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 (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a). Application 14-04-013 (Filed April 11, 2014)	A.14-04-013 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	A.14-06-012 June 17, 2014

Media Alliance
Action & Resources
for a more just, accountable and diverse media system

REPLY COMMENTS OF THE MEDIA ALLIANCE

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I – INTRODUCTION

Media Alliance's reply comments will focus on four particular areas: 1) broadband adoption as characterized by Comcast's Internet Essentials program 2) Comcast, Time Warner and Charter's customer service record 3) the impact of the proposed merger on market competition and 4) the nature of the merger's proposed operational efficiencies. The scope of these comments is necessarily limited due to the Commission's decision to deny intervenor compensation to Media Alliance.

Media Alliance states that the record will amply demonstrate that the proposed merger presents negative impacts to the public interest which cannot be ameliorated sufficiently by corrective conditions. In order to protect California consumers of voice, cable and broadband products from prolonged, longstanding and sustained adverse conditions, Media Alliance requests that the California Public Utilities Commission reject the pending applications at least until the federal review process is completed.

Media Alliance also states for the record that it objects to the Commission's decision to reject intervenor compensation and advises the Commission that the point of the compensation program is to facilitate greater public participation in Commission processes, which is sorely needed. The premise that the only role of the public in voice, data and Internet communications is as consumers or purchasers of those services is overly narrow and does a severe injustice to the significant and rapidly growing component of "the public" who are active content creators on the Internet and whose livelihoods and free expression is dependent on access to affordable, reliable and ubiquitous communication tools. Media Alliance regrets that the Commission has chosen to limit Media Alliance's ability to fully represent that constituency in this CPUC proceeding and necessarily reduce the scope and extent of these comments. It does not represent the intentions of the intervenor compensation program and in our opinion, reduces the diversity of perspectives and constituencies represented in this proceeding.

II – INTERNET ESSENTIALS IS ABSOLUTELY INADEQUATE TO ADDRESS BROADBAND ADOPTION NEEDS IN THE STATE OF CALIFORNIA

An examination of the record of the Internet Essentials program, originally brought into being as a merger condition in the Comcast/NBC Universal merger, demonstrates conclusively that the program has proven inadequate to address the digital inclusion challenges facing the United States as a whole, and California in particular. An expansion of the program, as suggested by some parties to the proceeding, is not a panacea for the flawed premise that this program in any form compensates for the greatly increased concentration in the broadband product marketplace nor the affordability challenges presented by Comcast's historic pattern of frequently raising prices on their products. To exacerbate the many problems created by insufficient competition in the California broadband market by a pro-forma expansion of a severely flawed and under-performing broadband subsidy program is a poor use of the Commission's regulatory authority and undermines the local and national goals in the President's Broadband plan and the charters of the Federal Communications Commission and the California Public Utilities Commission. It is not a solution and the offering of the program as evidence of corrective actions towards the California digital divide is simply insufficient.

Comcast states the following data in their voluminous public filing; 46,000 California households receiving Internet Essentials broadband subsidies. To achieve these numbers, they report 88 million media impressions, 2.3 million telephone calls and 242,000 public service announcements. To clearly focus on these numbers, Comcast is presenting 1,913 media impressions in California per enrolled household. Professor Horrigan, who discloses funding from the Comcast Research Technology Fund on his submitted study, states that Internet Essentials, despite this veritable media blitz, does not serve 87% of the eligible population for the program. 75% of "new" broadband adoptions, or the vast majority, have nothing at all to do with Internet Essentials and are facilitated either organically with no industry support whatsoever, or through the earnest efforts of comparatively under-resourced nonprofit organizations such as those funded by the California Emerging Technology Fund, who have tirelessly labored at the edges of the digital divide for years, unaided by 88 million media impressions and 242,000 public service announcements.

