Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of	)	
	)	
Comcast Corp.	)	MB Docket No. 14-57
Time Warner Cable Inc., *et al.*	)	
	)	
To Assign and Transfer Control of	)	
FCC Licenses and Other Authorizations	)	

REPLY COMMENTS OF CENTURYLINK, INC.

Melissa E. Newman
1099 New York Avenue, N.W.
Suite 250
Washington, D.C. 20001
(202) 429-3120
melissa.newman@centurylink.com

Tiffany West Smink
1099 New York Avenue, N.W.
Suite 250
Washington, D.C. 20001
(303) 992-2506
tiffany.smink@centurylink.com

Attorney for

CENTURYLINK

December 23, 2014

TABLE OF CONTENTS

Page

INTRODUCTION AND EXECUTIVE SUMMARY 1

ARGUMENT:

I. ABSENT CONDITIONS, THE MERGER WOULD FURTHER ENHANCE COMCAST'S UNFAIR COMPETITIVE ADVANTAGES WITH RESPECT TO VIDEO PROGRAMMING 3

II. COMCAST'S OPPOSITION AND RESPONSE CONFIRM ITS ANTICOMPETITIVE INTENT TO USE ITS DOMINANT POSITION IN MVPD SERVICES TO MONOPOLIZE THE MARKET FOR SPOT CABLE ADVERTISING 8

III. THE COMMISSION SHOULD NOT APPROVE THIS MERGER UNLESS COMCAST AGREES TO STOP IMPEDING ENTRY THROUGH FRANCHISE PROCEEDINGS 12

IV. AS AN ENTITY LARGER THAN NEARLY ALL ILECS, THERE IS NO REASON THAT COMCAST SHOULD CONTINUE TO OBTAIN UNEs OR INTERCONNECTION UNDER SECTION 251(c) 14

CONCLUSION 15

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of	)	
	)	
Comcast Corp.	)	MB Docket No. 14-57
Time Warner Cable Inc., *et al.*	)	
	)	
To Assign and Transfer Control of	)	
FCC Licenses and Other Authorizations	)	

INTRODUCTION AND EXECUTIVE SUMMARY

As a new video entrant, CenturyLink competes directly with Comcast. Indeed, in most places where it offers MVPD service, CenturyLink is the only alternative provider of bundles of video, broadband, and voice. As it explained in its comments, CenturyLink is participating in this proceeding because this transaction poses a grave threat to facilities-based video competition, and that threat demands aggressive action from the Commission.

Despite filing a lengthy Opposition[1] replete with attacks on parties that disagree with them, Comcast and Time Warner Cable ("TWC") have not provided any reason to doubt that, in at least four separate ways, this transaction would harm competition, and the public interest, in video and in other services. The Commission should either decline to approve this transaction or, if it permits it to move forward, impose conditions that are sufficient to protect competition in video and other markets.

1. Programming. Most importantly, this transaction threatens to increase the already significant disparity in programming costs between Comcast and its competitors.

[1] Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57 (Sept. 23, 2014) ("Opp.").

Comcast seeks to minimize that fact by claiming that it will obtain few new programming assets. That is not only inaccurate; it also ignores the fact that the transaction will increase Comcast's scope as an MVPD and thus the markets where it will benefit from raising rivals' programming costs. Beyond that, Comcast admits that, by increasing its already large scale, the transaction will aggravate the already wide gap in programming costs between it and other MVPDs.

Comcast claims that the Commission's arbitration process should suffice to address opponents' concerns, but that process predates the transaction and is not enough to offset the additional competitive harms at issue here. The Commission must do more and should, among other actions discussed below, require Comcast to allow competitors to use a Letter of Agency ("LOA") when they win customers to offset, at least in part, the competitive harms of this transaction.

2. Advertising. Comcast's Opposition confirms that, post-merger, it believes that it may legally deprive its video competitors of revenue by excluding other MVPDs' representation firms from the interconnects that are key to obtaining local spot advertising revenue.[2] Comcast's claim is incorrect as a matter of policy and antitrust law. However, it does highlight the need to require divestiture of Comcast's and TWC's affiliated representation firms or, at the least, to impose strict conditions that prevent the combined entity from effectively controlling competitors' access to advertisers.

