

Decision No. R14-1158

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0333T

IN THE MATTER OF THE JOINT APPLICATION FILED BY TIME WARNER CABLE
INFORMATION SERVICES, LLC AND COMCAST CORPORATION REQUESTING
APPROVAL OF MERGER TRANSACTION.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING JOINT APPLICATION
AND REQUIRING FILING**

Mailed Date: September 19, 2014

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I. STATEMENT

1. On April 11, 2014, Time Warner Cable Inc. (Time Warner), on behalf of its wholly-owned subsidiary Time Warner Cable Information Services (Colorado), LLC (TWCIS), and Comcast Corporation (Comcast) (collectively, Joint Applicants) filed a Joint Application for Approval of Merger Transaction, requesting approval for a transaction that will result in the transfer of control of TWCIS from Time Warner to Comcast (Joint Application). The Application included the direct testimonies of a witness on behalf of Time Warner and a witness on behalf of TWCIS.

2. On April 14, 2014, the Colorado Public Utilities Commission (Commission) provided notice of the Application to all interested parties. The notice also provided 30 days from the date of the notice for any interested party to file a petition to intervene to participate as a party in this proceeding pursuant to the Commission's Rules of Practice and Procedure.

3. On May 14 2014, DISH Network, L.L.C. (DISH), filed a Motion for Modification of Procedural Schedule (Motion) in this proceeding. Within its Motion, DISH included a sentence which indicated it had standing to intervene because it had a justiciable interest that may be adversely impacted by the outcome of the proceeding. DISH further indicated that the Commission, as of the date of the filing of the Motion, had not deemed the application complete pursuant to § 40-6-109.5, C.R.S., and argued that consideration of additional complexities due to transactions conducted after the Joint Application was filed warranted that the Joint Application was "outdated and incomplete" and should not be deemed complete.

4. On May 15, 2014, Qwest Corporation, doing business as CenturyLink QC (CenturyLink QC), filed a petition to intervene and, on May 16, 2014, filed a motion requesting the Commission grant the late-filed petition to intervene.

5. By Interim Decision No. C14-0563-I, issued May 28, 2014, the Commission deemed the Joint Application complete and as a result, found DISH's argument regarding completeness to be moot. The Commission referred this matter to an Administrative Law Judge (ALJ) for disposition, including a decision on the merits of the Joint Application. The ALJ was also to make a determination regarding interventions and any further relief sought in the Motion. The matter was subsequently assigned to the undersigned ALJ.

6. By Interim Decision No. R14-0623-I, issued June 10, 2014, it was found that DISH did not make the proper filing pursuant to statute and Commission rules to seek intervenor status in this matter. DISH made no subsequent filings seeking intervenor status. Because DISH did not have intervenor status, its Motion was denied. Consequently, the sole intervenor in this proceeding is CenturyLink QC.

7. Interim Decision No. R14-0623-I also set a pre-hearing conference in this proceeding for June 18, 2014. The pre-hearing conference was convened at the scheduled date and time. Appearances were entered on behalf of Joint Applicants, and on behalf of CenturyLink QC.

8. During the pre-hearing conference, CenturyLink QC stated that it intervened in this proceeding merely for the purposes of monitoring the process and did not intend to oppose the Joint Application. According to CenturyLink QC, the primary issue it intended to raise was that the Commission lacks jurisdiction to pass on the Joint Application.

9. As a result of those representations, CenturyLink QC was ordered to file a brief in support of its position due no later than July 9, 2014. Joint Applicants, if they chose, could file a responsive brief by July 18, 2014. CenturyLink QC and Joint Applicants filed briefs.

10. On July 9, 2014, CenturyLink QC filed its Brief Regarding Commission Jurisdiction. There, in a limited statement, CenturyLink QC asserted that “recent legislation” has limited the Commission’s role in regulating any communications services in Colorado; however, Century Link QC did not identify to which legislation it refers. CenturyLink QC further argued that § 40-5-105, C.R.S., does not support the Commission’s authority to approve or place conditions on mergers of telecommunications companies. Given those positions, CenturyLink QC argued that while the merger proceedings are important and involve significant issues for consumers and competitors at the federal level, it did not believe any further proceedings were warranted before the Commission.