In other words, Internet Essentials strongest performance is in the area of public relations, where it has demonstrated success in saturation media techniques. But that public relations success has not translated to more than a peripheral impact on California's digital divide and one that might well have occurred organically as California's digital divide has narrowed slightly each year in the years prior to the introduction of Internet Essentials. Comcast states that of the 2.3 million phone calls received about the Internet Essentials program, only 15% of the inquiries were from households deemed to even be eligible for the program, pointing to the program's inadequacy to address even one half of the real-life needs for broadband subsidies as revealed. The program has a higher level of effectiveness at generating gaudy attention statistics than at getting customers hooked up and receiving services.

The level of service is also something to which the Commission should pay attention. In it's December 1st filing, the joint applicants speak proudly of the speed enhancements they are trying to offer and intend to offer to California residents, stating that an average of 25 mps is intended. At 1/5mps, a speed that was increased under public pressure during the duration of the Internet Essentials program after the Federal Communications Commission defined "**broadband"** speeds at a higher number than that originally offered in Internet Essentials, the existing Internet Essentials program continues to be presented at a low tier of speed in a constantly changing technological environment. As Phil Shapiro documented in *The Hechinger Report,* Internet Essentials modems do not provide in-house wifi service, often preventing household members from using tablet devices with their subsidized broadband services. Since many educational assistance programs in schools feature iPad distribution to students, such a limitation can handicap students in Internet Essentials households from full utilization of educational tools provided to them. In order to genuinely address the digital divide, assistance programs cannot ghettoize their clients with marginal products that make full online participation difficult or impossible and enhance digital segregation. The Commission should pay attention to making sure the basement level of services provided, whether subsidized or not, do not prevent full digital participation.

Certainly the program has been beneficial for the 46,000 California households that are now using it for broadband access they didn't have before. The question is what the negative impacts of the proposed merger are on the millions of Californians who receive cable, voice and broadband services from Comcast, Time Warner Cable and Charter Communications, as well as the 87% of eligible low-income households without broadband services who are unserved by Internet Essentials. The Commission must balance the preponderance of the benefits and adversities to the largest number of people in order to come to a decision about whether the proposed merger is, on the whole, more beneficial or more adverse to the communication needs of the majority of the residents of the State of California.

III – THE CUSTOMER SERVICE RECORDS OF THE JOINT APPLICANTS ARE ABYSMAL AND THREATEN THE ABILITY OF CALIFORNIANS TO ACCESS AND UTILIZE COMMUNICATION TOOLS FULLY

While we do not mean to cast aspersions on the claims of the joint applicants that their customer service has improved “by light years”, Media Alliance does think it is helpful to this process to be specific about the starting point of the light year progression. Customer service can be described not only as the lighter aspects of well-documented annoyance as highlighted on numerous publicly-created videos, websites and social media material, where members of the public referred to in this proceeding as “consumers” have exhaustively presented their side of the story by taping frustrating encounters with the Applicant's agents or employees, spoofing or satirizing the Applicants and rewarding them with epithets like “America's Most Hated Company”. Such feedback is not merely anecdotal, it is also statistically documented. The Customer Satisfaction Index ranked the Joint Applicants dead last in customer service benchmarks among hundreds of major US corporations. At ConsumerAffairs.com, 2,513 comments are recorded about Comcast, 88% of them giving the company 1 star out of 5, the lowest possible rating. And in Worcester, Massachusetts, the City Council actually voted not to approve a Charter to Comcast franchise transfer on the basis of poor customer service.

This is not merely late-night comedy material. “Customer service” reflects the lived experiences of residents, inside California and out, trying to utilize tools and services that are essential to carrying out their lives. If they cannot manager their voice and data services without frequent and ongoing distress, their ability to be safe and to be connected is compromised. The record shows that the customers of the Joint Applicants would, if given the opportunity, vote with their feet and reject the services of the Joint Applicants. Unfortunately, there isn't anywhere else for them to go. So when the Commission acts to further increase concentration of services and erect ever-greater barriers to entry for new competitors by horizontally integrating across voice, data and cable services, the Commission places consumers in a position where their ability to self-select and therefore impact the market in the direction of greater affordability, reliability and quality of service is gravely compromised. And one has to ask if the market is not self-correcting for high prices and bad service, and the regulatory agencies in the government are punting on aggressively maintaining standards for quality of service, then who exactly can remedy high prices and bad services in communications markets in California?

