



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

July 21, 2014

Hon. Kathleen H. Burgess
Secretary, Public Service Commission
Three Empire State Plaza
Albany, New York 12223
secretary@dps.ny.gov

Re: **Case 14-M-0183**, Petition of Comcast Corporation and Time Warner Cable Inc.

Commissioners of the Public Service Commission:

I write today to urge the Commission to take steps to ensure that the proposed Comcast-Time Warner merger will serve the public interest by expanding access to fast, reliable and affordable internet connectivity for individuals, businesses, and institutions throughout the five boroughs of New York City. In addition, I urge the Commission to carefully examine Comcast's commitment to "net neutrality" as part of its review.

Ensuring High-Speed, Affordable Internet Access

Internet connectivity is the fourth utility of the modern age. As Professor Susan Crawford of the Benjamin N. Cardozo School of Law wrote, "Truly high-speed wired Internet access is as basic to innovation, economic growth, social communication, and the country's competitiveness as electricity was a century ago."

From the student taking advantage of interactive e-learning tools at school and the mid-career professional boosting his skills through online courses, to the small business owner trying to stake her claim to a piece of the Silicon Alley story, fast, reliable, affordable internet is an indispensable component of everyday life.

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.¹ 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.

In fact, many entrepreneurs seeking affordable office space in former industrial districts within the five boroughs have had to abandon those plans after discovering high-speed internet connections were not available.

This poor service has a disproportionate effect on low-income Americans. Indeed, despite billions of dollars in federal investment in broadband infrastructure and tools to close the digital divide, a considerable gap persists. A survey last year by the Pew Internet and American Life Project found that 54 percent of adults earning less than \$30,000 a year had an in-home broadband connection compared with 88 percent of those making \$75,000 or more.ⁱⁱ

Moreover, connectivity at New York City's "anchor institutions"—such as public schools and libraries—is falling short of the goals set out in the President's National Broadband Plan.

Last year, I published a report as Manhattan borough president based on an analysis of data from the New York City Department of Education detailing the maximum internet speeds at 1,236 educational facilities. We found that **over 75 percent of school facilities have maximum download speeds of 10 Mbps or less - 100 times slower** than the 1 gigabit per second target speed in the National Broadband Plan.

While there is a significant digital divide in New York on socioeconomic lines, the truth is that *no* neighborhood is immune from poor internet. From Tribeca to Tompkinsville, the Upper East Side to East Flatbush, the South Bronx to Sheepshead Bay, communities across the city and throughout the state are affected by poor broadband. The latest data from the FCC shows that, as of June 30, 2013, over 40 percent of connections in New York State are below 3 Mbps.

Should the merger be approved, Comcast would be obligated to comply with the existing franchise agreement between Time Warner Cable and the City of New York. However, in order for the proposed merger to truly be in the public interest, Comcast must have a more detailed plan to address these ongoing challenges and to further close the digital divide that leaves so many low-income New Yorkers cut off from the information superhighway.

To date, Comcast's efforts to close the digital divide have focused on its "Internet Essentials" program, which was launched in 2012.ⁱⁱⁱ The program offers a 5 megabit/second connection for \$9.95/month (plus tax) to families matching all of the following criteria:

- Located within an area where Comcast offers Internet service
- Have at least one child eligible to participate in the National School Lunch Program
- Have not subscribed to Comcast Internet service within the last 90 days
- Does not have an overdue Comcast bill or unreturned equipment

While the aim of the program is laudatory, its slow speed, limited eligibility, and inadequate outreach have kept high-quality connectivity beyond the reach of millions of low-income Americans.

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.^{iv} 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 company is meeting its commitments to low-income residents of the Empire State.

We have seen how telecommunications companies will promise to expand access as a condition of a merger, only to shirk their commitments once the merger has been approved. For instance, as part of its 2006 purchase of BellSouth, AT&T told Congress that it would work to provide customers "greater access and more choices for broadband, no matter where they live or work."^v However, later reports found that the FCC relied on the companies themselves to report their own merger compliance and did not conduct independent audits to verify their claims.^{vi}

