

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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Joint Petition of

TIME WARNER CABLE INC.

and

Case 14-M-0183

COMCAST CORPORATION

For Approval of a Holding Company Level
Transfer of Control

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COMMENTS OF COMMON CAUSE NEW YORK
IN OPPOSITION TO THE JOINT PETITION OF
TIME WARNER CABLE INC. AND COMCAST CORPORATION

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Date: August 8, 2014

PRELIMINARY STATEMENT

Common Cause New York¹ (“CCNY”), on behalf of its nearly 20,000 members across the State of New York,² submits the following comments in opposition to the proposed merger of Comcast Corporation (“Comcast”) and Time Warner Cable Inc. (“TWC”).

By way of Joint Petition, Comcast is seeking a holding company level transfer that would result in its acquisition of TWC, as well as its subsidiaries in this state. Approval of this transaction, however, would be contrary to not only the purpose of the New York Public Service Commission (“PSC” or “Commission”), but also the public interest. Although the merger of Comcast, the nation’s largest cable company, and TWC, the nation’s second largest cable company, poses serious antitrust concerns,³ the Commission’s inquiry is distinct from, and broader than, an antitrust inquiry. It is well within the Commission’s authority to withhold approval of the merger as not within the public interest, even if the merger is not anti-competitive. Further, given the summary nature of the assertions made in the Joint Petition, the facts which contradict those assertions, and the history of Comcast’s conduct, they do not meet their burden, which necessitates an affirmative showing that the proposed merger will result in net, positive benefits for New Yorkers.

¹ CCNY is the statewide New York chapter of Common Cause, a not-for-profit organization that is dedicated to restoring the core values of American democracy, as well as reinventing an open, honest and accountable government that empowers ordinary people to make their voices heard.

² With members in every county of the state, CCNY’s membership is comprised of current and former customers of TWC, as well as current and former customers of Comcast, who will undoubtedly be impacted by the outcome of this proceeding.

³ Mark Cooper, Buyer and Bottleneck Market Power Make the Comcast-Time Warner Merger “Unapprovable,” CONSUMER FED’N OF AM., at 11 (Apr. 2014), *available at* <http://www.consumerfed.org/pdfs/cfa-comcast-tw-merger-analysis.pdf> (“The proposed merger is a clear violation of Sections 1 and 2 of the Sherman Act and Sections 7, 12, 15 and 16 of the Clayton Act.”)

As a necessary consequence, CCNY respectfully urges this Commission to deny the subject Joint Petition outright.

ARGUMENT

I. THE PSC HAS BROAD STATUTORY AUTHORITY TO DENY THE JOINT PETITION OF COMCAST AND TWC.

A. The PSC Has Ample Statutory Authority to Deny the Joint Petition of Comcast and TWC.

The broad jurisdiction of states to regulate corporate conduct in order to protect the public has long been established, as evidenced by the U.S. Supreme Court’s decision in *Munn v. Illinois*.⁴ In that decision, the Court clearly stated the proposition that it is, in fact, appropriate for states to step in to regulate businesses—particularly those “clothed in the public interest” whose actions are of “public consequence.” Once the U.S. Supreme Court expressed approval for the use of commissions to set rates and regulate businesses whose actions are of “public consequence” in *Smyth v. Ames*,⁵ states, led by Wisconsin and then New York, set up Public Utility Commissions. Additionally, in *Nebbia v. New York*,⁶ the U.S. Supreme Court recognized the ability of states to regulate not only monopolies, but also industries within their borders.⁷

The laws of this state—specifically, the New York State Public Service Law (“PSL”)—affords the PSC broad statutory authority to deny the Joint Petition of Comcast and TWC. When the PSC was created by statute in 1907, its enabling legislation set forth its primary purpose: to protect the public.⁸ New York Courts have recognized that “the paramount purpose of the enactment of the Public Service Commissions Law was the protection and enforcement of the

⁴ 94 U.S. 113 (1876).

⁵ 169 U.S. 466, 545 (1898)

⁶ 291 U.S. 502 (1934).

⁷ *Id.* at 536.

⁸ *People ex rel. Delaware & H. Co. v. Stevens*, 197 N.Y. 1 (N.Y. 1909).

rights of the public." ⁹ This law was passed by the Legislature in response to the general public's desire to secure "publicity in the affairs of public service corporations," as well as "to guard and protect the interests of the public in their relations with such corporations."¹⁰

The joint Petition seeks approval of the merger pursuant to PSL §§99, 100 and 222.

