the main TWC website, has no extra sign-up process and is an easily accessible option for a much larger percentage of the low income population.<sup>113</sup>

The companies also offer no evidence and provide no assurances that they will work to end the digital divide by building out their networks into unserved areas, such as the rural portions of California, suggesting only that post-transactions, they may “consider” buildouts.<sup>114</sup> The proposed merger focuses on upgrading rather than extending networks, and so we cannot reasonably conclude that broadband deployment, or the communities that need it, will be well-served by this merger. In addition, Comcast has been known to actively lobby against an option that many unserved and underserved communities have made use of: municipal broadband. In several communities across the country, Comcast has invested significant resources to fight against communities’ rights to build their own broadband networks. Through the Colorado Cable Telecommunications Association (“CCTA”), Comcast was a key funder of two referendums to stop a municipal network in Longmont, CO.<sup>115</sup> The CCTA spent \$225,000 opposing the municipal ballot initiative in 2009 and \$385,000 on a second campaign in 2011.<sup>116</sup> Comcast has also raised opposition to municipal broadband initiatives in communities that include Seattle, WA and Batavia, IL through lobbying and political campaigns to limit the autonomy of municipal governments.<sup>117</sup> Municipal broadband is a way to increase broadband availability and

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<sup>113</sup> Time Warner Cable website, “High Speed Internet Plans and Packages,” <http://www.timewarnercable.com/en/internet/internet-service-plans.html>, Accessed October 2, 2014.

<sup>114</sup> *Opening Brief*, p. 76.

<sup>115</sup> Colorado Cable Telecommunications Association, “CCTA System Members,” [http://www.cocabletv.com/?page\\_id=9](http://www.cocabletv.com/?page_id=9), Accessed August 4, 2014. Listed members are Comcast, Optimum, US Cable and Rocky Mountain Communications.

<sup>116</sup> Brian Fung, “Big cable may have felled Seattle’s mayor, but it couldn’t stop this Colo. Project,” *Washington Post*, November 6, 2013, <http://www.washingtonpost.com/blogs/the-switch/wp/2013/11/06/big-cable-helped-defeat-seattles-mayor-mcginn-but-they-couldnt-stop-this-colorado-project/>.

<sup>117</sup> Christopher Mitchell, “Comcast Sets Sights on Seattle Mayor; Payback for Encouraging Competition,” *Community Broadband Networks*, November 1, 2013, <http://www.muninetworks.org/content/comcast-sets-sights->

local competition, but allowing Comcast to become the state's largest Internet service provider will strengthen its ability to quash such local initiatives, and could deny unserved and underserved communities the chance to take matters into their own hands.

## VIII. CONDITIONS

The transactions, as proposed, do not serve the public interest of California. Comcast's acquisition of TWC and Charter markets in California does not support broadband competition or deployment and threatens the availability of standalone broadband service. Should the CPUC choose to approve the transactions, it must enact strong conditions to mitigate the harms outlined in this document. The proposed conditions should remain in effect for a minimum of 10 years. To ensure compliance, Comcast should provide annual, public reports to the CPUC and publish such reports online.

### *A. Preserve Affordable, Standalone Broadband Offerings*

TWC has several low-cost broadband products which deliver far better value than what Comcast currently offers. The CPUC should require Comcast to continue to offer these standalone options in every California market it serves.

- TWC's Everyday Low Price Internet provides 2 Mbps, which is in the process of being upgraded to 3 Mbps, for \$14.99 a month. This offer is ideal for households with minimal Internet usage needs or for individuals that are ineligible for Internet Essentials but who want or need a low-cost Internet service.

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seattle-mayor-payback-encouraging-competition; and Jason Koebler, "Comcast Used This 'Spooky' Propaganda to Kill Off a Local Internet Competitor," *Vice*, July 28, 2014, [http://motherboard.vice.com/en\\_au/read/the-fliers-full-of-lies-comcast-used-to-kill-off-a-local-internet-competitor](http://motherboard.vice.com/en_au/read/the-fliers-full-of-lies-comcast-used-to-kill-off-a-local-internet-competitor).

- TWC also offers a 10 Mbps broadband service at \$29.99 a month, a 50 Mbps service at \$34.99 a month, and a 100 Mbps service at \$44.99 a month.<sup>118</sup> These products are all a better value and a more competitive offering than Comcast’s broadband service of 6 Mbps for \$49.95, which Comcast, as a condition of the Comcast-NBCU merger, is required to offer through February 2015.<sup>119</sup>

If this acquisition is approved, Californians may lose the flexible, low-cost Internet services that TWC currently offers. As such, the CPUC should require Comcast to continue offering these services for a minimum of 10 years. Maintaining TWC’s affordable broadband offerings, in addition to expanding eligibility for Internet Essentials, will ensure that Californians have a range of affordable options for broadband service and will support CPUC’s broadband goals.

