STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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 INITIAL COMMENTS

Erin P. Hogan, P.E.
Director, Utility Intervention Unit
518-473-0727
erin.hogan@dos.ny.gov

Gregg Collar
Program Analyst
518-474-1811
gregg.collar@dos.ny.gov

Saul A. Rigberg
Intervenor Attorney
518-408-3746
saul.rigberg@dos.ny.gov

Penny Zhu
Intervenor Attorney
518-486-9446
penny.zhu@dos.ny.gov

Dated: August 8, 2014
Albany, New York

UTILITY INTERVENTION UNIT
DIVISION OF CONSUMER PROTECTION
NYS DEPARTMENT OF STATE
99 WASHINGTON AVENUE
SUITE 1020
ALBANY, NY 12231-0001

TABLE OF CONTENTS

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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 INITIAL COMMENTS

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 proposed transaction would have Comcast entering into an agreement with Time Warner whereby Comcast will acquire 100 percent of Time Warner's equity in exchange for Comcast Class A shares. Under this transaction, Comcast would retain all of Time Warner's existing assets in New York State. The Petitioners request that the Commission grant approval of this transaction expeditiously, claiming the proposed transaction will generate significant public interest benefits.

The New York State Department of State's Utility Intervention Unit ("UIU") appreciates the opportunity to submit comments on the proposed transaction and its implications for New York's consumers. The UIU offers several recommendations to the Commission to protect consumers' interests. On several occasions in the past, the Commission has reviewed proposed mergers, and approved those proposed transactions

[1] Case 14-M-0183, supra, Notice Inviting Comments (May 16, 2014).

subject to conditions necessary to ensure that they are in the public interest. In the event the Commission decides to approve the merger, we recommend that the Commission follow that same approach here as well.

The UIU recommends conditioning approval on the acceptance of the following terms: (1) increased benefits for 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.

COMMENTS

I. LOW INCOME CUSTOMERS

The Petition provides little detail regarding the effects of the proposed merger on low-income consumers and the types of programs and services that would be provided to this section of the consumer market. The Commission should require the Companies to provide more information on this issue.

A. Lifeline

Universal service is a mandate of the 1934 Telecommunications Act and most recently, the Telecommunications Act of 1996. The Telecommunications Act of 1996 expanded the traditional goal of universal service to include increased access to both telecommunications and advanced services – such as high-speed internet – for all consumers at just, reasonable and affordable rates. The Telecommunications Act of 1996 established principles for universal service that specifically focused on increasing access to evolving services for consumers living in rural and insular areas, and for consumers with low-incomes.[2] One such principle is the availability of Lifeline telephone service for eligible low-income customers. The Commission has historically adopted these universal service principles including the requirement that any Eligible Telecommunications Carrier ("ETC") in New York State must offer a Lifeline telephone service offering in order to operate in the state. Time Warner became the first telephone service provider using Voice over Internet Protocol to request ETC status. Obtaining ETC status allows an eligible Company to obtain subsidies for the Lifeline service they offer. This request for ETC status was granted by the Commission in March of 2013,[3] thereby permitting Time Warner's low-income customers to become eligible for Lifeline telephone service. However, to the UIU's knowledge, Comcast has not similarly applied for ETC status in New York, and therefore, is not offering Lifeline to their eligible low-income customers. As Comcast low-income customers have no access to Lifeline services, they are denied a valuable discounted telephone service that benefits vulnerable customer populations.

The UIU recommends that any Commission approval of this proposed transaction include a requirement that Comcast seek the same ETC status as Time Warner and begin offering Lifeline telephone service as soon as possible to all of its eligible low-income customers currently in its service area. Low-income customers live on a precarious budget; by denying them access to low cost telephone service, they are forced to make a choice between vital services such as telephone and other basic necessities such as food and electricity. Making sure that these customers have access to affordable telephone service is sound policy, and saves financially vulnerable populations from making otherwise unnecessary difficult choices.