3. Impeding Entry Through Local Franchising Proceedings. Comcast, uniquely in CenturyLink's experience with cable providers, seeks to insulate itself from competition by delaying the resolution of local franchise proceedings and imposing onerous and anticompetitive build-out conditions. Exporting that behavior to TWC territories is, contrary to Comcast's

[2] *See* Opp. 278-79.

contention, a merger-specific harm. And, as demonstrated below, Comcast is simply wrong both in claiming that it has acted reasonably by seeking to delay competitive entry at every turn and in contending that any commitment to address this conduct would be unprecedented or improper.

4. Access to UNEs and Interconnection. Comcast does not argue that, with its massive post-transaction size and network, it needs access to unbundled network elements ("UNEs") or interconnection under 47 U.S.C. § 251(c) to compete. It likewise cannot dispute that, under the Commission's decisions, allowing that access when it is not necessary creates disincentives to facilities investment and harms the public without providing countervailing benefit. In raising that issue here, CenturyLink is not, contrary to Comcast's claim, seeking forbearance. Rather, it is seeking to alleviate that transaction-specific harm. Comcast should thus forgo section 251(c) access before any approval of this transaction.

I. ABSENT CONDITIONS, THE MERGER WOULD FURTHER ENHANCE COMCAST'S UNFAIR COMPETITIVE ADVANTAGES WITH RESPECT TO VIDEO PROGRAMMING

CenturyLink's comments demonstrated that the merger poses two grave threats related to video programming. First, by acquiring TWC's significant programming assets – including national cable networks and regional sports networks ("RSNs") in California, Hawaii, Kansas, Missouri, Nebraska, New York, Ohio, Texas, and Wisconsin – together with 7 million more TWC subscribers, the merger would increase Comcast's incentives to use that control to raise costs for, or deny access to, marquee content. Second, Comcast's added scale post-merger would widen the gap in programming costs between it and smaller entrants such as CenturyLink, impeding competition for MVPD services. Comcast's response on both points is unconvincing.

1. Comcast claims that "[t]he Transaction will not materially increase the amount of programming controlled by the combined company" and that it will "gain[] ownership, through the Transaction, of only one major additional English-language RSN featuring major professional league sports – Time Warner Cable SportsNet (featuring the Lakers)."[3] As an initial matter, this statement is misleading. For one thing, Comcast will gain effective control of not only the Los Angeles Lakers RSN, but also SportsNet LA, which is jointly owned by TWC and the Los Angeles Dodgers. For another thing, obtaining control over just these two RSNs is hardly insignificant: these networks control the games of two of the most valuable franchises in professional sports. For a third thing, there is no basis for Comcast to claim that many of the RSNs it will be acquiring "do not feature marquee programming" because they show college rather than professional sports. That assertion runs contrary not only to the Commission's prior rulings,[4] but also to Comcast's prior statements.[5] Indeed, in many areas of the country, college football and basketball are at least as valued by consumers as professional sports.[6]

---

[3] *See* Opp. 172, 174 (footnotes omitted).

[4] *See, e.g.*, Report and Order in MB Docket Nos. 12-68, 07-18, 05-192, Further Notice of Proposed Rulemaking in MB Docket No. 12-68, Order on Reconsideration in MB Docket No. 07-29, *Revision of the Commission's Program Access Rules*, 27 FCC Rcd 12605, 12643 ¶ 56 (2012) (defining "RSN" "in the same way the Commission defined that term in the *2010 Program Access Order* and in previous merger proceedings that have adopted program access conditions[,] [footnote omitted]" and including in its definition "sporting events of a sports team that is a member of" NCAA Division I Football or NCAA Division I Basketball).

