



ERIC GARCETTI
MAYOR

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VIA ELECTRONIC FILING

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel
Commissioner Michael O’Rielly
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Comments of the Office of the Mayor of the City of Los Angeles, *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57

Dear Mr. Chairman and Commissioners:

Los Angeles is one of several major markets which will be significantly impacted by the merger and divestiture transactions (system spin-offs, sales and exchanges) proposed by Comcast, Time Warner Cable (TWC) and Charter.

Comcast is a valued and highly influential member of the Los Angeles community. Through NBCUniversal, Comcast owns and operates broadcast stations in Los Angeles, including Telemundo 52 (KVEA) and NBC4 (KNBC), and as owner has made significant investments to maintain the quality of local news programming in this market by expanding midday and weekend newscasts,¹ by investing in new studios and by entering into a cooperative

¹ Merrill Knox, “Steve Carlston On ‘Rebuilding the News Legacy at KNBC’” TV Spy (February 22, 2013), available at: http://www.mediabistro.com/tvspy/steve-carlston-on-rebuilding-the-news-legacy-at-knbc_b81601 (last accessed on August 24, 2014).

news gathering and reporting arrangement with KPCC, a Southern California Public Radio station.² Comcast also owns and continues to invest in other assets that are key components of our economy, including Universal Studios.

Our experience with Comcast to date notwithstanding, we are concerned by several aspects of the subject transaction:

- The effect on competition and consumers. Both Charter and TWC provide cable service in the Los Angeles market today, and as part of the divestiture Charter will exit the Los Angeles market.³ Comcast, through NBCUniversal and its broadcast properties, has a direct ability (via carriage on cable systems, via the Internet, and over-the-air) to compete with TWC in the City today. The transaction as currently proposed will provide Comcast with even greater vertical control over the assets used today for the distribution of television and online programming. The addition of TWC's local cable system to Comcast's assets may extend and expand the concerns that the Commission found significant in the NBCUniversal merger to the Los Angeles market.
- The effect on access to video programming. Time Warner Cable SportsNet LA ("SportsNet LA") is a regional sports network exclusively dedicated to the Dodgers. In Los Angeles, it is currently carried only on TWC's cable system, which means that most of the Los Angeles market is unable to watch Dodgers games because SportsNet LA has not concluded carriage deals with other cable systems in the Dodgers territory (including Charter, Comcast, Verizon FiOS and AT&T's U-Verse) or with satellite distributors like DirectTV. Those distributors argue that the price that SportsNet LA is charging them is too high to make economic sense. Customers, in turn, would have to pay higher rates to watch their hometown team. This is not a healthy situation for the community. The Dodgers are a key part of the fabric of this City, and Dodgers games with the legendary Vin Scully in the broadcast booth have traditionally been available to viewers throughout this region at no extra charge. That is not true this year. As part of its investigation as to whether the merger and increased concentration will serve the public interest, we ask the Commission to examine these types of programming disputes, determine why the problem has not been resolved already, and then ask Comcast to show that the merger would alleviate, and not exacerbate, problems of this sort. This is precisely the type of public interest concern the City must take

² "NBC-Owned Stations Select Four Non-Profit News Partners" NBC Los Angeles (December 6, 2011), available at: <http://www.nbclosangeles.com/on-air/community/KNBC-NBCLA-KPCC-135105103.html> (last accessed August 24, 2014).

³ Both Verizon and AT&T offer video services in Los Angeles, but in limited areas within the City, defined (in Verizon's case) by their old telephone service territory, and in AT&T's case by the DSLAMs that have been reconfigured to support U-Verse. Neither is expected to expand the reach of their systems significantly.

into account and that we ask the FCC to likewise consider, in the case of the transaction. We are pleased that in a recent data request in this merger review proceeding the Commission has sought information about TWC's role in the management of SportsNet LA and its involvement in carriage negotiations and other strategic decisions of SportsNet LA. We owe it to the people of Los Angeles to assure that further consolidation will improve their lives.