B. Internet Essentials Program

The Petition mentions the Internet Essentials program, which was introduced by the Comcast Corporation in 2011. The UIU recognizes Comcast's efforts to promote this program with committed local partners in low-income communities and would like to see

[2] See, Federal Communications Commission, Definition of Universal Service, (available at, http://www.fcc.gov/encyclopedia/universal-service).

[3] Case 12-C-0510, Order Approving Designation as a Lifeline-Only Eligible Telecommunications Carrier (March 18, 2013).

the Internet Essentials program expanded. Because the Internet Essentials program is only implemented in a few isolated locations, the UIU recommends, as a condition of an approved merger, that this program replace Time Warner's existing low-income program in order to provide a greater number of low-income consumers in New York State with low-cost broadband service and access to computer-based training. There is a compelling need throughout New York for a program like Comcast's Internet Essentials, and the UIU requests a firm commitment on the part of the Petitioners to expend significant resources to meet this need. With greater access to the internet, low-income consumers throughout the state will be able to gain increased opportunities for education and employment, as well as more access to information regarding necessary services in the event of emergency.

While the UIU appreciates that Comcast's Internet Essentials program makes internet service less expensive for low-income customers, the UIU believes the program has a few problematic issues that need to be addressed. First, Comcast disclosed at the Public Statement Hearing held on June 18, 2014 in Albany, NY that the Internet Essentials offer is only available to new customers and not existing Comcast customers. An existing customer is eligible for Internet Essentials only if he or she disconnected service and then reactivated service with the Company. According to the eligibility criteria,[4] one would have to reactivate the service under a different name, pursuant to the Company's existing eligibility criteria, which states that a customer is eligible only if they have not subscribed to Comcast internet service within the last 90 days and have at least one child eligible to participate in the National School Lunch Program. These criteria are unnecessarily restrictive and disadvantage childless low-income customers and senior citizens that qualify for low-income benefits and could also benefit greatly from the program. The UIU therefore recommends that the Internet Essentials service offering be expanded to include *all* eligible low-income customers.

---

[4] To be eligible for Comcast's Internet Essentials program, an applicant must: (1) be located where Comcast offers Internet service, (2) have at least one child eligible to participate in the National School Lunch program, (3) have not subscribed to Comcast internet service within the last 90 days, and (4) not have an overdue Comcast bill or unreturned equipment. See, Internet Essentials from Comcast (available at, https://www.internetessentials.com/how-it-works) (last accessed August 1, 2014).

II. BROADBAND ISSUES

A. Stand-alone Broadband Service

In addition to programs and services for low-income consumers, basic broadband should be made more affordable to consumers of all income brackets. Time Warner has a stand-alone basic broadband offering available to all customers that is priced at $14.95/month. By contrast, Comcast's stand-alone broadband service is priced at $40/month. As the Public Utility Law Project ("PULP") pointed out in the "Statement of Gerald A. Norlander" distributed at the aforementioned Public Statement Hearing, there is no real commitment in the Petition, however, to continue to provide or expand these plans after the merger.[5] In the event that a merger between the Companies is approved and moves forward, the UIU is concerned that Comcast will transition away from Time Warner's pricing schedule. In order to promote the best interests of consumers, the UIU requests that Time Warner's stand-alone broadband pricing continue to be available to all customers, old and new, who are not eligible for the Internet Essentials plan. It is important for the public to have access to broadband service without having to purchase a number of other services (i.e., a bundle of services) that may not be needed. If consumers do not have the option of purchasing stand-alone broadband internet services at a reasonable price, a large population of internet service purchasers may be priced out of buying the service altogether, which we believe would be detrimental for both consumers and the Companies.