According to PSL § 99(2):

No franchise nor any right to . . . own or operate a telegraph line or telephone line shall be . . . transferred . . . unless the transfer shall have been approved by the commission. No telephone corporation shall transfer . . . its works or system or any part of such works or system to any . . . corporation . . . without the written consent of the commission.

PSL § 100 provides:

No telegraph corporation or telephone corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold any part of the capital stock of any telegraph corporation or telephone corporation organized or existing under the laws of this state unless authorized so to do by the commission.

While PSL §99(2) does not articulate a public interest standard, in various instances, however, the Commission has applied the public interest standard.¹¹ More specifically, in its review of proposed mergers, the PSC has three duties: (1) to ensure that the interests of ratepayers are served by the transfer of the New York Telephone system; (2) to ensure that the Commission can continue to effectively regulate the merged entity; and (3) to determine what conditions should be placed on the transfer to serve the policy goals of the PSC, such as the enhancement of competition, as well as the maintenance and improvement of service quality.

⁹ Id. At 9.

¹⁰ *People ex rel. Third A. R. Co. v. Public Service Comm'n*, 145 A.D. 318 (N.Y. App. Div. 1911).

¹¹ *E.G., Case 00-C-1415, Order Approving Transaction with Conditions*, May 11, 2001, p.2.

PSL § 100 also does not spell out conditions wherein the Commission must approve stock transfers. It does, however, provide that the PSC cannot consent to the transactions therein unless they are shown to be in the public interest, with case law supporting placing the burden of demonstrating that a transfer or sale is in the public interest on the petitioner.¹²

It is thus clear that, because the PSC has jurisdiction over the proposed merger of Comcast and TWC, it must determine that it would be “in the public interest.” This broad charge to protect the interests of the public, stands in distinction to the more narrow underlying purpose of the antitrust laws, which are to protect commerce and competitors. Here in New York, more than 60 years before the federal Sherman Antitrust Act,¹³ the Legislature passed a law making it a misdemeanor to conspire “to commit any act injurious to . . . trade or commerce.”¹⁴ Perhaps the clearest statement of the underlying purpose of the anti-trust laws can be found on the websites of the New York and federal officials charged with enforcement of antitrust laws.

The United State Department of Justice Antitrust Division describes its mission as follows:

“The mission of the Antitrust Division is to promote economic competition through enforcing and providing guidance on antitrust laws and principles.”¹⁵

Similarly, the New York Attorney General ‘s Antitrust Bureau describes its mission thusly:

“The Antitrust Bureau, part of the Division of Economic Justice, is responsible for enforcing the antitrust laws to prevent anticompetitive practices, and to promote competition in New York State.”¹⁶

¹² See *Digital Paging Systems, Inc. v. Public Service Commission*, 46 A.D.2d 92 (3d Dept. 1974).

¹³ 15 USC 1 et sq.

¹⁴ 2 R.S. 691, § 8(6) (enacted Dec. 10, 1828).

¹⁵ <http://www.justice.gov/atr/about/>

¹⁶ The Antitrust Bureau, New York State Office of the Attorney General, <http://www.ag.ny.gov/bureau/antitrust-bureau>

Therefore, in order to determine whether the merger is “in the public interest” , the PSC must examine much more than whether competition will be adversely impacted by the requested approval. Practices which may be found to satisfy the anti-trust laws, because they are not anti-competitive, may still have significant negative impact on the rate payers of New York. Thus, a determination by the U.S. Department of Justice that the planned merger is permissible under the antitrust laws, while providing potentially useful information, is not, and should not, be determinative of the PSC’s decision regarding the Joint Petition which must be governed by the PSL’s broader public interest standard.

B. The Public Interest Standard of PSL §222 Confers Broad Powers That Include the Ability to Block the Proposed Merger

In addition to the Commission’s authority to grant or withhold approval of the merger pursuant to PSL §§99(2) and 100, the scope of the PSC’s authority to examine, and if necessary, to block mergers or sales of cable television systems was recently expanded through the Legislature’s amendment of Public Service Law §222. By that section’s newly expanded very terms, it is clear that the PSC has the ability to block any merger through withholding its approval:

“No [merger or consolidation of any two or more cable television companies] shall be effective without the prior approval of the commission.” PSL §222 (1)

PSL §222 (3) (b), as recently amended, sets forth the standard to be applied in a manner which makes it clear that approval is not automatic. The opening words of that provision state “The Commission *shall not* approve the application ...unless...”[emphasis added], clearly indicating that the PSC has the authority to bar the merger as it would apply to cable franchises located in New York State.