#### *B. Enhance Internet Essentials*

Numerous parties commenting in the merger proceedings before the FCC,<sup>120</sup> the New York Public Service Commission<sup>121</sup> and the CPUC<sup>122</sup> have noted the limitations of Internet Essentials, even while praising the spirit of the program. WGAW also commends Comcast for its efforts, regardless of the origins of the program.<sup>123</sup> However, should the transactions be

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<sup>118</sup> Time Warner Cable website, “High Speed Internet Plans and Packages,” <http://www.timewarnercable.com/en/plans-packages/internet/internet-service-plans.html>, Accessed November 24, 2014.

<sup>119</sup> *Comcast-NBCU Order*, ¶ 103.

<sup>120</sup> *Comments of Institute for Local Self-Reliance, Common Cause, Center for Media Justice, Media Mobilizing Project, National Hispanic Media Coalition, Public Knowledge, Writers Guild of America, West, Benton Foundation, The Utility Reform Network (TURN), Hon. Tommy Wells, Hon. David Grosso*, FCC WC Docket No. 14-115 and FCC WC Docket No. 14-116.

<sup>121</sup> *Comments of the City of New York, Office of the Comptroller, before the New York Public Service Commission re: Case 14-M-0183, Petition of Comcast Corporation and Time Warner Cable Inc.*

<sup>122</sup> *CETF Comments*.

<sup>123</sup> Community Broadband Networks, “Comcast Gamed FCC for Internet Essentials ‘Concession’ in NBC Merger,” December 3, 2012, <http://www.muninetworks.org/content/comcast-gamed-fcc-internet-essentials-concession-nbc-merger>. David Cohen has noted that Internet Essentials was strategically launched as a carrot to gain regulatory approval for the acquisition of NBC.

approved, Comcast must improve the Internet Essentials program to ensure it serves the public interest. The CPUC should set sign-up benchmarks, requiring Comcast to enroll as least 45% of eligible households in Internet Essentials within two years of the close of these transactions, culminating when low-income neighborhoods have reached 80% broadband adoption (among all providers).<sup>124</sup> The CPUC should also require Comcast to improve Internet Essentials through expanded eligibility, elimination of enrollment barriers and WiFi access.

- Expand Eligibility: Comcast should expand program eligibility so that low-income households, individuals with fixed incomes or special circumstances such as seniors or differently-abled persons, are eligible to enroll in the program.<sup>125</sup>
- Eliminate Enrollment Barriers: Comcast should revise requirements that limit consumer participation. Comcast should waive the requirement that a consumer may not have been subscribed to Comcast service within 90 days of enrolling in Internet Essentials. Comcast should take reasonable steps to ensure that prior debts can be reconciled through partial payments and should consider reasonable debt forgiveness.
- WiFi: Currently Comcast's Internet Essentials modems only allow for an Ethernet or USB connection, which limits household broadband usage. Providing WiFi-enabled modems would allow all household residents to benefit from an Internet connection. Comcast should further augment Internet Essentials by opening its CableWiFi<sup>126</sup> hotspots to Internet Essential subscribers.

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<sup>124</sup> *CETF Comments*, pp. 5-6.

<sup>125</sup> *Comments of the Minnesota Association of Community Telecommunications Administrators (MACTA)*, FCC MB Docket No. 14-57, August 25, 2014, p. 5.

<sup>126</sup> Kevin C. Tofel, "Who has the largest Wi-Fi network in the US? Cable companies say they do," *GigaOM*, June 10, 2013, <https://gigaom.com/2013/06/10/who-has-the-largest-wi-fi-network-in-the-us-cable-companies-say-they->



### *C. Municipal Broadband*

Comcast has a history of opposing municipal broadband efforts. Many communities in California have championed the ability of municipal broadband networks to connect unserved and underserved communities. Such examples include:

- City of Vernon: In 2013 Vernon Department of Water and Power launched a fiber network to serve the municipality's 112 residents and 1,800 businesses.<sup>127</sup>
- Emeryconnect: Emeryville launched a public-private municipal broadband network called EmeryConnect. The network is an open access platform, leasing access to commercial providers such as AT&T and Comcast.<sup>128</sup>
- Lit San Leandro: San Leandro is a city of 85,000 residents in the San Francisco Bay area. Lit San Leandro is a public-private partnership that provides high-speed Internet to the San Leandro business community.<sup>129</sup>
- Loma Linda Connected Communities: the City of Loma Linda deployed and operates a fiber network that serves businesses and residents.<sup>130</sup>
- ONEBurbank: Business broadband service offered by Burbank Department of Water and Power. Burbank DWP began offering broadband services to business customers

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do/. CableWiFi is a cooperative, national network of WiFi hotspots operated by Bright House, Cablevision, Comcast, Cox and TWC.

<sup>127</sup> Community Broadband Networks, "California's Smallest Incorporated City to Extend Fiber to Residents," September 7, 2013, <http://www.muninetworks.org/tags/tags/vernon-ca>.

<sup>128</sup> EmeryConnect website, "Residential Services," <http://emeryconnect.com/residential-services/>, Accessed November 17, 2014.

<sup>129</sup> Lit San Leandro website, "Background and Frequently Asked Questions," <http://litsanleandro.com/background/faq/>, Accessed November 17, 2014.

