

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Comcast Corporation, Time)	MB Docket No. 14-57
Warner Cable, Inc., Charter Communications,)	
Inc., and Spinco to Assign and Transfer)	
Control of FCC Licenses and Other)	
Authorizations)	

**COMMENTS OF BEHALF OF THE ISSUING AUTHORITY,
MAYOR MARTIN J. WALSH
CITY OF BOSTON, MASSACHUSETTS**

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I. Introduction

Under the laws of the Commonwealth of Massachusetts, the Mayor of Boston is the sole “Issuing Authority” for a cable license (franchise) within Boston. In that role, Mayor Martin J. Walsh files these comments with the Commission regarding the joint application of Comcast Corporation (“Comcast”)¹ and Time Warner Cable (“TWC”) hereinafter referred to as “Applicants” for Federal Communications Commission (“FCC”) approval of assorted licenses and authorizations under the Communications Act (“Act”).²

Boston files these comments to emphasize that the Applicants bear the burden of demonstrating that all the transactions are in the public interest and that Applicants must do so by a preponderance of the evidence.³ The Commission should only approve the merger after having weighed the potential public interest harms, as well as benefits,⁴ and concluding that the transaction serves not only the public interest, convenience, and necessity,⁵ but that the deal does not violate or interfere with the Communications Act’s objectives.⁶ Boston believes such a

¹ Comcast has about 170,000 residential customers in Boston, generating \$6 million annually in franchise fees (street rent) to the City and \$3 million for network-related and access television support. Local fees are based only on video services revenue, not broadband or voice. Comcast’s gross Boston revenue we estimate at \$275 million based on their 10-K and local 2012 reports.

² The City of Boston would also like to associate itself with the thoughtful concerns raised by New York Mayor de Blasio and a filing made by the Counties of Los Angeles, CA, Montgomery County, Maryland, Ramsey County, Minnesota and the City of Portland, Oregon. Boston was also actively engaged with other local governments in reviewing merger plans through the National Association of Telecommunications Officers and Advisors (NATOA.)

³ *In the Matter of New Corp. and the DIRECTV Group, Inc., and Liberty Media Corp., For Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276-3277 ¶22 (2008) (*NewsCorp/DIRECTV Order*).

⁴ *In the Matter of General Motors Corp. and Hughes Elec. Corp. and the News Corp. Ltd., for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483 ¶15 (2004) (*GM/News Corp Order*).

⁵ 47 U.S.C. §§ 214; 257(b); 309(e); 310(d).

⁶ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., to AT&T Corp.*, Memorandum Opinion and Order, 15 FCC RCD 9816 ¶¶8,9 (2000); *GM/News Corp Order*, 19 FCC Rcd 473, ¶16.

standard can only be met, if met at all, if there are significant, transparent and enforceable conditions imposed on the transaction.

Mayor Walsh is most concerned with the need to protect consumers if this transaction is approved, especially low income customers, who in many areas will have no other choice but Comcast for access to true high speed broadband service.⁷ For that reason, Mayor Walsh adds his voice to others calling for merger conditions that would ensure:

- Affordable access for video and data services for low-income and other underserved residents, including the elderly and persons with disabilities;
- Improved and enforceable customer service standards;
- Support for institutional networks and municipal resiliency initiatives;
- Meaningful and stable support for public, educational and government channels;
- Protection and promotion of an open Internet, through Net Neutrality and related “open Internet” commitments.

II. The Impact of Applicants’ Merger

The City of Boston is currently served by Comcast, but does not have authority to review the proposed transaction under its current franchise. It is not in a position to ensure that the transfer is conditioned to protect the public in Boston through local action. The proposed transaction raises a number of concerns that it will be necessary for the Commission to address.

⁷ This is a real concern for Boston has most of the City lacks choice in residential broadband. Unlike every other major metropolitan area in the Northeast section of the nation, our local exchange carrier has chosen not to offer its residential video and data service over fiber in the City of Boston. We understand from a national perspective we are more the norm than the exception. According to the Commission’s own research (In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming MB Docket No. 12-203 (rel. July 22, 2013)(“Fifteenth Annual Video Competition Report”) para. 36, Table 2.) the vast majority of Americans, **64.7 percent of homes**, only have access to one wireline MVPD, the incumbent cable operator. And for more than 70 percent of those homes, the incumbent cable operator is one of the Applicants.