As another indication that rejecting the merger is within the PSC's power, the public interest standard set forth in PSL §222 (3) (b), as recently amended, clearly sets the burden on the companies seeking approval:

b) The commission shall not approve the application for a transfer of a franchise, any transfer of control of a franchise or certificate of confirmation, or of facilities constituting a significant part of any cable television system unless the applicant demonstrates that the proposed transferee and the cable television system conform to the standards established in the regulations promulgated by the commission pursuant to section two hundred fifteen of this article, that approval would not be in violation of law, or any regulation or standard promulgated by the commission, and that the transfer is otherwise in the public interest; provided, however, that a failure to conform to the standards established in the regulations promulgated by the commission shall not preclude approval of any such application if the commission finds that such approval would serve the public interest.

Accordingly, in order to satisfy their burden of proof and attain approval of the proposed merger, Joint Petitioners must show a) that their companies are in compliance with the Commission's cable rules, that the merger does not violate any law and is in the public interest. Petitioners have not satisfied that burden.

II. THE MERGER IS NOT IN THE PUBLIC INTEREST AND SHOULD NOT GO FORWARD

Many arguments in opposition to the Joint Petition have been introduced by thousands of commenters. In the within opposition, Common Cause/NY addresses a few issues which we believe are of paramount importance or which may not have been made by others. We note that the paucity of the public record in this proceeding and the Joint Petitioners actions in resisting efforts to make the information provided to the PSC in response to interrogatories public.

A. The Record Does Not Establish that Petitioners Have Met Their Burden of Proof under PSL §222.

The Joint Petition says it is brought pursuant to PSL Sections 99, 100 and 222.¹⁷ Responding to the filing of the Joint Petition, Governor Cuomo announced that the proposed merger would “Undergo Stringent State Regulatory Scrutiny” and “that the New York State Public Service Commission will use its new regulatory powers to conduct a thorough and detailed investigation into Comcast Corporation’s proposed merger with Time Warner Cable, Inc. to determine whether the proposed transaction is in the best interest of Time Warner’s New York customers and the State as a whole.”¹⁸ As the Governor recognized in his release and as PSL §222 clearly indicates, the burden of proof is on the petitioners.

Nevertheless, the Joint Petition does not allege that the proposed merger satisfies the necessary statutory tests. The Petitioners fail to even mention much less allege in their Joint Petition whether they are in compliance with PSC cable rules, or have obtained any waivers of compliance from the PSC regarding matters in which they are not in compliance. Thus they did not address an essential element for review under the new law, their compliance with existing commission rules. There are no grounds for waiving this clear element of the newly adopted statutory standard. Accordingly, on that ground alone, the petition should be deemed insufficient.

Further, if any waiver of requirements is now sought or should be entertained by the Commission as a result of any late attempt by the Joint Petitioners to either supplement their Petition or to include new evidence of compliance, there should be an opportunity for public review of any such attempt.

¹⁷ Joint Petition, pg.1

¹⁸ Press Release, Governor’s Press Office, May 19, 2014.

Instead, the Joint Petitioners rely on their sweeping and unsupported assertion that the approval of the transaction would be in the public interest. As discussed below, their reliance is misplaced.

B. The Record Fails To Establish That The Merger Is In The Public Interest

a) Comcast's public comments indicate that any advantages arising from the merger will benefit Comcast but not New Yorkers.

Comcast, in comments to the press and in testimony before Congress, has taken the position that the requested merger will result in substantial cost savings and economies of scale. Estimates indicate that the potential savings could total over \$1 billion annually. Yet, Comcast has been careful in the Joint Petition and in public comments to avoid any suggestion that New York customers would benefit from those cost savings. At best, Comcast spokesmen have suggested that the merger might slow cable tv price increases.¹⁹

Rather than sharing any cost savings with its customers or TWC customers, Comcast is counting on “revenue synergies” accruing to its bottom line as a desired benefit of the proposed merger. The comments of Comcast Cable president, Neil Smit, speaking at the 2014 Deutsche Bank telecom and Media Conference, are revealing:

I think the revenue synergies are greater than the cost synergies. On the revenue synergies side the first would be *the residential area where we would seek to bundle more* and that is call center training, that's teaching people to sell another RTU on a call, on a service call, fix a billing problem, *upsell to a third product, so just bundling better.* [Emphasis added] ²⁰

¹⁹ Bob Fernandez, “Before a House committee, Comcast exec fields more questions on Time Warner merger”, Philadelphia Inquirer, May 10, 2014, http://articles.philly.com/2014-05-10/business/49745413_1_comcast-time-warner-cable-comcast-corp-cable-tv-rate.

