**STATE OF NEW YORK**
**DEPARTMENT OF PUBLIC SERVICE**

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| Joint Petition of Time Warner Cable Inc. and Comcast Corporation For Approval of a Holding Company Level Transfer of Control. | Case 14-M-0183 |

# UIU REPLY COMMENTS


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## INTRODUCTION

On May 15, 2014, Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("Time Warner"; jointly, "Petitioners" or "Companies") filed a Joint Petition ("Petition") with the Public Service Commission ("PSC" or "Commission") seeking approval under Public Service Law §§99, 100 and 222 to transfer certain Time Warner telephone systems, cable systems, franchises and assets to Comcast. In a subsequent notice, the Commission invited parties to comment on the Petition.[1] The New York State Department of State's Utility Intervention Unit ("UIU") filed initial party comments on August 8, 2014, as did Department of Public Service Staff ("DPS Staff") and Stop the Cap!, a not-for-profit organization based in Rochester, New York. The Office of the Comptroller of the City of New York ("NYC Comptroller") filed public comments on July 21, 2014.[2]

The UIU discussed in its initial comments the deficiencies associated with the Companies' current substandard customer service, and offered suggestions that would improve service quality and the overall customer experience to acceptable levels as well as enhancing the ability of all customers to access modern communication services at a fair price. The UIU recommended that the Commission condition approval of the Petition on the Companies' acceptance of the following terms: (1) increased benefits for

[1] Case 14-M-0183, supra, Notice Inviting Comments (May 16, 2014).
[2] Close to 3,000 other public comments are posted on DMM.

low-income customers, including expansion of the Lifeline telephone service to all eligible customers in both the current Comcast and Time Warner service areas and the expansion of Comcast's existing Internet Essentials program into the Time Warner service area; (2) continuation of Time Warner's stand-alone broadband service throughout the service areas of both Companies, with a firm commitment to expand broadband service in the rural areas of the state; (3) implementation of a service quality measure; and, (4) the creation of two additional voting seats on the Board of Directors of the merged company to represent New York consumer interests. Without these conditions, granting the Petition would not serve the public interest as required by Public Service Law §222.[3]

As discussed further below, the UIU shares many of the concerns identified by the other commenters. While the UIU supports the analyses and recommendations made by DPS Staff regarding deficiencies in the Petition—specifically, in the areas of improving the Companies' service to its New York customers, making universal broadband more affordable, increasing broadband speed, and investing in infrastructure, including ways to remedy those deficiencies—, these reply comments urge the Commission to consider further enhancement of DPS Staff's recommendations. In support of its position, the UIU will focus on three areas: (1) the lack of detail in the Petition regarding in the Companies' proposed commitments and the failure of the Companies to provide an implementation schedule; (2) the potential that the current poor service quality may further deteriorate if customer-facing jobs are moved out of state; and (3) DPS Staff's recommendation that the combined company should offer a new "New York Essentials" product to further the goal of universal broadband affordability and increase promotion of basic internet services.

[3] Despite requests by the parties in a Montana proceeding for many conditions similar to the ones proposed by DPS Staff and the UIU in this proceeding, the Montana Public Service Commission denied a petition requesting authorization of the acquisition of NorthWestern Corporation by an Australian company on the grounds that the proposed transaction presents a risk of harm to Montana customers and is inconsistent with the public interest. Docket No. D2006.6.82, In the Matter of the Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure for Approval of the Sale and Transfer of NorthWestern Corporation, Order No. 6754c (issued August 1, 2007), pp. 45-57.

## COMMENTS

### I. LACK OF SPECIFICITY OF COMMITMENTS

The UIU observed in its initial comments that the Petition lacks specific details that would define the Companies' proposed commitment to expand broadband in areas currently not served, mainly rural areas.[4] DPS Staff's comments are consistent with the UIU's position on this matter. As DPS Staff point out, "the Petitioners have not made any specific investment commitments in the Joint Petition."[5] Additionally, DPS Staff explains:

> Other infrastructure investments put forward, but without any specific commitments, include the deployment of Wi-Fi hotspots in New York State, **rural infrastructure deployment** and increased availability of broadband to schools and libraries.[6]

DPS Staff's review of the potential benefits and detriments of the proposed transaction has led it to conclude that "there is no net positive benefit as a result of the proposed merger absent specific commitments and conditions that translate into guaranteed New York consumer benefits."[7] This excerpt from DPS Staff's comments expands on this conclusion:

> Depending on how the Commission assesses the transaction's benefits and detriments and how the commitments are eventually designed and valued, there may be a gap between the net benefits, including commitments, and the net positive benefits needed in order for the proposed transaction to be considered an overall net positive benefit for New York. Accordingly, we invite the Petitioners to make additional concrete commitments in its response to these comments, in the areas of infrastructure investment discussed above.[8]

[4] See UIU Initial Comments, pp. 5-6.
[5] Case 14-M-0183, Comments of the New York State Department of Public Service Staff (August 8, 2014), p. 21.
[6] Id., p. 47.
[7] Id., p. 48.
[8] Id.

The NYC Comptroller also noted the lack of specificity in the Petition[9] regarding the Companies' plan to improve the substandard quality of broadband service in New York City, for which high prices are paid:

> Unfortunately, as New York City residents know all too well, our city is stuck in an internet stone age, at least when compared to other municipalities across the country and around the world. According to a study by the Open Technology Institute at the New America Foundation, New Yorkers not only endure slower internet service than similar cities in other parts of the world, but they also pay higher prices for that substandard service. [Footnote omitted.] Tokyo residents enjoy speeds that are eight times faster than New York City's, for a lower price. And Hong Kong residents enjoy speeds that are 20 times faster, for the equivalent price.[10]

The UIU agrees with DPS Staff that at this point the Companies' proposals are merely aspirational. Without more detail and enforceable milestone commitments, the PSC would have little recourse if it approved the transaction. In the event that the Commission is inclined to approve the Petition, such approval must be conditioned on the Companies' specific commitment to certain expenditures and implementation schedules for program improvements and infrastructure investment. Only in this way would approval of the Petition result in positive benefits for New York consumers.

## II. CUSTOMER SERVICE AND JOBS

DPS Staff proposed, as a way of improving the Companies' inferior customer service, that "the combined company should also be subject to consequences should it not achieve its recommended level of service quality performance."[11] DPS Staff recommended that for each measure (video and broadband) for which these service quality targets are not met annually, the combined company should be required to pay $5 million into a public benefit program, which payment would double "should the

[9] NYC City Comptroller, p. 2.
[10] Id., p. 1.
[11] DPS Staff Comments, p. 41.

combined company fail to achieve these improvements for two consecutive years, until the target is satisfied."[12]

The UIU supports this concept but recommends that the PSC assess whether the $5 million and $10 million amounts are adequate to achieve the desired goal of improving service quality. The assessment should include a weighing of the combined company's projected revenues, the costs of infrastructure enhancements or service-related expenditures necessary to meet the metrics, and the proposed levels of public benefit payments. It is possible that, from a corporate balance sheet perspective, it is cheaper to pay the $5 million and $10 million than to make the necessary infrastructure improvements or other expenditures.

DPS Staff expressed its concern regarding the possible loss of jobs in New York if the proposed merger were approved by the Commission, and recommended a requirement that, for five years after the closing of the merger, Comcast provide a 90-day advance notice if Comcast decides to close a call center or relocate a call center out of New York.[13] This concern about the impact of the loss of jobs in New York coincides with the UIU's concern about the Companies' (already) poor record of customer service. (Both the UIU[14] and DPS Staff[15] noted the poor customer service satisfaction of both Time Warner and Comcast in comparison to others in the industry.)

With the Companies now providing such bad service, the UIU does not believe this notice requirement is adequate. The loss of customer-facing jobs (customer service call center jobs included) would most likely further deteriorate already unsatisfactory customer service. Accordingly, the UIU has two recommendations. First, as a condition of approval of the merger the Commission should require, for the first five years following the merger, that Comcast agree not to close any New York call center or relocate centers out of the state.[16] Second, the UIU continues to support the

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[12] Id., pp. 41-42.
[13] Id., pp. 42-43.
[14] UIU Initial Comments, pp. 6-7.
[15] DPS Staff Comments, pp. 27-28.
[16] As a condition of its approval of the NYNEX-Bell Atlantic and Verizon-MCI mergers, the Commission ordered the newly merged company to maintain its permanent headquarters in New York City. See, Case 05-C-0237, Order Asserting Jurisdiction And Approving Merger Subject To Conditions (November 22, 2005), p. 63; Case 96-C-0603, et al., Joint Petition of New York Telephone Company, NYNEX Corporation and Bell Atlantic Corporation for a Declaratory Ruling that the Commission Lacks Jurisdiction

recommendation in its initial comments that the Commission condition approval of the merger on the Companies' agreement to designate two voting seats on the Board of Directors of the merged company for New York consumer representation.[17]