11. On July 18, 2014, the Joint Applicants filed a Response to CenturyLink QC’s Brief Regarding Commission Jurisdiction. Joint Applicants stated that although not specifically identified in CenturyLink QC’s brief, they believe the reference to “recent legislation” refers to House Bill (HB) 14-1329 which deregulated certain telecommunications associated with Voice over Internet Protocol (VoIP) and IP-enabled services with certain exceptions. In addition, certain other changes to the statutes governing telecommunications services in Colorado were enacted pursuant to HB14-1329.

12. Specifically, the Joint Parties indicated that HB14-1329 placed VoIP and IP-enabled services into Part 4 deregulated services pursuant to Title 40 of Article 15 of the Colorado Revised Statutes. The Joint Parties pointed out that the Joint Application relates to those certificated competitive local exchange providers that provide wholesale telecommunications services and switched access, and not to the subsidiaries that provide VoIP service.

II. FINDINGS AND CONCLUSIONS

13. By Interim Decision No. R14-1079-I, issued September 5, 2014, it was determined that under § 40-5-101(1), C.R.S., and various Commission Decisions dating back to 1999, the Commission possesses jurisdiction over the Joint Application.¹ In arriving at that conclusion, the Interim Decision noted that TWCIS is a regulated utility by this Commission. It was granted a certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications services, and a letter of registration (LOR) to provide emerging competitive telecommunications services by Decision No. R08-1131 in Proceeding No. 08A-285T, issued October 27, 2008. Pursuant to its CPCN, TWCIS is authorized to provide basic local exchange telecommunications service throughout Colorado. Pursuant to its LOR, TWCIS is authorized to provide advanced features, switched access service, premium services, intraLATA toll service, jurisdictional private line services, and non-optional operator services throughout Colorado. Further, TWCIS provides local exchange services in Colorado pursuant to its PUC No. 1 tariff on file at the Commission that includes local offerings. In addition, TWCIS has an intrastate switched access tariff (PUC No. 2) on file with the Commission.

¹ See e.g., *In the Matter of the Application of Public Service Company of Colorado for Commission Authorization for New Century Energies, Inc. to Merge with Northern States Power Company, for Extension of the Current Regulatory Plan Which Includes an Earnings Sharing Mechanism, and for Such Other Relief as may be Appropriate or Necessary*, Decision No. C99-1052, issued September 29, 1999, Proceeding No. 99A-377EG; *In the Matter of the Application of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., and U S WEST Communications, Inc. for Approval of the Merger of Their Parent Corporations, Qwest Communications International Inc. and U S WEST, Inc.*, Decision No. C00-0041, Proceeding No. 99A-407T, issued January 20, 2000; *In the Matter of the Application of Aquila, Inc. doing business as Aquila Networks – WPC and Aquila Networks – PNG, Black Hills Corporation, Aquila Colorado, LLC, Black Hills/Colorado Utility Company, Inc. and Black Hills/Colorado Utility Company, LLC for an Order Approving the Transfer of Control and Ownership of Aquila’s Public Utility Assets and Businesses in the State of Colorado*, Decision No. C08-0204, issued February 29, 2008, Proceeding No. 07A-108EG; and, *In the Matter of the Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC and Qwest LD Corp.*, Decision No. C11-0001, Proceeding No. 10A-350T issued January 3, 2011.

14. According to its *2013 Colorado Public Utilities Commission Competitive Carrier Annual Report* filed with the Commission on May 5, 2014, TWCIS identifies itself as a competitive local exchange carrier (CLEC), facilities based interexchange carrier, transport provider, and an interconnected VoIP provider.