These include, for example, concerns regarding the impact of the increased size and market power of Comcast on the public and the City. That increased size is likely to make future competitive entry more difficult. The increased concentration and market power justify strong conditions to protect the public, and to ensure that Comcast is obligated to be responsive to local needs and interests now and in the future. In addition, the transaction compounds the problems created by the NBCUniversal merger – problems that the Commission found warranted conditions designed to preserve local programming, ensure consumers could obtain basic Internet services at reasonable prices, and preserve the Open Internet. Those conditions also need to be preserved and expanded. Finally, the application fails to show that the transaction will have concrete benefits for anyone, including existing Comcast subscribers. As the very least, to serve the public interest, the merger should be subject to conditions that maintain and improve current protections for consumers, and ensure advanced services are available and affordable to all.

Boston has consistently sought to protect the public through its cable franchising process through consumer protections over and above those found in the Code of Federal Regulations; through institutional network requirements that ensure that public institutions are interconnected and able to provide advanced services to the public, through strong requirements for public, educational and government programming (PEG) and through affordable lifeline Basic cable TV services rates and senior discounts. It intends to continue to do so in the future, but it can only do so if the Commission attaches appropriate conditions to this transaction, including conditions that ensure that cable systems meet public needs for advanced services through “Net Neutrality” commitments and provisions that ensure affordable broadband service is widely available.

III. The Need to Protect Consumers in Digital Age

Boston's digital divide pilot with Comcast, "Digital Connectors", is acknowledged to be the forerunner of what became Comcast's Internet Essentials. Eligibility for Digital Connectors was graduation from one of Boston's digital literacy initiatives: Technology Goes Home (TGH)⁸, Connected Living, and, On Line Learning Readiness.

Internet Essentials is Comcast's national broadband adoption program for low-income families. (The original Internet Essentials commitment was offered by Comcast as a social commitment to help Comcast gain the NBC Universal merger three years ago.) The commitment expired June 2014, but has been renewed by Comcast in light of the TWC merger for another 3 years.

Comcast's Internet Essentials addresses the Digital Divide by offering Internet access to certain low-income families for only \$9.95/month. Comcast indicates that 2.6 million households could be eligible for Internet Essentials, but because the plan has some overly stringent requirements for eligibility, nationally it appears that only about 6 - 12% of those who are eligible have even signed up. The experience of low penetration is reflected in Boston where Comcast reports only 1,154 Internet Essentials connections through fiscal year 2012, despite the fact that Boston educates more than 57,000 students in 128 schools in Boston, a school system that has a system-wide free lunch eligibility.⁹ Of the 846 households submitted to the Internet

⁸ Technology Goes Home ("TGH") is a school-based broadband program, where parent and children learn the benefits of the Internet as a team, at the child's school. It is taught by teachers from the school and has been expanded training through libraries, community centers, Boston Housing Authority initiatives and public computing centers. Over the last 3 years TGH has trained more than 11,000 families in Boston and is offering services beyond Boston in other cities. TGH seeks to grow by 4,500 individuals annually. TGH beneficiaries are the type of homes that need to be protected in this world. The majority of household incomes in TGH homes is under \$20,000 a year, with 79% being single female heads of household and 41% of adults are English language learners.

⁹ Comcast reports somewhere between 1,000 - 2,000 IE cable modem service activations in the state. By contrast, the approximate average daily participation in free school lunch in Mass is about 288,000. (see <http://frac.org/wp->

Essentials program by Boston's Technology Goes Home program through Fall 2013, only 255 were successful in signing up for service.

Boston calls on the Commission, should it choose to approve the pending merger, to extend the commitment to Internet Essentials. As Boston sees it, "Digital Equity" will not be achieved in 3 years; there is no reason to expect a competitive alternative will supplant the need for the program in three years; there is therefore no reason to limit the commitment to three years.

Boston further recommends that Comcast commit to make the program a success by agreeing to meet adoption or penetration rates, eliminating enrollment obstacles, and streamlining the application process to increase the program's success rate.