<sup>130</sup> City of Loma Linda website, Loma Linda Connected Community, "Residential Program Information," <http://www.lomalinda-ca.gov/asp/Site/LLCCP/ProgramInfo/Residential/index.asp>, Accessed November 17, 2014.

to turn its under-utilized smart grid into a new revenue source while addressing the needs of the business community.<sup>131</sup>

Los Angeles and Santa Monica are among the larger municipalities in California to consider municipal broadband. Notably, the City of Santa Monica launched City Net, a high-speed, municipally-funded fiber network that serves governmental agencies and businesses. Today City Net offers commercial broadband service from 100 Mbps to 10 Gbps and provides free WiFi in many of the city's public spaces.<sup>132</sup> Los Angeles has also explored municipal broadband options, first with a feasibility study on municipal WiFi in 2009 and most recently with an RFI on a publicly-supported (although not directly funded) municipal broadband network.<sup>133</sup> As a condition of these transactions, Comcast must respect the autonomy of local governments to construct broadband networks and provide residential service to their constituents, even when such projects overbuild a Comcast service area. Comcast must commit not to limit or lobby against municipal broadband efforts at the federal, state or local level.<sup>134</sup>

#### *D. Network Neutrality*

Post-merger, Comcast will have enhanced incentive and ability to discriminate against OVD competitors through blocking, degrading the speed or quality of service, and selectively implementing data caps. As the City of Los Angeles noted in comments filed with the FCC,

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<sup>131</sup> Burbank Water and Power website, "About One Burbank Services," <http://www.burbankwaterandpower.com/one-burbank-new/about-oneburbank>, Accessed November 24, 2014.

<sup>132</sup> Lisa Gonzalez, *Santa Monica City Net: An Incremental Approach to Building a Fiber Optic Network*, Institute for Local Self-Reliance, March 5, 2014, <http://ilsr.org/santa-monica-city-net/>.

<sup>133</sup> Report of the Los Angeles Information Technology Agency to the Los Angeles City Council, January 20, 2009, Ref EXE-027-09, *Feasibility Study Completed by LA Wi-Fi Working Group*; Report of Los Angeles Department of Water and Power to the Los Angeles City Council, September 5, 2013, Ref EXE-243-13, "Use of City Fiber for Business or Home Use"; and Request for Information issued by the Los Angeles Information Technology Agency, *Los Angeles Community Broadband Network*, April 7, 2014.

<sup>134</sup> *Comments of the National Association of Telecommunications Officers and Advisors*, FCC MB Docket No. 14-57, pp. 5-6.

Comcast's enhanced power as a broadband provider will enable it to "create specialized and favored pathways for its own content outside the public Internet, and use its last mile control to limit access by competitors who provide content using streaming technologies."<sup>135</sup> The effect of these actions will be to drive consumers to Comcast's cable and OVD services, thus limiting the growth of online video as a competitive alternative. In addition, Comcast will be able to use its network management power to advantage Comcast-affiliated applications and websites by making download speeds faster, pictures clearer and eliminating stutter. While Comcast has offered to extend the Net Neutrality principles required by the FCC as a condition of the Comcast-NBCU merger to TWC systems, Comcast's behavior demonstrates that these conditions do not go far enough. The CPUC and the FCC must go further to ensure that Comcast is not able to harm broadband content markets.

- Comcast should be prohibited from restricting, degrading or interfering with lawfully-available streaming content, platforms and services.
- Comcast must treat all content equally—no fast lanes, no paid prioritization.
- Usage based billing and data caps must be eliminated.
- Comcast must commit to upgrading interconnection points when 70% of capacity is reached. As a general principle, interconnection agreements should be reasonable and subject to CPUC review.

#### *E. Resolution of Existing Franchise Fee Disputes*

Cable franchises are one of the most valuable assets MVPDs such as Comcast hold. Franchises grant corporations the right to construct networks under public rights' of ways, providing access to potential subscribers. The CPUC should not approve this transfer until Time

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<sup>135</sup>*City of LA Comments*, p. 3.

Warner Cable settles its outstanding debts to the City of Los Angeles which include \$2.5 million in franchise and PEG fees from 2008 and 2009, and \$7.2 million in franchise and PEG fees from 2010 and 2011.<sup>136</sup>

## **IX. CONCLUSION**

Comcast's proposed acquisition of Time Warner Cable and Charter markets in California fails to support the public interest or advance any of the state's broadband needs or goals. Instead, it poses myriad harms to state and local economies, consumers, and broadband services. Allowing Comcast to increase its control of broadband distribution will harm competition in upstream online content markets and will have a disproportionately negative impact on the entertainment industry, a vital segment of state and local economies. The loss of TWC as an ISP will undermine the availability of affordable, standalone broadband service and the quality of broadband service generally, replacing an ISP that has vowed to always offer unlimited broadband service with one that is planning to add usage charges to all customers within five years. The loss of two ISPs in the state will reduce benchmark competition and decrease the likelihood of competitive overbuilding. This is a deeply anti-competitive transaction that serves only to consolidate control of the state's broadband future in the hands of one corporation. Because the Joint Applicants have offered nothing in the way of additional buildout of service or other measures to mitigate the harms presented by this transaction, the merger does not serve the public interest.