- The effect on innovation and the open Internet. The increased concentration resulting from the merger creates risks for development of innovative applications and content, whether distributed via the traditional pathways “to the television” or via less traditional streaming to computers, tablets and other devices. The combined Comcast will be in a position 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. That sort of control could have a significant impact on the development of the digital economy.

Balanced against these and other potential harms are statements through which Comcast hints at possible positive public benefits of the merger. Unfortunately, the benefits are not backed by enough detail or concrete commitments. For example:

- Comcast states that the transaction “will provide a more seamless fabric of Wi-Fi connectivity across the combined company’s footprint.” But the cable industry has already entered into widely publicized “roaming agreements”⁴ that include not just Comcast and TWC systems, but also other systems. Comcast does not guarantee that the wireless coverage will be expanded to serve areas that currently lack adequate wireless and/or wired broadband service.
- Comcast suggests that TWC will be able to take advantage of Comcast’s “world class” voice and data services for business. But TWC already claims it has “world class” services and about 625,000 customers.⁵ Absent some condition requiring specific investments or expansions of services, the benefit is not obvious.

⁴ Shalina Ramachandran, “Cable Firms to Share Wi-Fi” Wall Street Journal (May 21, 2012) available at: <http://online.wsj.com/news/articles/SB10001424052702304019404577418013952626578> (last accessed August 24, 2014).

⁵ <http://business.timewarnercable.com/resource-center/news/press-releases/twcbc-expanding-phone-feature-options.html>.

POSSIBLE CONDITIONS

If the transactions are approved, the approval must be subject to significant conditions designed to ensure that the benefits promised by the Company materialize in Los Angeles, and the potential harms identified in this and parallel proceedings are mitigated (merger review proceedings have just begun at the California Public Utilities Commission, which is examining the impact of the merger on broadband deployment).

Without strong commitments to tangible benefits, there is a risk that the merged company may not deliver excellent products and services to Los Angeles consumers, or that the public interest will suffer. Comcast and TWC, for example, pursuant to the Commission's recent rule change allowing "all digital" cable systems to encrypt their video programming, are now beginning to scramble their signals on digital systems across the country, with the result that programming that used to be viewable in classrooms and community centers at no charge cannot be viewed without a set top box. TWC has deducted more than \$5 million in franchise fees owed to the City of Los Angeles that supposedly represent the "value" of its provision of public access, educational and government ("PEG") studios and provision of free services to schools prior to 2009 - an act of self-help that TWC claims was justified by this Commission's Section 621 order, even though that order forbade such unilateral actions.

Because the merger of the two largest cable companies and the creation of concentrated regional systems are likely to have significant long-term consequences, to the extent possible the conditions must be designed to satisfy the following criteria:

- The conditions must be enforceable (and should be enforceable by local governments).
- It must be possible easily and quickly to obtain and analyze information to determine compliance.
- The conditions should remain in place as long as the market power that justified those conditions exists. The company could always seek relief from conditions, but relief needs to be based on facts, not on arbitrary time limits.
- To the extent possible, the conditions should be broad enough to prevent side-stepping as new technologies are implemented.

The Office of the Mayor believes that conditions should be imposed that at least: (a) ensure availability of services, including advanced services, throughout all of the communities in the City; (b) preserve network neutrality, and ensure that digital content and application providers are able to reach consumers, and consumers are able to use their products; (c) ensure consumers receive adequate customer service, to be defined in publicly visible metrics and the failure to achieve such metrics results in refunds or other compensation to customers; (d) that the merger does not result in blocking development of competitive alternatives (whether those alternatives take the form of service delivered via the cable system, alternative systems, or by third party equipment in the customer home or alternatives yet to be developed and promulgated); (e) protect and promote local

television, filmed and other types of programming; and (f) ensure commercial programming disputes can be resolved in a way that minimize disruption to consumers and maximize consumer options for obtaining access to programming. At the very least, we believe addressing these issues requires the following.