B. Expansion to Rural Areas

The Petition contains several references to different products and programming choices that will be made available to customers as a result of approval of this transaction. However, the Petition does not detail the Companies' commitment to expand broadband to areas currently not served, mainly rural areas. This is disconcerting because more

---

[5] In the Joint Petition, the only reference to the Internet Essentials Program was a sentence stating that, "Earlier this year, Comcast announced that the Internet Essentials Program has been extended indefinitely – beyond its initial three years." See, Case 14-M-0183, Joint Petition Time Warner Cable, Inc. and Comcast Corporation for Approval of a Holding Company Level Transfer of Control, (May 15, 2014) p.26 [hereinafter, "Petition"].

than six million New Yorkers, approximately 30% of the population, do not use broadband at home due to issues which include: affordability, lack of knowledge and their perception of need.[6] The Petition briefly mentions a Connect NY broadband grant program with the assumed intention of reaching more New York communities. The Petition states, "In fact, under that program millions of dollars are being spent to deploy hundreds of new network miles passing thousands of additional homes and businesses in Upstate New York."[7] This is the sole reference to the Petitioner's commitment to expand in rural areas, which lacks a defined timeline and estimate of customers to be served, given New York State's strong public policy interest in developing broadband use in the state.[8]

The UIU is concerned that Comcast and Time Warner have little reason to build out or expand their networks to offer broadband in the rural areas where there is no real competitor for broadband. As Mr. Norlander pointed out at the July 18, 2014 Public Statement Hearing, Verizon has halted the rollout of its FiOS broadband service.[9] At this time, FIOS is available sporadically throughout the state and the UIU has to believe that Verizon has no intention in the near future of rolling out additional broadband to rural areas. Since deploying FiOS to customers in larger communities has been halted due to the costs, broadband is likely to be delayed further to rural customers in areas where roll-out costs are even higher. For these reasons, the UIU recommends that the Commission impose requirements on the Petitioners to roll out broadband to current areas where broadband is not available, in particular to rural areas of the state.

III. SERVICE QUALITY

Aside from the issues regarding specific products and services, the UIU would like to address the service quality problems that have plagued both Companies. In 2012, the Division of Consumer Protection ("DCP") documented 107 complaints made against Time

---

[6] See, Sarah Buck, Federal Communications Commission Hosts Rural Broadband Workshop, Rural Community Assistance Corporation (RCAC), Apr. 25, 2014 (available at, http://www.rcac.org/pages/714?i=1042).

[7] Joint Petition, p. 14.

[8] See, Governor Andrew M. Cuomo, Press Release: Governor Cuomo Announces $9 Million Broadband Investment in the North County (July 30, 2014) (available at, http://www.governor.ny.gov/press/07302014-north-country-broadband-investment).

[9] Transcript from June 18, 2014 Public Statement Hearing, p. 47.

Warner by consumers. This number was a sharp increase from the 21 complaints received in 2011, which is likely attributable to Hurricane Sandy. From these complaints, we understand that a large number of customers lost service and did not receive adequate help as Time Warner's Customer Service Departments were completely overwhelmed. This experience highlights a potentially serious issue if another major storm were to hit New York State, as many customers have their phone service through their cable provider. In addition to service issues that resulted from Sandy damage, on the whole, Time Warner still has significant service quality challenges. In 2013, the DCP received 83 complaints against Time Warner, a decrease from 2012, but still a significant number. The filed complaints were related to: continuous rate increases; poor quality of picture; fees that Time Warner unilaterally imposed on all Time Warner customers for rental of their modems when in the past there was no fee for the modem; and billing errors. The PSC received 1,020 complaints against Time Warner in 2012, and 1,150 complaints in 2013. This reflects the poor customer satisfaction ratings that Time Warner received in surveys conducted by JD Power[10], Consumer Reports[11], and the American Customer Satisfaction Index ("ACSI").[12] In both the JD Power and ACSI surveys which related to television, telephone, and internet services, Time Warner and Comcast finished last and next to last for all three services.