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<sup>136</sup> Meg James, "LA sues Time Warner Cable over past fees," *LA Times*, March 15, 2014, <http://articles.latimes.com/2014/mar/15/entertainment/la-et-ct-time-warner-cable-lawsuit-20140315>.

For the above-stated reasons, WGAW respectfully requests that the Commission deny the Applications. If, however, the CPUC chooses to approve the transactions, we ask the Commission to adopt the enforcement conditions outlined in this brief.

Respectfully submitted,

\_\_\_\_\_  
/s/  
Emily Sokolski  
Senior Research & Policy Analyst

\_\_\_\_\_  
/s/  
Laura-Blum Smith  
Research Analyst

\_\_\_\_\_  
/s/  
Ellen Stutzman  
Director of Research & Public Policy

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(323) 951-4000

## EXHIBIT INDEX

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# EXHIBIT A

Josh Lowensohn, “Comcast could mandate a monthly data cap on all customers in the next five years,” *The Verge*, May 14, 2014

ADVERTISEMENT

**THE VERGE**

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# Comcast could mandate a monthly data cap on all customers in the next five years

By [Josh Lowensohn](#) on May 14, 2014 08:30 pm

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▼ SCROLL TO CONTINUE ▼

Comcast says it could begin capping monthly data for all its customers within the next five years, a change that could potentially end up costing some heavy internet users additional fees. Speaking at a media summit in New York earlier today, Comcast executive David Cohen said that he expects the company to move entirely to a "usage-based billing model" in the next five years, while adding that most customers don't go over their monthly allotment.

"I would also predict that the vast majority of our customers would never be caught in the buying the additional buckets of usage, that we will always want to say the basic level of usage at a sufficiently high level that the vast majority of our customers are not implicated by the usage-based billing plan," Cohen told the audience. "I don't think that's the model that we are heading toward, but five

***"VERY DIFFICULT TO  
MAKE PREDICTIONS."***

years ago I don't know that I would have heard of something called an iPad. So, very difficult to make predictions."

Comcast currently has what Cohen described as a "series of pilots" in various parts of the country that determine how much data monthly internet subscribers get. Users in some markets get a 300GB monthly cap, while others get 600GB. In places like Alabama, Atlanta, and Tennessee, there's also what Comcast **calls a "flexible-data" option** that is limited to 5GB, but offers a credit if users stay under that amount. Those who go over pay by the excess, just like running over minutes on a monthly cell phone plan.

The news comes as Comcast is in the throes of merging with Time Warner Cable, a deal worth \$45 billion, and could close later this year. Time Warner was originally sought after by Cable provider Charter as far back as **November of last year**, but Comcast ended up making the deal **happen some three months later**. Time Warner already has 30GB plans that run in a similar fashion to Comcast's flexible-data offering, complete with a monthly credit to those who stay under the total.

The last time Comcast made a big change to its data plans was two years ago, **getting rid of its controversial 250GB monthly data cap**, in place of the 300GB plans. Those who go over the monthly allotment were originally threatened to have their service suspended for a year, though Comcast has since started charging for extra chunks of data.

# EXHIBIT B

Christopher Libertelli, Vice President, Global Public  
Policy, Netflix, Inc., “Letter to Senator Al Franken,”  
April 23, 2014



April 23, 2014

The Honorable Al Franken  
United States Senate  
309 Hart Senate Office Building  
Washington, D.C. 20510-2309

Dear Senator Franken:

Thank you for your letter. Netflix shares your concerns about the power of a merged Comcast/Time Warner Cable and is committed to sharing facts with policymakers to increase their understanding of this issue. Netflix has seen firsthand how Comcast can leverage its existing market power to extract arbitrary tolls to reach consumers, particularly from Internet video companies like Netflix that pose a competitive threat to Comcast's own video services.

Below are Netflix's answers to the questions posed in your letter. We are also taking this opportunity to correct statements regarding our agreement with Comcast and the way the transit market currently functions made by Comcast Senior Vice President David Cohen during the Senate Judiciary Committee's recent hearing.

**1) Will Comcast's acquisition of Time Warner Cable increase Comcast's ability to extract payments from non-affiliated entities as a condition of access to Comcast's broadband Internet consumers. If so, please explain how and why, noting also any consequences for consumers.**

Yes.

Comcast is limiting the capacity of connections between its network and other networks, unless the network agrees to pay Comcast for access. This congestion causes delays when traffic enters Comcast's network through the settlement-free connections. Consumers experience these delays as slow page loads, poor streaming quality, and frequent streaming pauses.

Few Americans have a meaningful choice in broadband service providers: Comcast subscribers are largely stuck with Comcast. And the only way for content providers to reach the millions of broadband subscribers currently controlled by Comcast is to go through Comcast. By degrading consumers' experience, Comcast can demand that content providers pay them a toll to avoid

congestion and reach their captive subscribers. If content providers cannot effectively reach Comcast subscribers, they cannot compete. So they have little alternative for an uncongested connection unless they agree to Comcast's terms.