## III. NEW YORK ESSENTIALS

The UIU recognized in its initial comments that the stated objective of Comcast's Internet Essentials program is to make broadband less expensive for low-income customers, but that the program has deficiencies that needed to be addressed.[18] The UIU identified in particular the eligibility criteria of the Internet Essentials program, and urged expansion of the Internet Essentials service offering to include *all* low-income customers. The NYC Comptroller made similar observations:

> The Center for Public Integrity found that of the 7.2 million low-income families in Comcast's nationwide service area, only 2.6 million are eligible for Internet Essentials. [Footnote omitted.] The Center's analysis of customers in Time Warner Cable's service area found that of the 4.6 million households that earn less than the amount that would qualify them for the federal government's free and reduced-price lunch program, only 1.7 million would qualify for Internet Essentials since the program is not offered to childless couples or low-income individuals.
>
> Not only are the eligibility rules for Internet Essentials far too narrow, but the company has done a poor job of signing up those who do meet the criteria. In fact, only 300,000 (12 percent) of eligible households nationwide have actually signed up since the program was launched in 2011.
>
> It is critical that the PSC not only press Comcast to significantly expand the reach of Internet Essentials, but also that it engage in appropriate oversight to ensure that the

to Investigate and Approve a Proposed Merger between NYNEX and a Subsidiary of Bell Atlantic, or in the Alternative, for Approval of the Merger, Opinion No. 97-8 (issued May 30, 1997), p. 13. Comcast is headquartered in Philadelphia, PA, so if call centers are allowed to close or relocate out of New York, there would be no company presence in New York at all.

[17] As a condition of approving the proposed merger of Fortis Inc. and several Arizona public utilities, the Arizona Corporation Commission required that Arizona residents comprise a majority of the board of directors of the new entity. Docket Nos. E-04230A-14-0011 and E-01933A-14-011, In the Matter of the Reorganization of UNS Energy Corporation, Decision No. 74689, Opinion and Order, docketed August 12, 2014, p. 12.

[18] UIU Initial Comments, p. 4.

> company is meeting its commitments to low-income residents of the Empire State.[19]

To remedy this situation, DPS Staff recommended expanding the program to include more eligible low-income customers.[20] Additionally, DPS Staff recommended a new program called New York Essentials that eliminates the restrictive eligibility criteria of the Internet Essentials program.[21] The UIU supports this proposal; opening up eligibility to include customers who participate in the Lifeline telephone program would help achieve the UIU's objective of having low-cost broadband service available to all low-income customers in the state.

In its initial comments, the UIU discussed Time Warner's stand-alone basic broadband service offering available at $14.99/month. The UIU recommended that the stand-alone service offering be made available to all customers, old and new, who are not eligible for the Internet Essentials program. DPS Staff reached a similar conclusion.[22] DPS Staff recommended that the Internet Essentials and New York Essentials programs should be promoted through the combined company's websites, at retail outlets, and other marketing materials.[23] It is not clear, however, that Time Warner's $14.99/month stand-alone broadband service offering is included in DPS Staff's recommendation to increase promotion of these service offerings. Accordingly, the UIU supports the DPS Staff recommendation that the combined company should be required to promote these basic internet service offerings in New York, and should include and aggressively promote the Internet Essentials and New York Essentials programs along with the $14.99/month stand-alone service offering.

[19] NYC Comptroller, pp. 2-3.
[20] DPS Staff Comments, pp. 23-24, 33, and 43.
[21] Id., p. 44.
[22] "The combined company should be required to retain and continue to offer Time Warner's $14.99 "Everyday Low Price" Internet offering." DPS Staff Comments, p. 45.
[23] Id., pp. 44-45.

## CONCLUSION

For the reasons discussed above and in the UIU's initial comments, and in the respective initial comments of DPS Staff and the NYC Comptroller, the Commission must condition any approval of the Petition upon the Companies' acceptance of the requirements and obligations proposed by the parties. Otherwise, the proposed merger would not pass New York's net positive benefits test or satisfy the public interest requirements of Public Service Law §222.

Respectfully submitted,

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