[5] *See, e.g.*, Proposed Findings of Fact and Conclusions of Law of Comcast Corporation at 47, *TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network, Complainant v. Comcast Corporation, Defendant*, MB Docket No. 08-214, File No. CSR-8001-P (FCC filed July 2, 2009) ("'Comcast subscribers in Harrisburg primarily follow the Philadelphia professional sports teams, and Comcast subscribers in southwestern Virginia primarily follow NCAA sports, and particularly games from the ACC.' [footnote omitted]").

[6] *See, e.g.*, Harris Interactive News Release, *As American as Mom, Apple Pie and Football?* (Jan. 16, 2014) (among adults who follow one or more sports, college football is the third most favorite sport (11%), behind professional football and baseball, but ahead of men's professional basketball (6%), hockey (5%), and men's soccer (2%)), http://www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/mid/1508/articleId/1365/ctl/ReadCustom%20Default/Default.aspx; *id.* ("Looking at college football, those in the South (17%) . . . are more likely to say this is their favorite"); Jon Langford, *America's Big Business*

Comcast's attempt to downplay the effect of the transaction on its acquisition of programming is hardly surprising, because Comcast has no substantive answer to the underlying concerns. As CenturyLink has explained, the merger increases significantly the markets where Comcast would benefit by denying or raising the costs of programming to rival MVPDs.[7] Those markets now include New York State (including New York City), the Carolinas, the Midwest (including Ohio, Kentucky, and Wisconsin), Southern California (including Los Angeles), and Texas. In addition, because Comcast will also acquire significant new content, the merger exacerbates these anticompetitive effects further still. In order to compete successfully with Comcast's cable systems, unaffiliated MVPDs would need to obtain access to an even greater amount of Comcast-controlled content than they would prior to the merger.

Comcast does not seriously dispute any of this. It argues,[8] however, that these concerns are redressed by the MVPD arbitration condition in the *NBCUniversal Order*.[9] As CenturyLink

---

of College Football? It's a Foreign Concept for Brits, BBC America (Mar. 3, 2014) ("There are 24 U.S. states without a major league sports team, and college football fills the void. Take Alabama: a state with five million people and four stadiums with capacities over 80,000. For people living here who want to watch competitive team sports, their only option is college ball." "The United States is the only country in the world where college sports are as popular (if not more so) than the professional ones."), http://www.bbcamerica.com/anglophenia/2014/03/americas-big-business-college-football-alien-concept-brits/; ESPN, *Customer Marketing and Sales: College Basketball* ("With a 15 hour a week commitment, college basketball fans spend more time with ESPN than fans of NFL, MLB, NBA and NASCAR"), http://www.espncms.com/Sports-Content/All-Sports/Basketball---NCAA#v=%7B-f-.%7B-Shows-.-%7C%7C%7C%7C%7C%7C-_-Media-.-0-_-SortBy-.-2-%7D_-p-.1_-s-.--%7D (last visited Dec. 15, 2014).

[7] CenturyLink Comments at 9.

[8] *See* Opp. 87-89.

[9] In an ex parte filed in response to questions from the Commission staff, Comcast claims that "[r]eal [w]orld" facts and its "[t]rack [r]ecord" confirm that it will not engage in conduct that harms rival MVPDs with respect to Comcast-affiliated programming. *See* Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 14-57, Response to Question 1 Attachment at 2, 9 (FCC filed Nov. 26, 2014)

has demonstrated, however, while these prior conditions are a good start, they are not sufficient, and the Commission should impose several additional conditions to curb Comcast's undisputed incentives and ability to discriminate. Specifically, CenturyLink demonstrated that the Commission should, for a period of seven years: (1) require Comcast to disclose the prices, terms, and conditions for Comcast-controlled programming under new agreements reached with the largest MVPDs; (2) require Comcast to disclose the prices it pays third parties for cable and broadcast content under any new agreements Comcast signs post-merger; and (3) mandate that Comcast allow competing providers to use LOAs to disconnect a customer's Comcast cable service (and, where obtained with cable, broadband service) without the customer having to make a separate call to Comcast.