Finally, Comcast should expand its commitment to Internet Essentials by offering Wi-Fi-enabled in-residence modems so that Internet Essential families can share the bandwidth amongst themselves. Low-cost tablets, netbooks and smartphones do not typically support connectivity via the Ethernet or USB ports found on by the equipment supplied to Internet Essentials customers. By providing modems that support residential Wi-Fi service, Internet Essentials would be more meaningful by allowing customers to take advantage of more affordable equipment.

IV. The Need to Protect Public Access Programming

As our world becomes global through the use of digital media, the need to ensure that local and independent voices are heard becomes that much greater. In Boston, those local independent voices have been preserved through Boston's support of public, educational and governmental (municipal) channels. Both Boston City TV and the Boston Neighborhood

content/uploads/2010/07/ma.pdf). Comcast serves about 70% of the state's roughly 1.4 million cable TV subscribers, about 1.4 million.

Network have grown in utilization, viewership, relevance, variety, and quality. Boston is fortunate to have a strong partnership between city government, the access community and cable providers, all of whom are committed to giving something back to the people of Boston. PEG programming requirements have been a central part of the franchising agreements between the mayors of Boston and the cable operators that have sought to provide services in the city. The result has been 32 years of community media that has become engrained in the civic, social and cultural fabric of the city.

Boston will continue to take every step that it can to ensure that PEG programming will continue to meet local needs in Boston. Comcast historically has been a steadfast partner in these endeavors, but the Commission must ensure that its new larger status will not provide it the opportunity or incentive to retreat from its historic commitments. It is therefore appropriate to ensure, among other things, Comcast cannot disadvantage PEG signals, or relegate them to second-class status as compared to other signals, and particularly, local broadcast signals. PEG programmers should be able to take full advantage of the advances in cable television technology as Comcast improves its systems, and develops new platforms for video delivery.

V. Network Neutrality

Boston joins with other cities and commenters in urging the Commission to adopt conditions that will ensure that the increased concentration that would result from this merger does not endanger the Open Internet. The Open Internet could be threatened unless:

- *The Commission adopts conditions that ensure that Comcast will operate pursuant to meaningful and enforceable “net neutrality” conditions.* Regardless of what approach the Commission takes generally to preservation of the open Internet, the regional and

national impacts of the proposed transactions justify strong neutrality conditions – and should not permit creation of “fast lanes.”

- *The Commission should ensure that Comcast will interconnect with other providers on reasonable terms – and those terms need to be subject to Commission review.* This problem, the “Netflix” problem will only be exacerbated by the increased concentration resulting from this merger.
- *The Commission should ensure that Comcast cannot avoid neutrality conditions through creation of alternative pathways to end users.* Comcast can segment its network to stream video and other services to subscribers, while avoiding data caps and speed limits on Internet service. The Commission recognized the issue in the NBCUniversal merger, and the problems will become more significant over time. It will be particularly important to ensure that subscribers can obtain critical local information without facing speed bumps or data caps.

VI The Need for Enforceable Merger Conditions

As other local officials¹⁰ have noted, if the Commission wants to protect consumers, it must make ensure that conditions imposed upon the merger to realize the benefits claimed by the applicants and protect against harms, are enforceable. A promise or an aspirational statement of goals does nothing to protect consumers.

A review of the Applicants’ proposals reveals that the public interest conditions proposed are not sufficient to protect against harm or ensure the benefits of the merger are realized. The applicants simply propose to extend the NBCUniversal merger conditions to Time Warner. Otherwise, the Applicants do not commit to any specific obligations and offer virtually no

¹⁰ See e.g. Comments of NATOA, Portland, Los Angeles County *et. al.*

concrete details about when potential benefits will become reality. Nor is the penalty for failure to achieve the proposed benefit defined. The Commission must identify the benefits; establish time lines for achieving the benefit; and, list penalties for failure to achieve those benefits.

VII. Conclusion

The Applicants' proposed merger will change the nation's broadband landscape. Boston and the nation's consumers rely upon the Commission to demand that the Applicants meet their burden of demonstrating the required "public benefits" by testing and rigorously analyzing the merger's impacts. No such analysis can be considered adequate absent transparent and enforceable merger conditions that protect consumers and the nation's broadband network.

Respectfully submitted

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