²⁰ <http://www.cmcas.com/secfiling.cfm?filingID=950103-14-1756>, as discussed in Wallsten, *An Economic Analysis of the Proposed Comcast/Time Warner Cable Merger*, Technology Policy Institute, May 2014.

Certainly, New Yorkers will not regard ever more aggressive “upselling” attempts by the newly merged entity to push increasingly expensive packages as being in their interest nor should this Commission. New Yorkers’ response to such attempts is likely to mirror the outrage that surrounded the new infamous recording of a Comcast Customer Service Representative haranguing a customer for more than 20 minutes as the customer attempted to cancel their Comcast service.²¹ It is a truism that for more than a century, our law has recognized that in a choice between ever higher corporate profits or a reasonable rate for the public, what is just for the public is appropriately balanced against the profit of the corporation:

“It cannot be said that a corporation is entitled, as of right, and without reference to the interests of the public, to realize a given per cent upon its capital stock.... The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 596-7 (1896).

Yet, it is a principle which Comcast appears to have forgotten. Such blatant rent-seeking is not in the public interest and should not be countenanced by approval of the Joint Petition.

b) New York cable and internet customers will be adversely effected by the merger

a) Comcast’s Representations Regarding Expanding Internet Coverage for Under-Served Populations Fall Short

Comcast’s Internet Essentials program is held out in the Joint Petition and in Comcast’s comments at public hearings on that Petition, as offering a significant benefit to

²¹ E.g., Ben Axelson, “Comcast customer service call from hell goes viral ahead of TWC merger”, Syracuse.com, July 16, 2014, <http://bit.ly/1jQo8SY>; Christopher Zara, “Comcast Cancellation Nightmare Exposes Cable’s Hardline Customer-Retention Tactics”, International Business Times, July 15, 2014, <http://www.ibtimes.com/comcast-cancellation-nightmare-exposes-cables-hardline-customer-retention-tactics-1629012>.

New Yorkers. The basic concept of Internet Essentials is appealing, but the program is much too limited in both concept and execution to support a finding that the Joint Petition should be approved. Internet Essentials is directed to only a small proportion of the low-income population which does not have affordable broadband access to the internet – families with children whose children qualify for the school free lunch program. Because of the stringent requirements which Comcast has placed on applicants, Internet Essentials serves only 12% of that already smaller universe of low-income families with children who qualify for the free lunch program. What is needed is program that will offer low cost internet to low-income under-served individuals without stringent barriers. The Joint Petition does not reveal any plans to provide such needed service.

Should the Joint Petition be approved, New Yorkers are likely to lose the ability to obtain free standing broadband internet access at a reasonable cost. Currently, TWC offers an “Every Day Low Price Internet Tier “ at \$14.99. Review of Comcast offerings indicate that some customers can obtain unbundled internet service for \$39.99 for the first 12 months, rising to \$54.99 in months 13-24.²² The price differential is striking and representative of Comcast’s pricing. Given Comcast’s stated corporate plan to aggressively push bundled products, New Yorkers can anticipate that their ability to obtain free standing internet service at a low cost is likely to be lost should the Joint Petition be approved.