Comcast addresses only the first of these conditions, arguing that there is no need to extend the MVPD arbitration conditions in the Comcast-NBCU Order because "*no* MVPD has found it necessary to invoke these arbitration conditions since the NBCUniversal transaction[.]"[10] But the fact that parties have not sought to invoke arbitration is not proof that such conditions are unnecessary. Instead, that fact suggests that this condition, even if not adequate by itself, is having some effect in disciplining Comcast's conduct. The availability of arbitration as a last resort helps ensure that Comcast does not act unreasonably in the first instance; the merger makes this condition more important than ever to retain.

("Comcast Nov. 26 Ex Parte"). CenturyLink's Comments (at 10-11) have demonstrated already, however, that Comcast's prior behavior includes refusing to allow competitors access to an RSN; TWC likewise has had a recent dispute with DirecTV and other MVPDs over access to another RSN (SportsNet LA). Comcast's purported showing that it will lack the incentive to engage in such behavior cannot be squared with these facts. On the contrary, as an even larger company, a post-merger Comcast would have a greater incentive to engage in this conduct.

[10] *See* Opp. 89 n.252 (emphasis in original).

2. Whereas Comcast is wholly dismissive of most concerns regarding the effect of the merger, it acknowledges that the scale-related advantages in acquiring programming that it will attain through the merger are "[c]onceptually . . . at least a relevant argument[.]"[11] Comcast nonetheless claims that "the Transaction is unlikely to affect the relative bargaining position of Comcast and content companies in any material fashion[.]"[12] Comcast thus concedes that the transaction will produce at least some cost savings in programming,[13] but claims that these savings will be "very small" because both Comcast and TWC are already large MVPDs that receive low rates.[14] Even if that were true, that misses the point. Assuming that the merger only produced small additional savings in programming costs, given that pre-merger Comcast already enjoys a substantial advantage over MVPDs in acquiring content – as Comcast and its own economists acknowledge[15] – any reduction in programming costs resulting from the transaction is likely to give Comcast a further advantage over rivals.

[11] Opp. 156.

[12] *Id*.

[13] *Id*.

[14] In its Nov. 26 Ex Parte, Comcast claims (at Response to Question 1 Attachment at 2; Response to Question 2 Attachment at 2, 4) that any increase in size as a result of the transaction will be "modest" and that programmers will still have significant negotiating power. As an initial matter, a 30% increase in subscribers (from 22 to 29 million) is hardly modest. Moreover, to the extent that Comcast is suggesting that such a large increase will not affect rates, that position is contrary to the conclusions of the Commission, other MVPDs, and independent analysts (as well as Comcast's own prior statements). *See* CenturyLink Comments at 13-16 (collecting quotations). And the fact that programming costs have gone up somewhat for Comcast over the past decade is irrelevant, *see* Nov. 26 Ex Parte, Response to Question 2 Attachment at 4, as it does not compare those increases to the ones experienced by its smaller MVPD competitors.

[15] *See* Rosston-Topper Reply Report ¶ 56 ("[T]hese cost savings arise in part because Comcast estimated that some of its *existing* contracts may have somewhat lower prices than TWC contracts; Comcast did not anticipate any *additional* discounts to its own prices in its due diligence analysis for the TWC transaction [emphasis in original].").

Beyond that, however, it is dubious that Comcast will receive only small additional discounts. Comcast argues that the dynamics of the programming marketplace are such that it is unlikely to receive significantly lower prices than rivals because "it would not be advisable for a programmer to create too much differential between one MVPD's prices and another's in the same market, since that could drive subscribers to switch to the MVPD with lower wholesale pricing (and result in less revenue for the programmer)[.]"[16] But that argument assumes – without proof – that the MVPD that receives the significantly lower cost will pass those savings on to consumers, which has never proven to be the case with Comcast despite its existing cost advantages.[17] Moreover, if Comcast's theory were correct, it should have no objection to the condition that CenturyLink has proposed. The Commission should require Comcast to disclose the prices, terms, and conditions of contracts that it pays for programming – a proposed condition to which Comcast's reply offers no response.