A. AVAILABILITY OF SERVICES

1. Comcast appears to recognize the importance of extending its “Internet Essentials” program as a means of ensuring that some of the public benefits promised emerge (and in our view, the program is critically important). Unfortunately, that program has not worked well, as the July 11, 2014 filing in this proceeding by the California Emerging Technology Fund indicates. There are simply too many hoops in the application process and conditions on the service, a fact Comcast appeared to acknowledge when it announced a temporary amnesty that would allow customers who had bad payment records in the past to take advantage of the program. The potential significance of such a program in Los Angeles is undeniable. It is estimated that as many as 30% of all Angelenos do not have Internet access⁶. But to be effective, the program needs improvements, which could include the following.

- a) The program ought to be available to anyone, without regard to income level and without a requirement for a significant deposit, or payment by means that might not be a practical option for a lower income person. It must be well-publicized and not hidden. Charges that would tend to make the program ineffective would include:
 - i) Significant upfront charges for installation.
 - ii) Significant deposits tied to income or creditworthiness.
 - iii) Data caps that almost guarantee that ordinary usage will result in significant and unexpected overcharges.

While we understand that the Company would want to limit eligibility for the service to those who are not current subscribers to Comcast services, or who are low income, if the Company offers other alternative services at reasonable prices, there should be little concern that customers will shift to a lower speed option. There are obvious advantages to the residents of the City in Comcast making the service available to anyone as a regular part of the company’s offerings. Specifically and not exclusively, workforce education and development are key to the City’s growth and future. Ready access to high speed internet connectivity is increasingly precedent to success in the modern economy. Prohibition, directly or indirectly, of access to same is tantamount to exclusion from economic benefit.

If an income test is maintained, the test should not be tied to eligibility for the school lunch program, particularly given the growing importance of Internet access to anyone

⁶ source: www.cetfund.org.

applying for jobs or government assistance. It should be sufficient if a person seeking to take advantage of the program is enrolled in any public assistance program, including the federal Supplemental Nutritional Assistance Program or similar state programs. Where there is an easy way for the company to verify eligibility, it should do so. We ask that the FCC provide “best practices” to effect the above.

- b) To ensure that there is an immediate improvement in the reach of the Internet Essentials program, Comcast should be required to expand the number of public locations to which it provides free Internet services. Comcast should provide a high-speed connection (equivalent to their highest commercial offering) to libraries, schools and community centers, including computing centers established in Los Angeles and elsewhere under the Broadband Technologies Opportunities Program (BTOP) program, as well as ongoing support and upgrading to the latest standards at no cost to the foregoing. This would provide a meaningful community-based supplement to e-rate Internet availability.
- c) The Internet Essentials program ought to include a Wi-Fi component, both to address problems associated with MDU access, and because lower income users may rely primarily on mobile devices to access the Internet, or may not have access to laptop or desktop computers. This need is suggested by Comcast itself in the public materials on the Internet Essentials program where it is stated that 1.4 million individuals use the program as of year three, yet only 30,000 subsidized computers were provided. At a minimum we would like to see Comcast make its Wi-Fi hotspots located along the streets, public areas, and elsewhere available to users of the Internet Essentials program.
- d) The Internet Essentials upstream and downstream speeds should increase at no extra charge over time, just as Internet speeds offered by Comcast for other Internet service levels increase at no extra charge, and should not be subject to terms or conditions that make service of limited utility or expose the user to unexpected charges. As a starting point, a 5x1 speed may be adequate, although the price should be closer to \$5 than \$10.
- e) Comcast should expand the awareness of and the capabilities of the Internet Essentials program to be a more substantial Internet offering for children, students, parents, and educators. For example, Comcast should work with community institutions, including the City government, schools, and libraries, to encourage enrollment in Internet Essentials. It should deploy and help develop filtering tools and educational resources that make it practical for parents, educators, and community institutions to ensure a safe online experience and to limit Internet use in appropriate circumstances. These filtering tools should be offered to parents and children to help ensure a safe online browsing experience. The reach of the program could be expanded if Comcast were to commit to work with schools and other public institutions to develop digital education resources (such as those materials available through initiatives like Digital Citizenship⁷) and filtering tools that could be easily implemented for devices distributed to students by, or made available to them at, public institutions. Incorporating a filtering tool option as part