15. Interim Decision No. R14-1079-I also stated that in determining whether a proposed transfer should be granted, the Commission is required to evaluate whether the transfer is “not contrary to the public interest.” *Mountain States Tel. & Tel. Co. v. Pub Utils. Comm’n*, 763 P.2d 1020, 1029 (Colo. 1988); *Buckingham v. Pub. Utils. Comm’n*, 504 P.2d 677, 679 (Colo. 1972).

16. In reviewing past Commission Decisions regarding the public interest standard, the Commission, while acknowledging that the standard “arrogates significant latitude to the Commission in its review of merger applications,” has nonetheless established that the public interest standard is met when the joint applicants meet their burden to show that the merger will advance the public interest by producing consumer and producer welfare gains for the citizens of Colorado. (*See, e.g.*, Decision No. C99-1052, p. 4, ¶ 6, Proceeding No. 99A-377EG).

17. Because the Joint Application is unopposed, it was found in Interim Decision No. R14-1079-I that a determination as to whether the Joint Application is not contrary to the public interest and should be granted can be made on the filings of Joint Applicants, including the information provided in the application itself and the attached testimony. Reviewing the pre-filed testimony of Joint Applicants’ witnesses Ms. Beth Choroser on behalf of Comcast, and Ms. Julie Laine on behalf of Time Warner, it appeared that the testimony of both witnesses contained sufficient information to make a determination as to whether Joint Applicants meet their burden of proof regarding the public interest standard. However, because the testimony did

not include affidavits whereby the witnesses each avowed that the statements contained in such testimony were true and accurate, it was determined that a ruling on the public interest standard could not be made without such sworn testimony.

18. As a result, the Joint Applicants were required to submit affidavits from both witnesses avowing that the information and statements contained in each witness's written testimony is true and accurate. Upon receipt of the affidavits, a determination on the merits of the Joint Application would issue.

19. On September 8, 2014, Comcast and Time Warner made a compliance filing which included the affidavits of the two witnesses avowing that the written testimony submitted with the Joint Application is true and accurate. Affidavits were filed by Beth Choroser of Comcast and Mr. Michael Quinn of Time Warner. Ms. Choroser filed testimony along with the Joint Application. While Ms. Julie Laine filed testimony on behalf of Time Warner, the pleading accompanying the affidavits states that Ms. Laine is no longer employed by Time Warner and instead, Mr. Quinn, Group Vice President and Chief Regulatory Counsel for Time Warner, who has direct knowledge of the information and statements included in the testimony of Ms. Laine, avows that Ms. Laine's testimony is true and accurate.

A. Description of Each Joint Applicant

1. Time Warner

20. As provided in the Joint Application, Time Warner is a publicly traded Delaware corporation with its headquarters located at 60 Columbus Circle, New York, New York 10023-5860. Time Warner is a provider of video, high-speed Internet, and voice services to residential and business customers. Its network facilities cover portions of 31 states, including Colorado, and it faces competition in each of those areas for all of its services.

Time Warner's broadband infrastructure has enabled it, through its operating subsidiaries, to provide interconnected VoIP services in most of its geographic footprint.

21. TWCIS is a wholly-owned subsidiary of Time Warner and a limited liability company organized under the laws of the State of Delaware. Its principal office is located at 60 Columbus Circle, New York, New York 10023-5860. TWCIS is authorized in Colorado to provide all forms of telecommunications services pursuant to Commission Decision No. R08-1131 (Oct. 27, 2008) in Proceeding No. 08A-285T.

22. Time Warner Cable, through its subsidiaries, provides its competitive voice services using VoIP technology to residential and business customers in Colorado. TWCIS does not itself provide direct end-user voice services. Instead, TWCIS offers wholesale telecommunications services, including switched access service and local interconnection service, to retail VoIP providers, including TWCIS's own non-carrier affiliate that provides retail VoIP service. Time Warner, through its cable and other subsidiaries, offers video and high-speed data voice services, all in competition with the incumbent local exchange carriers (ILECs) and other service providers. The companies offer these services using the facilities of Time Warner, as well as, if necessary, third-party infrastructure. Retail customers range from small businesses with a single location to medium-sized and enterprise businesses with multiple locations as well as government, education, and non-profit institutions. In Colorado, Time Warner Cable provides services in the Gunnison, Telluride, and Crested Butte communities.