II. COMCAST'S OPPOSITION AND RESPONSE CONFIRM ITS ANTICOMPETITIVE INTENT TO USE ITS DOMINANT POSITION IN MVPD SERVICES TO MONOPOLIZE THE MARKET FOR SPOT CABLE ADVERTISING

Far from offering assurances that it will not use its dominant position in video distribution to disadvantage smaller MVPDs and the independent firms that may represent them, Comcast declares that it should be free to shut MVPDs out of interconnects if they have the temerity to prefer to use independent advertising representatives, rather than Comcast Spotlight, to represent

---

[16] Opp. 158.

[17] In fact, by at least some accounts, Comcast's prices are higher, not lower, than rival MVPDs, despite its significant cost advantages. *See* Petition To Deny of Free Press at 78, *Applications of Comcast Corp. and Time Warner Cable Inc.*, MB Docket No. 14-57 (FCC filed Aug. 25, 2014), http://apps.fcc.gov/ecfs/document/view?id=7521818670.

them.[18] Comcast's claim is incorrect as a matter of antitrust law, and it underscores the need to require divestiture of Comcast Spotlight and TWC Media Sales as a condition of allowing the transaction to proceed – or, at a minimum, to impose strict conditions that prevent the combined entity from effectively controlling competitors' access to advertisers.

As an initial matter, Comcast seeks to divert the Commission's attention by focusing on whether there is harm to advertisers.[19] CenturyLink, however, demonstrated that the transaction harmed the public interest by putting Comcast in a strong position to deprive *competitive MVPDs* of revenue and thus impede competition in that market.[20]

Beyond that, Comcast attempts to downplay the role of representation firms in the market for spot advertising, but in all segments of the market – and particularly in the market for regional and national advertisers – representation firms play a critical role, especially for smaller MVPDs (like CenturyLink's Prism service). By requiring representation firms to compete to provide the best terms and prices for the services they provide, the Commission can ensure that competing MVPDs avoid Comcast Spotlight's monopoly pricing. In the absence of such competition among firms – preferably unaffiliated firms – Comcast can (and apparently will) use its control over access to advertisers to put competing MVPDs at a disadvantage by extracting increasing percentages of competitors' revenues, effectively raising its rivals' costs.

Comcast insists that it has no intention to exclude competing MVPDs from interconnects.[21] Comcast accordingly should have no objection to an enforceable condition

[18] *See* Opp. 278-79 ("[t]here is nothing anticompetitive about a firm electing not to do business with one of its competitors[]").

[19] *See id*. 268 ("Notably, no *advertisers* oppose the Transaction [emphasis in original].").

[20] *See* CenturyLink Comments at 21-28.

[21] *See* Opp. 276-77.

requiring non-discriminatory access to interconnects for all MVPDs. Furthermore, and contrary to Comcast's arguments, any such condition must ensure that a representative of any participant in the interconnect should have the ability to sell spot advertising. It cannot be a condition of participation in the interconnect that an MVPD *also* accept the representation services of the firm affiliated with the dominant MVPD in the interconnect.

Comcast's exclusion of MVPDs' independent representation firms from sale of spot advertising through local interconnects not only threatens significant harm to competing MVPDs, but also violates antitrust law. Comcast declares that monopolists generally have no duty to deal with rivals, citing *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*.[22] But Comcast misunderstands the role and structure of interconnects. Interconnects do hold an effective monopoly on sale of regional cable advertising spots. That monopoly, however, is the result of a cooperative agreement among rivals to make their spots available on a joint basis. When rivals join together to create a joint resource, there is a great risk that a dominant firm or firms will use control over that resource to disadvantage or exclude rivals, and such conduct is therefore subject to exacting scrutiny under Section 1 and Section 2 of the Sherman Act.[23] Here, the competitive benefit of regional interconnects is that they create an advertising opportunity – spot advertising on all MVPD systems within a region – that cannot be offered without cooperation among rivals.[24] But the pro-competitive justification does not

[22] 540 U.S. 398 (2004).

[23] *See, e.g.*, *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284 (1985); *NCAA v. Board of Regents of the Univ. of Oklahoma*, 468 U.S. 85 (1984); *United States v. Terminal R.R. Ass'n*, 224 U.S. 383 (1912).