⁷ <http://www.digitalcitizenship.net/>

of the ordering process may also make the program more attractive to parents who wish to have Internet access for educational purposes, but may have concerns about unfiltered access to the Internet. Comcast should commit to providing these filtering tools and educational resources to educators, parents, and students in perpetuity.

2. If one of the benefits of the merger is expansion of Wi-Fi availability, the Commission should establish a timeline to achieve full deployment throughout franchise territories, and require reporting to individual jurisdictions. The Wi-Fi deployment should be designed so that users in all areas can expect to receive similar levels of service – that is, deployment standards should be uniform. Also to ensure that the purported benefits of the merger are realized, the Commission may also wish to set target dates for wireline system expansion to true high speed capabilities.

B. NETWORK NEUTRALITY

1. Los Angeles is the creative capital of the world, and its economy reflects the vitality of its creative community. As the Writers Guild of America West, Inc. explained in its July 25, 2014 comments in the Commission’s Open Internet proceeding, the creative community increasingly depends on the Internet to develop and distribute content. Ensuring that there are open, high speed pathways to homes and businesses is critical to ensuring that this community can develop new content and new creative businesses – and that, in turn, is critical to the local and national economy. While the network neutrality provisions imposed in NBCUniversal are a good first step, it is also clear that Comcast is developing platforms and mechanisms for streaming or otherwise providing content and applications to consumers (including via the X1 box) that will allow it to deliver services akin to those being delivered via the public Internet – but without data caps or other restrictions that may apply to competitors.⁸

a) Network neutrality requirements should be extended indefinitely, with a simple method for filing complaints and a remedy for violations.

b) To the extent that Comcast is permitted to create a “special path” to consumers, it is important that the Commission prevent that path from being open only to content and applications favored by Comcast, or being priced at a level that would prevent consumers from accessing content and applications offered by schools and government. To put it another way, PEG users should have access to the home via all the company’s platforms, and the Commission needs to be particularly careful that it not put Comcast in a position that it can limit access to basic health, educational and governmental services.

c) The “Netflix problem” (not technically a net neutrality problem) has been widely publicized, and needs to be addressed in some manner in this proceeding – if only to ensure

⁸ Brian X. Chen, “Comcast Streaming Service Raises Net-Neutrality Concerns” New York Times, (March 27, 2012), available at: http://bits.blogs.nytimes.com/2012/03/27/comcast-xbox-net-neutrality/?_php=true&_type=blogs&_php=true&_type=blogs&_r=1& (last accessed August 24, 2014).

that the company submits to the Commission's jurisdiction to control this type of interconnection. Given the importance of the content industry to Los Angeles, it is critical that content providers can obtain fair access to Comcast's network – "neutral" carriage once on the network is not likely to provide adequate protections.

C. CUSTOMER SERVICE

1. As one of the benefits of the merger, Comcast says it will be bringing its customer services to the TWC systems. However, we have grown concerned about recent reports regarding Comcast's customer service practices.⁹

a). There is a real risk that this transaction will lead to *worse* customer service as customer service centers and operational centers are regionalized to cut costs. Further, cable mergers typically result in significant and costly disruptions for customers as operations are cut over from one system to another – a process that may not be avoidable, but that can be expected to place substantial strains on customer service operations.

b) It therefore makes some sense to require the company to maintain current levels of employment for at least a period of 24 months, and to submit a transition plan sufficient to ensure that additional staff will be hired and in place locally to address the problems associated with customer switchover. Because local governments will inevitably receive the vast majority of complaints, it will be critical that there are local, knowledgeable contacts who are in a position to meet with government officials and respond to their concerns.