The Utility Reform Network (TURN) submitted several Comcast customer bills into this proceeding for Commission review. Looking at those sample bills which document the recent round of 2014 price increases by Comcast Cable in Northern California, one can't help but notice a 40% increase in the cost of hourly labor for cable installation/repair services from $50/hour to $70/hour. That's a pretty big increase (40%) in a year when the Consumer Price Index went up by 1.7%.

Before the Internet became so central to the basic communication web, it was determined that a household and business communications network, the land-line telephone system, was an essential public safety and citizen engagement tool. In other words, a point to point network was needed in order to enable communications across distance and to enable authorities to contact the inhabitants of the local area in times of emergency. This network, because of its public nature and public importance, was not reserved only for those with the disposable income to purchase luxury products, but for all because the public interest and necessity outweighed the economic imperatives. The values for what became known as "common carriage" were affordability, reliability and ubiquity.

Media Alliance will posit that the nature of the public interest and necessity with regard to communications networks does not magically transform itself when wires change from copper to fiber or when sound waves transform into bits and bytes. The purpose and the required attributes for point to point communications networks remain the same. So the common carriage standards for affordability, reliability and ubiquity in the public interest are still the markers for defining the public interest as a regulatory agency charged with defending that public interest. So when reviewing a proposed multi-company merger with impacts across the three communication sectors of voice services, cable delivery and data services, the specific impacts on the three public interest standards define the public interest impacts and frame the conversation on whether impacts are adverse.

Does the proposed merger have an adverse impact on the affordability of communication services in California? Given that the master applicant Comcast has a much more aggressive record of raising prices within their service area than submissive applicant Time Warner Cable does within their service area (and the record is unambivalent in that regard), the Commission may be forced to conclude that the proposed merger can be anticipated to have an adverse impact on the affordability of communication services for Californians.

Does the proposed merger have an adverse impact on the reliability of communication services in California? It's an important question for the Commission to answer. Media Alliance would put forward that rampant customer frustration with the services of the Joint Applicants could be an indicator that the reliability of services has not been superior or even adequate to date. Pushing customers into VOIP phone services from legacy phone services has demonstrably reduced reliability and the efficacy of communication services in emergencies. Will California benefit from an increased emphasis from its major providers on forced or highlypressured migrations to VOIP voice services? Public access stations, which provide essential community engagement services including government meeting broadcasts, remote educational services and the broadcast town hall, have had ongoing problems in receiving reliable equilateral treatment on a par with commercial stations from the Joint Applicants cable services (as the Commission has heard much about), although it should not be debatable that the broadcast of a City Council meeting is not an inferior product to the broadcast of a football game as far as the public interest is concerned. And on the Internet, it is the master applicant's particular experiments in 2008 with unauthorized throttling of the legal Bit Torrent transactions of Robb Toploski that kicked off the long federal network neutrality process that has challenged the Federal Communications Commission, toured the DC Circuit Courts and recently drew the attention of the President of the United States, who made an unambiguous statement that consistency and reliability in the treatment of data is essential and that master applicant Comcast's 2008 action were contrary to his definition of the public interest in an open Internet. The Commission needs to consider whether the increased adoption of VOIP, the channel-slamming of governmental, educational and public access channels and the random throttling and blocking of Internet transmissions can be anticipated to have an adverse impact on the reliability of communication services for Californians.

Does the proposed merger have an adverse impact on the ubiquity of communication services in California? As mentioned in the first part of this set of comments, it is questionable whether relying on the flawed Internet Essentials program to effectively address the lingering digital divide in California would reflect a serious approach by the Commission. Gaudy reports by consultants on Comcast's payroll that make excuses for poor results should not be accepted as a sufficient remedy for adverse impacts. The Commission needs to discount bought and paid for recommendations and realistically balance the real benefits of Internet Essentials as balanced against the anticipated impacts of the proposed merger and weigh one against the other to accurately determine where the best interests of the people of California lie.