[24] *Cf. Broadcast Music, Inc. v. CBS*, 441 U.S. 1 (1979).

provide any rationale for barring independent sales representatives from selling spot advertising on interconnects.

To the contrary, there is no apparent justification for extending the cooperative arrangement for joint provision of spot cable advertising to the exclusive provision of representation services. To be sure, Comcast argues that it invests resources in hiring sales personnel and in sales and marketing efforts. But Comcast does not and cannot explain that such investment is necessary to the creation of the interconnect. Rather, to the extent Comcast is referring to investment in its sales representation services, a rival advertising representative cannot free-ride on those investments, but must make comparable investments to compete with Comcast. In sum, Comcast's dominant position in the interconnects in which it participates does not justify its anticompetitive exclusion of rival MVPDs that prefer to use independent advertising sales representatives.[25]

More generally, Comcast's cavalier defense of its anticompetitive refusals to deal with rival MVPDs' independent representation firms magnifies the need for structural conditions or stringent and enforceable conditions that ensure that rival MVPDs are not subject to Comcast's predatory behavior in the market for local cable advertising. The most effective remedy would be divestiture of affiliated advertising representation firms; independent firms will have appropriate incentives to compete on price, quality, and innovation – rather than to favor the interests of their corporate affiliates. As a second-best, the Commission should impose stringent

[25] Requiring a participating MVPD to accept Comcast's representation services as a condition of participation in a Comcast-dominated interconnect is also a *per se* unlawful tying arrangement, given the interconnects' monopoly control over the sale of regional cable spot advertising. *See Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2 (1984).

antidiscrimination safeguards to ensure that Comcast cannot disadvantage rivals through its bottleneck control over access to local cable advertising.[26]

III. THE COMMISSION SHOULD NOT APPROVE THIS MERGER UNLESS COMCAST AGREES TO STOP IMPEDING ENTRY THROUGH FRANCHISE PROCEEDINGS

In its initial Comments, CenturyLink demonstrated that Comcast has the incentive to use proceedings before Local Franchising Authorities ("LFAs") to hamstring the attempts of facilities-based providers like CenturyLink to enter new markets.[27] CenturyLink further demonstrated that Comcast, unlike other incumbent cable companies, has acted on that incentive and has in fact slowed entry and raised costs for CenturyLink in multiple locations.[28] This transaction thus threatens harm to the public if Comcast's tactics are exported to the locations where TWC currently offers service.[29]

In response, Comcast does not dispute that it, unlike other cable incumbents, has made a practice of seeking to impose build-out conditions on new facilities-based competitors. And it never disputes that, absent action by this Commission, it will expand those tactics to areas now served by TWC. The Commission should thus reject Comcast's unsupported and incorrect assertion that this issue has "nothing to do with this Transaction."[30]

Comcast next tries briefly to defend its conduct on the merits. It claims chiefly that it was not, in fact, extraordinarily aggressive in protecting itself from competitive entry.[31]

---

[26] *See* CenturyLink Comments at 28-30.

[27] *See id.* at 30-31.

[28] *See id.* at 32-34.

[29] *See id.* at 33.

[30] Opp. 301.

[31] *Id.*

Comcast, however, has sought to impede CenturyLink's entry at every turn, going so far as to oppose the draft model franchise document adopted by the Colorado Communications and Utilities Alliance ("CCUA"), a group comprised of cities and counties in Colorado that collaboratively protect the interests of their communities in all matters related to local telecommunications. Going even further, Comcast continues to oppose the use of the CCUA model document in the specific localities.

Nor is Comcast on solid ground in contending that its positions are "reasonable" because they are "similar to the requirements that cable companies have faced[.]"[32] As the Commission has explained, imposing similar requirements on a new facilities-based entrant creates significant competitive concerns: "Because the second provider realistically cannot count on acquiring a share of the market similar to the incumbent's share, the second entrant cannot justify a large initial deployment. Rather, a new entrant must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding."[33]

Finally, Comcast claims, without any citation or other support, that a voluntary commitment to take action that would avoid these transaction-specific harms would constitute an "unprecedented restriction[]" on its "First Amendment rights."[34] In fact, however, as CenturyLink has already shown (and Comcast does not dispute), the Commission has previously

[32] Opp. 301.