If the Comcast and Time Warner Cable merger is approved, the combined company will represent 40 percent of wired broadband subscribers,<sup>1</sup> including those in 19 of the top metropolitan areas, with many of those homes having Comcast as the only option for truly high-speed broadband (>10Mbps). As DSL fades in favor of cable Internet, Comcast could control high-speed broadband to the majority of American homes. Comcast is already dominant enough to be able to capture unprecedented fees from transit providers and services such as Netflix. The combined company would possess even more anti-competitive leverage to charge arbitrary interconnection tolls for access to their customers.

**2) Do you agree with Comcast's testimony describing interconnection arrangements generally and Comcast's new interconnection arrangement with Netflix in particular? If not, please explain.**

No.

During the Senate Judiciary hearing on the proposed merger, Mr. Cohen said that it was "Netflix's desire to pay us directly and cut out a middleman." That is not an accurate description. Netflix agreed to paid peering with Comcast to reverse an unacceptable decline in our members' video experience. Netflix developed an entire CDN architecture, called "Open Connect" based on settlement-free peering. This no-fee interconnection norm avoids the gamesmanship and blackouts that plague cable carriage and retransmission-consent negotiations in the traditional video space. Indeed, Netflix is directly interconnected with ISPs all over the U.S. and internationally without any exchange of payment from either side. Our agreement with Comcast is the first time that Netflix was forced to pay an ISP for what amounts to access to their subscribers.

In a subsequent statement, Comcast said "[i]f Netflix did not like the terms of our agreement, or if they do not like the terms Comcast provides at any time in the future, Netflix can work with any of the multiplicity of partners that connect with Comcast.... Transit is a highly competitive marketplace and Netflix and other Internet content providers have many choices."

The fatal flaw in this assertion is that the number of transit providers or pathways into Comcast's network is irrelevant to this issue. Every transit provider must ultimately negotiate with Comcast

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<sup>1</sup> Comcast-Time Warner Merger Application, *Israel Declaration* at 32. Consumers do not view mobile broadband as a substitute for a wired broadband connection, particularly for data-rich media like streaming video because of reliability issues and data caps.

for a connection to Comcast's network and Comcast controls the terms of that access. Simply put, there is still one and only one way to reach Comcast's subscribers: through Comcast.

Prior to our agreement to interconnect directly with Comcast, Netflix purchased all available transit capacity into Comcast's networks from multiple transit providers. Every single one of those transit links to Comcast was congested (even though the transit providers requested extra capacity), resulting in poor video quality for our members. Until Netflix agreed to pay Comcast, the more that Comcast subscribers requested Netflix content, the more congested these connections became, and the more that their Netflix video quality suffered. That is where Comcast is able to leverage its market power most effectively. It can restrict transit capacity into its network to force content providers into paying for uncongested interconnection.

It is inaccurate for Comcast to suggest that by paying Comcast directly, Netflix is simply swapping out payment for services that it used to pay transit providers to perform. For a content company such as Netflix, paying an ISP like Comcast for interconnection is not the same as paying for transit service. Transit providers are paid by companies like Netflix because they carry Internet traffic over great distances and provide connections to all of the networks that comprise the global Internet.

Comcast does not connect Netflix to other networks. Comcast does not carry Netflix traffic over long distances. Netflix connects to Comcast in locations all over the US, and has offered to connect in as many locations as Comcast desires. Netflix is itself bearing the costs and performing the transport function for which it used to pay transit providers. It is Netflix that incurs the cost of moving Netflix content long distances, closer to the consumer, not Comcast.

**3) Comcast argues that it operates in a highly competitive marketplace in which consumers have ample choices for high speed Internet service and therefore will not tolerate slow streaming speeds or artificially high costs. What do you make of that argument?**

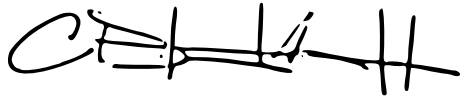
Few Americans have a meaningful choice in broadband Internet access service provider. According to the FCC, about 70 percent of U.S. households have at best two options for 6 Mbps or greater broadband Internet access, which is the floor for data-rich applications like streaming video. As stated above, consumers do not view mobile broadband as a wireline broadband substitute for applications like streaming video because of low data caps and reliability issues. Couple all of this with the high costs of switching from one provider to another, and most consumers feel that they have to take whatever their ISP offers.

To conclude, Netflix is committed to providing our users with great video quality whenever they chose to watch Netflix. Unfortunately, Comcast appears willing to sacrifice the quality of its own subscribers' broadband experience to extract fees from the content providers that Comcast's own subscribers are paying Comcast to access. The fact that Netflix paid to protect our

consumers is evidence of Comcast's power. Acquiring Time Warner Cable will only increase this leverage.

The proposed merger will result in online video content providers paying higher prices for access to Comcast customers or delivering poorer service to customers who depend on Comcast for broadband access. Ultimately, competition and consumers will suffer. That is why Netflix opposes the merger.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Libertelli', with a horizontal line extending from the end of the signature.

Christopher Libertelli  
Vice President | Global Public Policy  
Netflix, Inc.