Some commenters have suggested that the Commission should demand improvements in consumer ratings as a condition of the merger. The Office of the Mayor certainly does not oppose that, although once the merger is completed, those metrics will be of little use without a review and enforcement program. That suggests at the very least that the company must collect data; that the bases for data collection must be clear; and that the information should be readily available. Moreover, it suggests that the performance standards should apply across the board to all services offered by the company via its cable system. Indeed, an approval that permits regional control of broadband connections on the scale sought here must, at a minimum, come with a requirement that the company provide adequate services to consumers.

The Office of the Mayor requests that Comcast pursue customer service transparency and open data methodologies by posting call wait times, outages, service installation durations, Wi-Fi hotspot requests, and other metrics online without usage restrictions. This pursuit of transparency

⁹ See for, example, Daniel Muoio, "That Comcast Customer Service Rep Wasn't Going Rogue" Bloomberg Businessweek, (July 18, 2014), available at: <http://www.businessweek.com/articles/2014-07-18/that-comcast-customer-service-rep-wasnt-going-rogue>; Adrienne Jefferies, "Comcast Confessions: when every call is a sales call" The Verge (July 28, 2014), available at: <http://www.theverge.com/2014/7/28/5936959/comcast-confessions-when-every-call-is-a-sales-call> (last accessed August 24, 2014).

will inure to the benefit of customers with increased quality of service as seen in so many other sectors (e.g. travel, food, and government).

c) An important, related matter is that the systems – to the extent that Comcast becomes the dominant provider - must be capable of providing continuous service in case of emergencies. While the companies discuss the advantages of bringing Comcast’s technologies to TWC systems, it is not clear at all either Comcast or TWC hybrid fiber cable systems have adequate back-up power and other operational capabilities that can withstand and survive the sorts of natural disasters that lead to outages in Southern California, or for that matter, anywhere else. Those issues can be addressed through locally established requirements and memoranda of understanding – as long as the Commission makes it clear that localities may establish such requirements as a condition of this merger.¹⁰

d) Finally, the Commission should include conditions designed to ensure the promised benefits of the merger will actually be realized. These could include the following:

- i) Available broadband speeds (upstream and downstream) should double within two years, and prices should be consistent with prices in competitive markets. The Google Fiber markets, and municipal Gigabit systems like Chattanooga may provide useful yardsticks.
- ii) Services should improve throughout communities, and not just in the areas where consumers can pay most for service. The Commission should closely monitor the reach and offerings of the system in test areas like Los Angeles, to ensure that the company does not discriminate against areas in terms of system capabilities and prices that has the effect of creating “haves” and “have nots.”

D. LOCAL PROGRAMMING ISSUES.

As part of the NBCUniversal merger, the Commission recognized the importance of preserving and protecting local programming. As noted above, the merger amplifies these concerns, particularly with respect to continued support for PEG, where it appears to the City that TWC, Charter and Comcast have done very little to preserve or enhance this important resource. If the merger is approved, it should include conditions that ensure that PEG is not relegated to second class status on cable systems in any respect. The Commission cannot rely on the traditional franchising process to address PEG issues. As the Commission is aware, in an effort to spur competition, many states, California among them, moved to a “uniform state franchise” which is defined by statute. There is no simple way for localities, or the state agency that issues the state franchises to adjust the companies’ obligations to reflect the impacts of the merger on PEG and local programming. To the extent that this merger, if approved, will concentrate cable holdings and reduce the prospect of future wireline based competition, it is important for the Commission to establish minimum national requirements. Among them:

¹⁰ The issue of back up power for broadband system reliability is also an issue that the California Public Utilities Commission has identified for investigation in its merger review.