2. Comcast

23. Comcast is a publicly traded corporation organized under the laws of Pennsylvania. Its principal offices are located at One Comcast Center, Philadelphia, Pennsylvania 19103-2838. Comcast is a global media and technology company with

network facilities covering portions of 39 states and the District of Columbia. No individual or company holds, directly or indirectly, a 10 percent or greater equity interest in Comcast. Comcast is a provider of video, high-speed Internet, digital voice, and other next-generation services and technologies to residential customers and small- and medium-sized businesses.

24. Comcast, through its VoIP operating subsidiary, Comcast IP Phone II, LLC, offers competitive residential and commercial VoIP services to its customers in Colorado. Through its certificated Colorado operating subsidiary Comcast Phone of Colorado, LLC, Comcast offers wholesale telecommunications services, including switched access service, local interconnection service to retail VoIP providers including its VoIP affiliates. Comcast Phone of Colorado, LLC also offers intrastate Metro Ethernet transport services to retail customers and has a small number of resold interexchange service customers. Comcast Business Communications, LLC, another Comcast affiliate, provides interstate transport services, including Metro Ethernet services, to retail and wholesale customers pursuant to its interstate authority. Comcast is active in the wholesale business, particularly with respect to cellular backhaul services for wireless carriers. In Colorado specifically, Comcast's VoIP subsidiary, Comcast IP Phone II, LLC, serves state residents roughly along the 1-25 corridor from Greeley to Pueblo (including the Denver Metro and Colorado Springs areas) and along 1-70 from Bennett to Glenwood Springs.

25. According to the sworn testimony of Ms. Beth Choroser, in 2002, the Commission granted the authority to transfer control from AT&T Broadband Phone of Colorado, LLC (AT&T Broadband) to AT&T Comcast Corporation in Decision No. C02-470, Proceeding No. 02A-169T issued April 30, 2002. Previously, AT&T Broadband was granted a CPCN to provide competitive local exchange service and a LOR to provide non-optional operator services pursuant to Decision No. C01-0603,

Proceeding No. 01A-182T issued June 8, 2001. As a result of Decision No. C02-470, AT&T Comcast Corporation became the successor-in-interest of the CPCN granted to AT&T Broadband. On February 24, 2003, AT&T Broadband Phone of Colorado, LLC notified the Commission of its name change to Comcast Phone of Colorado, LLC, doing business as Comcast Digital Phone.

26. On August 10, 2007, Comcast Phone of Colorado, LLC filed with the Commission an application to discontinue provision of residential end-user circuit-switched services in Colorado. On October 9, 2007, by Decision No. C07-0854 in Proceeding No. 07A-301AT, Comcast Phone of Colorado, LLC's discontinuance application was granted. An application to discontinue circuit-switched service to business customers was granted in Decision No. C07-0935 in Proceeding No. 07A-375AT issued November 8, 2007. Ms. Choroser states that in each case customers had a choice of transitioning to Comcast's interconnected VoIP service provided through its subsidiary non-common carrier affiliate (Comcast IP Phone II, LLC), or other providers. Comcast Phone of Colorado, LLC, which offers wholesale and other telecommunications services, continues to be a registered CLEC and have effective tariffs on file in Colorado.