The UIU is concerned that the Companies' quality of service will be further impacted as a result of the proposed merger. To the extent that the quality of Comcast and Time Warner's telephone service is poor, customers may not be able to complete important telephone calls, including those involving public health and safety. To ensure that the quality of service offered by the Companies improves, the UIU recommends that the Commission condition merger approval on an objective service quality measure to which a negative revenue adjustment would be attached in the event that the Companies

---

[10] See, J.D. Power, Telecom Index (available at, http://ratings.jdpower.com/telecom/index.htm)
[11] Consumer Reports, May 2014, pp. 28-29.
[12] "ACSI Telecommunications and Information Report 2014, May 20, 2014; (see also, ACSI: Subscription TV and ISPs Plummet, Cell Phone Satisfaction Climbs (May 20, 2014) available at, http://www.fiercecable.com/press-releases/acsi-subscription-tv-and-isps-plummet-cell-phone-satisfaction-climbs?utm_medium=nl&utm_source=internal)

failed to meet the metric.[13] The Companies, DPS Staff, and any other interested parties, including the UIU, should be directed to develop the appropriate targets. Furthermore, the Companies should be required to file a quarterly report on their performance with the Commission that would be made available to the public and interested parties.[14] The Companies' current level of customer service is simply not acceptable for New York.

IV. NEW YORK CONSUMER REPRESENTATION ON THE BOARD OF DIRECTORS OF THE MERGED COMPANIES

In addition to the implementation of measures to rectify service quality issues, the UIU recommends 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. These two voting seats would represent the interests of New York customers, who provide the Companies with their main source of income. These voting seats would provide a direct voice for customers to influence any corporate plans or policy that would have long-range, significant effects on consumer costs. In previous PSC cases, such as the merger of Fortis, Inc. with the electric and natural gas utility, Central Hudson, the Commission set as a key provision of the merger, the assurance that at least two members of the Board of Directors for the merged company would be residents of the service territory.[15] This provision gives customers of Fortis/Central Hudson a direct voice to advocate on behalf of consumer interests. Likewise, a provision requiring that two of the directors of the merged company

[13] The Company appears to recognize the service quality issues it faces when it talked about the disparity between Time Warner and Comcast offerings to its customers. However, still failing to acknowledge the Comcast service and reliability issues mentioned above. "I'd describe bringing the network up to standards that will enable consumers to be able to access the reliability of the network…….So getting the network healthy, if you will, and capable of launching the kinds of services that consumers in Comcast's footprint enjoy today would be the first objective." (Transcript from June 18, 2014 Public Statement Hearing), pp. 51-52.

[14] According to PULP, Time Warner since becoming an ETC has been filing service quality reports measuring the same things that incumbent local exchange carriers (ILECs) like Verizon have been filing for years. However, they have been filed under trade secrecy and not available to the public. The UIU strongly recommends that these service quality reports be available to the public just as they are now for all the ILECs. (Transcript from June 18, 2014 Public Statement Hearing), pp. 41-42.

[15] See, Case 12-M-0192, Chairman Garry A. Brown, Press Release: Commission Approves Sale of Central Hudson, (June 13, 2013).

represent consumer interests and reside in New York would serve the same consumer advocacy purpose in this case.

Not having a designated customer representative on the Companies' current Board of Directors has likely contributed to the lack of responsiveness to customer concerns. Prices for both Time Warner and Comcast services have been steadily increasing over the years for bundled services that many customers neither need nor want. The attempts that customers have made to communicate their service problems to the Companies have been largely ineffective, and may be attributed to the fact that these complaints are not heard by decision makers in these companies.

Accordingly, the UIU strongly recommends that New York consumers' interests be adequately represented on the merged Companies' Board of Directors.

CONCLUSION

The UIU is concerned that this transaction may have negative impacts on the customers, in particular low income customers, of both Comcast and Time Warner. Therefore, in the event the Commission approves the proposed transaction, the UIU recommends that the Commission condition its approval upon adoption of the recommendations the UIU has identified herein.

Respectfully submitted,

Saul A. Rigberg

Erin P. Hogan, P.E.
Director, Utility Intervention Unit
518-473-0727
erin.hogan@dos.ny.gov

Saul A. Rigberg
Intervenor Attorney
518-408-3746
saul.rigberg@dos.ny.gov

Penny Zhu
Intervenor Attorney
518-486-9446
penny.zhu@dos.ny.gov

Gregg Collar
Program Analyst
518-474-1811
gregg.collar@dos.ny.gov

Dated: August 8, 2014
Albany, New York