²² The difficulty in finding any internet-only offerings on Comcast’s website appears to be an on-going violation of the conditions imposed by the FCC for approval of the Comcast-NBCUniversal merger . Consent Decree, FCC DA 12-953, File No.: EB-11-IH-0163, June 27, 2012, http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0627/DA-12-953A1.pdf

The Joint Petition promises that it will aggressively pursue competitive bids to serve schools and libraries. This would seem to be limited to schools and libraries within TWC's existing footprint. In essence, the Joint Petition's argument is that, where it already provides service, it will treat schools and libraries like any other commercial customer, hardly a compelling argument that the merger will result in lower-cost or more extensive services to those essential public facilities. Where libraries are located in rural areas that providers deem "unserviceable"²³, those facilities will not receive any benefit from the proposed merger, any more than any residences in those areas.

b) New York consumers will not benefit from the imposition of data caps

Comcast has a history of imposing data caps on its customers internet usage., a highly controversial and unpopular action.²⁴ The policy proved so unpopular, Comcast suspended it in 2012.²⁵ Now, a Comcast executive has publicly stated that Comcast will impose "usage-based billing" – i.e., data caps – on all of its customers within five years.²⁶ TWC does not limit the internet usage of its customers, in New York or elsewhere. TWC sees this as a competitive advantage, as on its website it states "TWC has unlimited Internet with no overuse penalty."²⁷ The promise of imposition of data caps limiting internet usage

²³ Lauren Hallinger, "No silver bullet for expanding Internet in Nassau", Troy Record, May 12, 2014, <http://www.troyrecord.com/general-news/20140512/no-silver-bullet-for-expanding-internet-in-nassau>

²⁴ Grant Gross, "Critics Question Comcast Broadband Caps", PC World, August 29, 2008, <http://www.pcworld.com/article/150473/comcast.html>

²⁵ Jason Cross, "Comcast suspends data cap, searches for alternative", TechHive, May 17, 2012, <http://www.techhive.com/article/2000095/comcast-suspends-data-cap-searches-for-alternative.html>

²⁶ James O'Toole, "Comcast plans data limits for all customers", CNN Money, May 14, 2014, <http://money.cnn.com/2014/05/15/technology/comcast-data-limits/>

²⁷ <http://www.timewarnercable.com/en/internet/internet-service-plans.html>

by New York customers should the Joint Petition be approved must be regarded as a detriment to the public. It is yet another area in which Comcast seeks to improve its bottom line at the unreasonable expense of the public.

c) Comcast's aggressive stance seeking to restrict internet access is not in the public interest.

Comcast is a leading proponent of a gated internet, where internet providers establish a "fast lane" providing priority internet access to those who pay premium fees and have the ability to restrict users internet access. Such a plan would potentially allow service providers such as Comcast to censor internet traffic, not just on the basis of how much they are paid but on the basis of content as well. Such an arrangement can not be considered to be in the public interest.

d) The Joint Petition Does Not Address Local Concerns

Common Cause/NY shares the concerns of the representatives of public access channels testifying at public hearings that the Joint Petition is wholly silent as to those services. Further, TWC offers unique local news coverage through its NY1 and YNN channels, providing 24 hour coverage of New York's state and local affairs, as well as coverage of New York's elected officials in Washington, D.C., that is not duplicated elsewhere. Comcast does not appear to provide similar extensive local coverage in the markets it serves, although we have found reference to its "expanded regional sports coverage." Loss of the unique local coverage which TWC provides would be a decidedly not be in the public interest.

e) The Merger threatens to deny TWC's New York VOIP customers their Lifeline service and the protections arising from TWC's ETC status.

At the same time the Joint Petition indicates that the merged entity will “continue to provide Lifeline services pursuant to its existing ETC designation” it clearly implies that the merged entity will seek to “relinquish the [TWC] Lifeline certificate.”²⁸ Not only do low income customers benefit from the low subsidized cost of Lifeline service, they also receive the full protections which accompany TWC’s status as a public telephone utility. Such protections are highly desirable from the public’s point of view. The promised threat to petition the Commission to relinquish the TWC Lifeline certificate is yet another way in which the requested merger does not serve the public interest.

f) Customer Service is not likely to improve for New York customers.

Many of the comments which have been received in opposition to the merger pertain to the infamously poor customer service provided by both Comcast and TWC. We share the general concern that, notwithstanding the Joint Petition’s broad assertions that lack any enforceable specificity, a greatly enlarged post-merger entity will have even more difficulty and less incentive to provide acceptable customer service.

C. Comcast’s Past Conduct and the Size of the Resulting Merged Entity Establish That Any Conditions Will Not Ameliorate the Costs and Detriment to New Yorkers

Contrary to the Joint Petition’s broad assertions that Comcast has abided by merger conditions in the past, the facts show that Comcast is willing to ignore its regulatory obligations and the conditions it accepts in order to win approval of planned mergers.

1. Comcast has ignored merger conditions and engaged in prohibited conduct in the past.

²⁸ Joint Petition, pg. 10.