IV – THE COMMISSION CANNOT CONSIDER HYPOTHETICAL COMPETITION. THE INDICATOR IS THE CURRENT LEVEL OF MARKETPLACE COMPETITION

In the comments submitted by the Joint Applicants (Israel, Keatung, Weiskopf), the authors address the issue of market place competition, specifically in the California broadband market by acknowledging that there is little practical competition to the Joint Applicants in their geographic terrain at this moment, given the current speed differentials between DSL and cable modem service. In point of fact, the vast majority of Californians currently have only one choice for truly high-speed broadband and if the proposed merger were to go through, that one choice would become the same company for virtually all Californians. As basic antitrust law states and as common sense demonstrates, such a situation largely ties consumer's hands and does not allow them to self-correct for unsatisfactory pricing and service levels by decamping to a competitive service, because there isn't one. While this situation is already present in the California marketplace for broadband, the proposed merger amplifies its effects, locks it down and likely increases the time interval until potential future competitors could develop and achieve sufficient market penetration to offer the preponderance of consumers a desirable alternative service. As the authors attest, the period of time until that happens is likely to be enormously lucrative for the combined company post-merger.

The authors present the argument that while they cannot debate the above point, the merger should still be approved because there will be competitors in the future after the legacy telephone providers invest in expanding their higher-speed fiber networks and pending Google's full entry into fiber and so on. While such a consummation is devoutly to be wished even without the proposed merger in order to mitigate what is already an uncompetitive and consumer-unfriendly broadband marketplace in California, it is somewhat absurd to present that a proposed merger does not damage competition because in the future there will be more competition. At least hypothetically.

The Commission's responsibility under antitrust law is not to play mind reading games as to whether or not Google Fiber will expand its California footprint, but to assess the competitive impact on the affected markets right now. The Joint Applicants are not applying for merger permission in 2025. They are applying in 2014. The question at hand is whether the horizontal integration that will result from this proposed merger will further concentrate the impacted markets, put the squeeze on consumers, and put up barriers to entry for new applicants that are substantively greater than the pre-merger position. Those are not, despite the Joint Applicant's pleas, hypothetical questions.

V – THE ECONOMIC IMPACT OF $1.5 BILLION DOLLARS IN OPERATIONAL EFFICIENCIES IS NOT INSIGNIFICANT

Finally, Media Alliance encourages the Commission to take a sober look at the Joint Applicant's contention that the proposed merger will save $1.5 billion dollars in operational efficiencies. The Applicants describe that sum as consisting of three things a) reductions in corporate overhead b) reductions in network operations and c) bulk purchasing efficiencies. With California's economy still struggling in the wake of the severe economic collapse and with the Joint Applicants representing three profitable companies employing many workers in California, there is no doubt that reductions in network operations and corporate overhead are likely to result in significant job loss, with the resulting costs to the California economy as workers relocate to other jobs in other industries. $1.5 billion represents a large sum and if even a billion dollars of it represents specific job losses, that is an adverse impact on Californians that is not insignificant and should not be glossed over with evasive language like "overhead" and "efficiencies", but should be acknowledged in forthright terms as one of the negative impacts to be balanced in a robust examination of the public interest impact of the proposed Comcast/TWC merger.

VI – CONCLUSION

For the above-mentioned reasons, Media Alliance believes that given the preponderance of the impacts on the majority of the residents of California, the proposed merger does not present sufficient positive impacts to outweigh the negative impacts that might reasonably be expected from this merger based on the available evidence and would encourage the Commission to declare the application, pending federal review, to have failed to demonstrate that the proposed action is in the public interest of the people of California.

Dated: November 10, 2014 ` Respectfully submitted,

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