# EXHIBIT C

Comments of the New York Public Service  
Commission, FCC MB Docket No. 14-57, August  
25, 2014 (Excerpts)



STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350  
www.dps.ny.gov



PUBLIC SERVICE COMMISSION

AUDREY ZIBELMAN  
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GREGG C. SAYRE  
DIANE X. BURMAN  
*Commissioners*

KIMBERLY A. HARRIMAN  
*General Counsel*  
KATHLEEN H. BURGESS  
*Secretary*

August 25, 2014

*Filed electronically via ECFS*

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Suite TW-A325  
Washington, DC 20554

Re: MB Docket No. 14-57, Application of Comcast Corp. and  
Time Warner Cable Inc. for Consent to Transfer Control  
Of Licenses and Authorizations; New York State Public Service  
Commission Initial Comments

Dear Ms. Dortch:

On behalf of the New York State Public Service Commission, I have enclosed the Initial  
Comments of the New York State Public Service Commission for filing in the referenced docket.

Thank you for your attention. Please contact me at (518) 474-2510 if you have any  
questions.

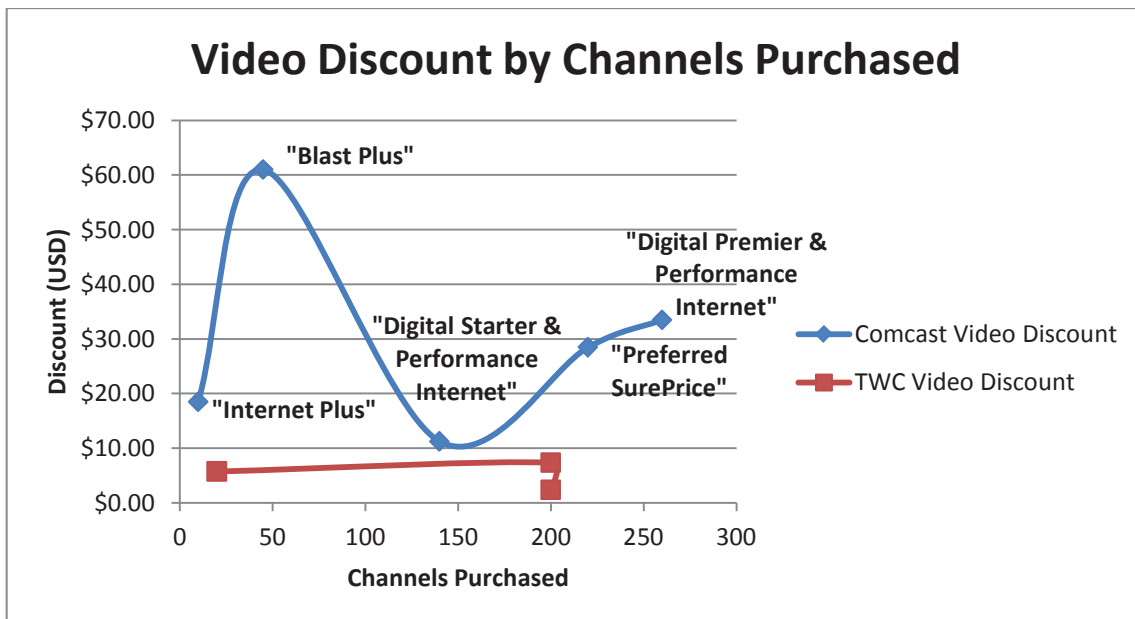
Respectfully submitted,

KIMBERLY A. HARRIMAN  
General Counsel  
State of New York  
Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

Enclosure

public interest. For example, the combined company may price standalone Internet service artificially high in favor of its bundled video and Internet services. This issue was raised by the NYDPS Staff in their comments to the NYPSC.<sup>12</sup>

Moreover, based on our review of current pricing structures for Comcast and Time Warner, Comcast appears to significantly discount its bundled services, whereas Time Warner's discounts are more modest. Comparing the marginal price consumers pay to add video service to an Internet connection from each respective company illustrates this point. The graph below represents the discounts associated with Comcast and Time Warner's Internet and video service bundles, the difference between the additional cost of adding video service to their Internet plans, and purchasing standalone video service, averaged over a 24-month period, to incorporate differences in promotional and retail pricing. We are offering the following facts for the FCC to consider in its analysis.



<sup>12</sup> See, Case 14-M-0183, supra, pp. 37-38.

The pattern of bundled discounts between the two companies, respectively, graphed over the number of channels purchased in each bundle, showcases the difference in pricing incentives. While the discounts for Time Warner's menu of bundles are relatively constant, and modest, the discounts offered by Comcast vary significantly across its various bundled offerings. Of particular note is the "Blast Plus," \$49.99 a month (for the first 12 months) Internet-video bundle offering. Unlike the next step-up and next step-down bundles ("Digital Starter & Performance Internet" and "Internet Plus" priced \$79.99 and \$39.99 for the first twelve months, respectively, which offer a 25 Megabits per second (Mbps) Internet connection), this "45+" video channel bundle also offers a 105Mbps Internet connection, ideal for households interested in "cutting the cord" and utilizing multiple video streams. The video "discount" for this particular bundle is so large that it actually exceeds the average cost of the standalone video package over 24 months, due to the large promotional bundled discount.<sup>13</sup> By offering such a large discount on video service, Comcast may render Internet-only plans unattractive and discourage customers from foregoing video service all together, allowing the combined company to perhaps compete unfairly with over-the-top video-service competitors like Netflix, Hulu, and AppleTV.