Comcast's past conduct shows a willingness to agree to conditions in order to obtain approval for a merger and then violate those same conditions when it appears advantageous to do so. In the first instance, as discussed above, in 2012 Comcast agreed to "visibly offer and actively market" a stand-alone broadband internet option. An FCC investigation revealed that the company was failing to follow through on this promise, levying a \$800,000 fine, a small amount compared to Comcast's 2012 income of over \$12 billion.²⁹

In 2013, the FCC found, in a contested proceeding, that Comcast had violated a condition to its 2011 acquisition of NBCUniversal designed to prevent Comcast from using its control over channel line-up to discriminate against competing news networks.³⁰ Comcast favored its own MSNBC channel, placing it in relatively low in the channel line up, while assigning BloombergTV to a much higher channel where viewers were less likely to discover it.³¹ Comcast fought this determination every step of the way, but was ultimately ordered to place BloombergTV in the same channel range as its own news channels, such as CNBC and MSNBC.³²

An earlier instance reaffirms Comcast's willingness to interpret its legal obligations to the detriment of its competitors. In 2007, Electric Frontier Foundation reported that Comcast was using its power as an as an Internet Service Provider (ISP) to selectively interfere with some customers' connections, thus effecting the speed at which their

²⁹ Comcast, "Comcast Reports 4th Quarter And Year End 2012 Results", February 12, 2013, <http://www.cmcsa.com/releasedetail.cfm?ReleaseID=739834>.

³⁰ FCC 13-124, In the Matter of Bloomberg L.P., "FCC Affirms Bloomberg v. Comcast News Neighborhooding Decisions", <http://www.fcc.gov/document/fcc-affirms-bloomberg-v-comcast-news-neighborhooding-decisions>.

³¹ Brian Stetler, "Comcast Ordered to place Bloomberg with TV Peers", NY Times, September 27, 2013, http://www.nytimes.com/2013/09/28/business/media/comcast-ordered-to-place-bloomberg-with-tv-peers.html?_r=0.

³² Eriq Gardner, "FCC Orders Comcast to Put Bloomberg TV Alongside Other News Channels", Hollywood Reporter, 9/27/2013, <http://www.hollywoodreporter.com/thr-esq/fcc-orders-comcast-put-bloomberg-638226/>.

communications were able to access the internet.³³ In 2008, the FCC found that Comcast had selectively targeted and interfered with certain customers' internet connections, which it found to be a "discriminatory and arbitrary practice" and ordered Comcast to bring its "unreasonable conduct to an end."³⁴

There is, therefore, ample evidence to conclude that Comcast would not adequately abide by any conditions which this Commission might place on its approval of the merger of Comcast and TWC.

2. The gargantuan size and market power of the merged entity is likely to make it impervious to state-level regulation.

Should the requested merger be approved, the resulting entity's footprint would be approx. two-thirds of the U.S. population.³⁵ Conservative estimates indicate that it would control at least 30% of the cable market. In an era of "too big to fail" financial institutions, an entity of this size and market power may well qualify as "too big to regulate," at least at the state level. Certainly, the lack of specificity in the joint Petition can be seen as an indication of the lack of deference which the Joint Petitioners accord to state level inquiries. It is difficult to imagine any penalty sufficient to provide a deterrence to the sort of unreasonable conduct that the FCC has repeatedly found Comcast engages in. New Yorkers should not have to bear the risk of Comcast's imperviousness to regulation and the costs attendant to insuring compliance.

³³ Peter Eckersley, Fred von Lohmann and Seth Schoen, "Packet Forgery By ISPs: A Report on the Comcast Affair", Electric Frontier Foundation, November 28, 2007, <https://www.eff.org/wp/packet-forgery-isps-report-comcast-affair>.

³⁴ Memorandum Opinion and Order, 23 FCC Rcd. 13,028 (2008).

³⁵ Jon Brodtkin, "How the US could block the Comcast/Time Warner Cable merger", Ars Technica, Feb.18,2014, <http://arstechnica.com/tech-policy/2014/02/how-the-us-could-block-the-comcasttime-warner-cable-merger/>.

III. CONCLUSION

For all of the foregoing reasons, Common Cause/NY respectfully submits that the Commission should deny the Joint Petition, finding that the requested merger is not in the public interest.

Dated: August 10, 2014
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Respectfully submitted,
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