a) The companies should treat each PEG channel the same as it treats the primary signal of local broadcast stations; if a consumer can view a local broadcast station in HD and SD (that is, if the channels are simulcast) the PEG channels should also be simulcast if a local community requests it. PEG channels should be delivered to subscribers so that they can be selected, recorded and accessed and viewed in the same way as broadcast channels. If broadcast channels can be recorded with one touch via a button on a remote, PEG channels should also be recordable in the same way; if a channel can be selected or searched via a voice command, PEG channels should also be searchable via a voice command. If individual programming listings appear for broadcast channels, those listings should also be provided for PEG channels.

b) Channel capacity should be provided end to end – from the point where signals originate to the subscriber – without charge to the local community.

c) The NBCUniversal merger recognized the importance of ensuring PEG could take advantage of technological advances like video on demand. But the Comcast video on demand solution for PEG was not implemented in a way that made it likely that the programming could be found or would be chosen by subscribers, Comcast has not implemented the solution widely, and Comcast itself suggested that a streaming solution would provide a better means for providing PEG on demand than a video on demand solution. Assuming that were true, it will be important for Comcast to agree that PEG support may be used to distribute PEG programming via traditional channels and via non-traditional means; to allow PEG funding to be used for operating support and not just for capital purposes, and to ensure that consumers can access PEG programming via any Comcast platform without additional charges or equipment. Such conditions – including allowing PEG funding to be used for operating support – could go a long way to ensuring that communities are in a position to produce and disseminate independent local programming.

Los Angeles is prepared to take advantage of PEG resources. The City has devoted significant resources to its government access channel to ensure that critical public meetings are accessible to the public via cable systems and via streaming media. All the equipment we purchase today is designed to take advantage of digital technologies so that the City is in a position to deliver programming that is of a high quality that many viewers demand. City Council meetings are provided with closed captioning and in English-language and Spanish language today; the long-term goal is to make the government access channel as accessible as possible to the City's diverse population. There would be more opportunities for development of programming targeted to the City's multi-lingual population if the City had more flexibility in PEG funding use.

E. COMMERCIAL PROGRAMMING

The Office of the Mayor recognizes that disputes between companies like Comcast and commercial video programming content providers are often complex. And even where there is no dispute, exclusive programming arrangements may have the effect of preventing significant portions of the population from viewing programming for extended periods – or make the programming unaffordable.

The Commission needs to devise some mechanism for resolving these disputes as part of this merger, given the dominant position that Comcast (and Charter/Spinco) will have in almost every major metropolitan market in the United States. It should consider:

- a) Whether Comcast or its affiliates should be permitted to obtain exclusive rights to critical programming;
- b) Whether Comcast or its affiliates should be able to obtain rights across multiple platforms;
- c) Whether some mechanism can be developed that ensures that competitors can obtain access at reasonable prices.

Certainly some mechanism is required. The ongoing dispute involving SportsNet LA continues to leave much of the Los Angeles area – about 63% by one account - without access to Dodgers games.

In any case, in deciding whether the merger is approved, the Commission must determine whether the merger will serve the public interest. As part of that determination, it is important for the Commission to examine real-world problems like the Dodgers dispute, and decide whether those disputes are likely to be exacerbated by the merger, or whether the merger can be implemented in a way that benefits consumers. Consumers are benefited if they can obtain valuable programming from other cable companies and video service providers, and if they can view programming via the Internet without having to subscribe to video programming packages from Comcast. Comcast and TWC have the burden of showing that the merger will serve the public interest, and as part of that showing, it is important that the companies show that post-merger, we can expect programming important to communities should be available at reasonable prices whether they subscribe to Comcast-owned systems, subscribe via service provided by someone else, or watch via streaming media.

The transactions associated with this merger deserve close and careful consideration by the Commission. The Commission should only grant any approval subject to clear and enforceable conditions.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Garcetti", with a horizontal line extending to the right.

ERIC GARCETTI
Mayor