The standalone production cost of providing either video or broadband service for both companies may be comparable, and the minimum price for either video or broadband service should be the incremental cost of providing that service. Since the incremental cost to a company of providing video service

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<sup>13</sup> The promotional bundle cost is \$49.99 per month, versus \$59.99 for Internet only.

# EXHIBIT D

Jeff Simmermon, Director, Digital Communications,  
TWC, “Launching an Optional Usage-Based  
Broadband Pricing Plan in Southern Texas,” *Time  
Warner Cable Untangled*, February 27, 2012



BY: **JEFF SIMMERMON**  
Director, Digital Communications

Share



# Launching An Optional Usage-Based Broadband Pricing Plan In Southern Texas

Today, we are launching an **optional** usage-based pricing program for customers who want to save money on their broadband bills in southern Texas. This includes **San Antonio, Laredo, Corpus Christi, the Rio Grande Valley** and the **Border Corridor**.

Details are explained in this post, but if you find that you want more information, you can find that here: [‘Essentials’ Broadband Information](#).

Yes, we did try this before, a few years ago. And yes, pretty much everyone agrees that it didn't go so well. So we listened to customer complaints. A lot.

Consequently, **Time Warner Cable customers will always have access to unlimited broadband** at a flat monthly rate. Usage-based consumption is optional, and it's designed to save light users money. Customers can switch back and forth as often as they like, but if they choose not to switch, nobody's switching anything for them.

We profit from unlimited consumption, and a free, open Internet is the sort of Internet that has gotten us this far.

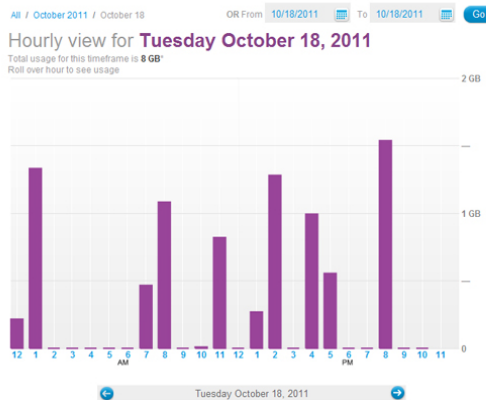
But now, if our customers in southern Texas choose a tiered plan, then they've got a chance to knock a few dollars off their monthly bill. Having a usage-based pricing plan isn't going to be for everyone, and that's fine, too. A tiered plan might not be right for me, but my Mom's not going to be passing Final Cut projects through DropBox to her friends at church anytime soon — she may benefit by saving a few dollars on Web capacity she's never going to need.

Ultimately, we want to give our customers that maybe use less data a price break.

Heavy data users are a smaller portion of our customer base.

Customers who don't think they need unlimited broadband can try this Essentials plan, which offers:

- 1) Up to 5GB/month of data transmission for a \$5/month discount from one's current monthly bill. All Standard, Basic and Lite broadband customers will be eligible. Turbo, Extreme and Wideband customers will continue as always, with access to unlimited broadband and no optional tiered plan or discounts.
- 2) The ability to opt-in and opt-out of a tiered package at any time.
- 3) A "meter" that tracks usage on a daily, monthly, weekly or even hourly basis, enabling customers to accurately gauge usage. Below is an example of the hourly meter:



- 3) A 60 day/2 billing-cycle grace period to allow customers to adjust usage patterns. During this time we will notify customers of overages but won't charge for them.

Related Articles



[Automatically Connect to TWC WiFi Hotspots With 'My WiFi'](#)

[We Are Deploying Free Public WiFi For Customers in Austin, TX — Starting Today](#)

[What Expanding the WiFi Network Really Means](#)



BY: **JEFF SIMMERMON**  
Director, Digital Communications

Share





BY: **JEFF  
SIMMERMON**  
*Director, Digital  
Communications*

Share



4) Overages will cost \$1 per GB, not to exceed a maximum of \$25/month.

This presents the opportunity to save \$5/month from a monthly broadband bill.

We already have the **TV Essentials** plan for \$39.99/month that offers low-income households to have access to cable, in a stripped down package. This is meant to be the broadband equivalent.

There is an ever-growing segment of the American population that has to make some hard choices about which bills to pay and which services to cut. We're hoping that by introducing this plan, we'll be able to stay in more families' lives when the hard cuts have to happen.

Although our Internet service is terrific, it's a competitive world out there, so we're trying some new stuff to not only retain the customers we have today, but get new customers tomorrow.

By offering broadband pricing based on usage, we're hoping to enhance the value of the subscription to the lighter users that represent a large number of our customers. And we're hoping that attracts more customers from our competition – people that are drawn by the flexibility, choice, and opportunity to save.