[33] Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101, 5118 ¶ 35 (2007) (footnotes omitted).

[34] Opp. 302.

accepted similar commitments as a condition of approving a transaction.[35] An agreement not to oppose or intervene in attempts by a competitive franchise applicant to obtain a franchise would thus be consistent with those prior cases. Even more clearly, an agreement not to oppose expedition of local franchising proceedings and to make transparent Comcast's contacts with those authorities – the same kind of transparency that Comcast must provide under this Commission's ex parte rules – would not violate any of Comcast's rights.

IV. AS AN ENTITY LARGER THAN NEARLY ALL ILECS, THERE IS NO REASON THAT COMCAST SHOULD CONTINUE TO OBTAIN UNEs OR INTERCONNECTION UNDER SECTION 251(c)

Comcast does not dispute that, if this transaction is completed, it will be larger than all but two ILECs in the country.[36] Nor does it contest the fact that it will have the resources and scale to obtain interconnection and network facilities without the benefit of low, regulated TELRIC rates and asymmetrical interconnection rights under section 251(c) and the Commission's rules.[37] Finally, Comcast does not contest that allowing it to continue to exploit those rules would lead to the problems caused by overbroad section 251 requirements without any countervailing benefit.[38] Instead, Comcast argues that CenturyLink is effectively seeking forbearance under 47 U.S.C. § 160 without making a "market-by-market" showing.[39] In fact, however, CenturyLink is not seeking market-wide relief in any geographic area. Instead, it is making a transaction-specific argument that Comcast does not and cannot contest: Regardless of

---

[35] *See* CenturyLink Comments at 34 n.71 (collecting examples of parties agreeing to forgo right to seek relief from regulators).

[36] *See id*. at 38.

[37] *See id.* at 38, 40.

[38] *See id.* at 38-39 (collecting Commission statements explaining that overbroad unbundling creates disincentives to investment).

[39] Opp. 193.

whether other parties may still need UNEs and interconnection under section 251(c) in some or all markets, after this transaction *Comcast* will be of such a massive scale that it will not need them in any market. Accordingly, allowing Comcast to retain that regulatory benefit post-merger will cause the public-interest harms caused by overbroad access under section 251(c)(3).

Because the transaction would create those public-interest harms, Comcast is simply wrong in its unsupported assertion that CenturyLink is seeking to put its "interests before those of consumers."[40] Rather, it is Comcast that is seeking to receive a regulatory windfall that it plainly does not need, even though that windfall is contrary to the public interest. The Commission should thus not approve this transaction unless Comcast agrees not to order UNEs or interconnection under section 251(c)(3).

CONCLUSION

The Commission should not approve this transaction unless it adopts the conditions discussed above and in CenturyLink's Comments.

Respectfully submitted,

CENTURYLINK

By: /s/ Tiffany West Smink
Tiffany West Smink
1099 New York Avenue, N.W.
Suite 250
Washington, D.C. 20001
(303) 992-2506
tiffany.smink@centurylink.com

Melissa E. Newman
1099 New York Avenue, N.W.
Suite 250
Washington, D.C. 20001
(202) 429-3120
melissa.newman@centurylink.com

Its Attorney

December 23, 2014

---

[40] *Id.*

CERTIFICATE OF SERVICE

I, Keith D. Nieb, do hereby certify that on this 23rd day of December, 2014, a copy of the foregoing **REPLY COMMENTS OF CENTURYLINK, INC**. were served via electronic mail on the following persons as noted below.

Vanessa Lemmé
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(Vanessa.Lemme@fcc.gov)

Marcia Glaubermen
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(Marcia.Glauberman@fcc.gov)

William Dever
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(William.Dever@fcc.gov)

Jim Bird
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(TransactionTeam@fcc.gov)

Best Copy & Printing, Inc.
c/o Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(fcc@bcpiweb.com)

/s/ Keith D. Nieb
Keith D. Nieb