A Commitment to Net Neutrality

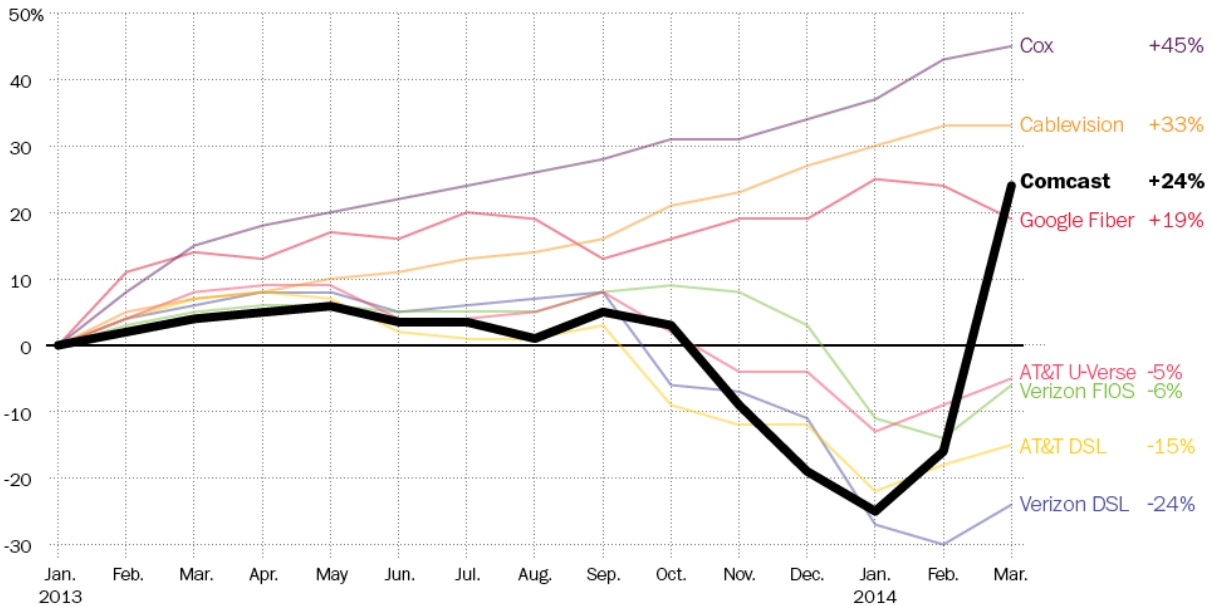
The public interest is not only served by closing the digital divide, but also by ensuring that the internet remains the modern-day agora where all people can engage in robust discussion on an equal footing and where the power of ideas, rather than the size of one's pocketbook, guides the marketplace. To that end, the PSC should press Comcast on its commitment to net neutrality.

While the FCC has not declared internet providers to be "common carriers", state law has effectively done so within the Empire State. Under 16 NYCRR Part 605, a common carrier is defined as "a corporation that holds itself out to provide service to the public for hire to provide conduit services including voice, data, or video by electrical, electronic, electromagnetic or photonic means."

Importantly, the law requires these carriers to "**provide publicly offered conduit services on demand to any similarly situated user on substantially similar terms, subject to the availability of facilities and capacity.**" (emphasis added).

In recent months, Comcast has shown that it is willing to sacrifice net neutrality in order to squeeze additional payment out of content providers, such as Netflix. As shown in the chart below, Netflix download speeds on the Comcast network deteriorated rapidly prior to an agreement whereby Netflix now pays Comcast for preferential access.

% change in Netflix download speed since Jan. 2013, by I.S.P.



SOURCE: Netflix
GRAPHIC: The Washington Post. Published April 24, 2014

Consumers have a legitimate fear that if access to fiber-optic networks is eventually for sale to the highest bidder, then not only will it stifle the entrepreneurial energy unleashed by the democratizing forces of the internet, but will also potentially lead to higher prices for consumers in accessing content. Under that scenario, consumers are hit *twice*—first by paying for internet access to their home and second by paying for certain content providers’ preferred access.

Internet neutrality has been a core principle of the web since its founding and the PSC must examine whether Comcast’s recent deal with Netflix is a sign that the company is eroding this principle in a manner that conflicts with the public interest.

In the past, the PSC was required to grant its approval for a cable merger unless it found that the transaction was not in the public interest. However, thanks to recent changes in the State’s cable franchise law that recognize internet access as a utility on par with gas and electricity, the burden has shifted to the cable companies to demonstrate that the transaction is now in the public interest.

I urge the Commission to hold Comcast to that burden and to ensure that the merger is in the best interest of the approximately 2.6 million Time Warner Cable subscribers in New York State and many more for whom quality, affordable internet access remains unavailable. And I urge Comcast to view this as an opportunity to do the right thing by introducing itself to the New York market as a company that values equitable access and understands that its product—the fourth utility of the modern age—must be available to all New Yorkers.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer", written in a cursive style.

Scott M. Stringer
Comptroller
City of New York

ⁱ http://www.newamerica.net/publications/policy/the_cost_of_connectivity.

ⁱⁱ <http://www.pewinternet.org/2013/08/26/home-broadband-2013/>.

ⁱⁱⁱ <https://www.internetessentials.com/how-it-works>.

^{iv} <http://www.publicintegrity.org/2014/05/28/14798/whos-eligible-comcasts-internet-essentials>.

^v http://www.sec.gov/Archives/edgar/data/732713/000110465906043264/a06-12347_7425.htm.

^{vi} http://www.huffingtonpost.com/2012/11/18/rural-att-customers-merger-Internet_n_1914508.html.