Again: we know that when we attempted a usage-based billing plan before, it didn't go well. All participation in the Essentials plan is opt-in, with the opportunity to save a few dollars each month. It's not going to be for everybody, and that's fine — **all Time Warner Cable customers will still have the option of selection an unlimited broadband plan.**

+ 14 Comments

Comments for this post are closed – all comment threads close after 14 days from the original post date.

If you are having trouble or need assistance with your phone, cable, or broadband service, please contact our Online Care Team at [twcable.help@twcable.com](mailto:twcable.help@twcable.com), or at

<http://www.twcableuntangled.com/2012/02/launching-an-optional-usage-based-pricing-plan-in-southern-texas-2/>

# EXHIBIT E

## WGAW Methodology for California Broadband Analysis

WGAW analyzed wireline broadband data to understand residential Internet service choices for consumers in the census blocks where Joint Applicants (Charter, Comcast and Time Warner Cable) offer service. The primary data set WGAW used was the US Department of Commerce, National Telecommunications and Information Administration, State Broadband Initiative (CSV format December 31, 2013) for the state of California. We also utilized Census block population data from the 2010 Census. WGAW analyzed provider availability at the census block level because it is the smallest geographic unit for which broadband data is publicly available. In the tables below we describe the territory served by Joint Applicants' as "Joint Applicants Footprint" however, we would like to note that Joint Applicants' services may not be available to every household within a served block.

1. Data Sources

- a. NTIA data sets for California:<sup>1</sup>
  - i. The small census block set (census blocks smaller than 2 miles)
  - ii. The large census block set (census blocks larger than 2 miles.)
- b. Census block population for the state of California (Census File 1.)<sup>2</sup>
- c. Census County Codes for California.<sup>3</sup>

2. Data Exclusions

- a. From both data sets, 'end user' categories coded as 2, 3, and 4 were excluded. This excludes all business and governmental users.<sup>4</sup>

3. Analysis of Broadband Service in Joint Applicants' Combined Footprint

- a. Created summary of all broadband providers by census block, broken out by technologies:
  - Asymmetric xDSL
  - Symmetric xDSL
  - Other Copper Wire
  - Cable Modem—Docsis 3.0 Down
  - Cable Modem—Other
  - Optical Carrier/Fiber to the End User
- b. Totaled broadband providers inclusive of all technology by census block
- c. Totaled cable and fiber broadband providers by census block
- d. Created a population weighted average for total number of broadband providers and total of only cable and fiber broadband providers

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<sup>1</sup> WGAW analysis of National Telecommunications and Information Administration data and 2010 Census Block Data. US Department of Commerce, National Telecommunications and Information Administration, State Broadband Initiative, California (CSV format December 31, 2013), <http://www.broadbandmap.gov/data-download>.

<sup>2</sup> Missouri Census Data Center, Standard Summary File 1 (2010 Census) Extract Assistant, California, [http://mcdc.missouri.edu/cgi-bin/broker?\\_PROGRAM=websas.sf12010x\\_extract\\_menu.sas&SERVICE=appdev&st=](http://mcdc.missouri.edu/cgi-bin/broker?_PROGRAM=websas.sf12010x_extract_menu.sas&SERVICE=appdev&st=).

<sup>3</sup> US Census Bureau, 2010 FIPS Codes for Counties and County Equivalent Entities, [https://www.census.gov/geo/reference/codes/files/st06\\_ca\\_cou.txt](https://www.census.gov/geo/reference/codes/files/st06_ca_cou.txt)

<sup>4</sup> Note: the CA data does not actually contain any end users coded as 3 or 4.



4. Summary Tables

<b>Joint Applicants' Combined Footprint</b>	
California Population (total)	37,253,956
Population Within Joint Applicants' Combined Footprint	30,651,791
As % of State Population	82%
Total Census Blocks in Joint Applicants' Footprint	351,751

<b>Average Number of Broadband Providers</b>	
Population Weighted Average (all technology)	2.22
Population Weighted Average (cable & fiber only)	1.23

<b>Providers Within Joint Applicants' Footprint (all technology)</b>		
<b>Number of Providers</b>	<b>Population in Footprint</b>	<b>% of Pop. In Footprint</b>
1	865,790	2.82%
2	23,237,022	75.81%
3	5,605,305	18.29%
4	674,054	2.20%
5	235,116	0.77%
6	2,686	0.01%
0	31,818	0.10%

<b>Cable and Fiber Providers Within Joint Applicants' Footprint</b>		
<b>Number of Providers</b>	<b>Population in Footprint</b>	<b>% of Pop. In Applicant Footprint</b>
0	31,818	0.10%
1	24,318,739	79.34%
2	5,668,193	18.49%
3	633,041	2.07%

<b>Census Blocks Where Joint Applicant's Only Competition is a DSL or Copper ISP</b>			
<b>Census Blocks</b>	<b>Block %</b>	<b>Population within Census Blocks</b>	<b>Population %</b>
220,889	63%	21,075,294	69%

<b>Fiber Availability in Joint Applicants' Footprint</b>		
<b>Census Blocks Served by a Fiber Provider</b>	<b>Population Served by a Fiber Provider</b>	<b>% of Population in Footprint Served by Fiber</b>
48,808	530,3941	17%