B. Description of Proposed Transaction

27. According to the Joint Application, Comcast has entered into an agreement with Time Warner Cable whereby Comcast will acquire 100 percent of Time Warner Cable's equity in exchange for Comcast Class A shares. As illustrated in the structure charts included in Exhibit A, at the closing of the transaction, Tango Acquisition Sub, Inc. (Merger Sub), a new direct wholly-owned subsidiary of Comcast, will merge with Time Warner Cable under Delaware law. At that time, the separate corporate existence of Merger Sub will cease, and, thereafter,

Time Warner Cable will be a wholly-owned subsidiary of Comcast. Contemporaneously with the merger, each Time Warner Cable share will be converted into the right to receive 2.875 shares of Comcast Class A shares.

28. TWCIS is to remain a wholly-owned subsidiary of Time Warner Cable. So, upon completion of the transaction, it will become an indirect, wholly-owned subsidiary of Comcast as an operating entity in Colorado. According to the Joint Applicants, the Joint Application does not seek authority for the transfer of customers or for any changes in rates, terms, or conditions of service. It is anticipated that the change in indirect ownership of TWCIS will be seamless to Colorado customers.

C. Public Interest

29. As discussed previously in Decision No. C11-0001 in Proceeding No. 10A-350T, it is appropriate to consider, as part of the public interest analysis, § 40-15-101, C.R.S. (to foster, encourage, and accelerate the continuing emergence of a competitive telecommunications environment); § 40-15-501, C.R.S. (to serve the ultimate goal of replacing the regulatory framework established in part 2 of this article with a fully competitive telecommunications marketplace statewide); and, § 40-15-502, C.R.S. (to keep local exchange telecommunications markets open to competition, provide access to high quality basic service at just, reasonable and affordable rates to all the people of Colorado, and to serve universal service policy objectives). In that Proceeding, similar to here, the parties sought approval of a joint application at the holding company level with no changes made to the corporate structure of the operating entities. In the instant matter, the analysis will take into consideration the above legislative directives as affected by HB14-1329, as well as ensuring that there is no net harm to customers. The interests of the Joint Applicants will be weighed against those of any affected ratepayers.

30. The testimony of Ms. Choroser, Ms. Julie Lane, on behalf of TWCIS (as adopted by Mr. Quinn), as well as statements in the Joint Application represent that the proposed merger will generate substantial public interest benefits, with no countervailing harm, and consequently warrants approval. Ms. Choroser's testimony and the Joint Application further provide that Time Warner Cable will continue to offer competitive services in Colorado following the closing of the transaction. According to the provided information, permitting Comcast and Time Warner Cable to combine the best aspects of each company's voice services will encourage more network investment in Colorado.

31. With regard to the effect of the merger on competition, Ms. Choroser states that the transaction will allow Comcast to integrate the features of its residential voice offerings with the features of TWCIS's residential offerings, creating a best-in-class voice service offering, making it a more robust competitor in the voice service sector. Across its footprint, Comcast offers its XFINITY Voice customers traditional features such as call waiting, three-way calling, and voicemail, as well as several enhanced features, including caller ID provided over a television, laptop, or mobile device, and Readable Voicemail. Comcast also offers customers the ability to send and receive unlimited text messages to and from their XFINITY Voice telephone numbers.

32. Ms. Choroser points out recent network investments which have expanded the features available to XFINITY Voice customers. For example, Comcast has moved to a new advanced and flexible IP Multimedia Subsystem network architecture which enables customers to access the service from different locations using a variety of methods and networks, including not only the wired connections provided by Comcast, but also Wi-Fi connections and public Internet connections provided by third parties, whether

wired or wireless. For example, it enables “Voice 2go,” which allows users to place calls over a Wi-Fi or data connection from their Comcast-assigned telephone numbers using an app downloaded to a mobile device, and to receive calls to their home numbers at multiple locations and on multiple devices using the “Advanced Call Forwarding” feature. Combining these features with TWCIS's VoIP product will produce an advanced, state-of-the-art offering, according to Ms. Choroser.

33. Ms. Choroser also addresses the effect of the merger on business voice and data customers. According to that testimony, Ms. Choroser believes that businesses of all sizes will benefit from an increase in much-needed competition and the accelerated deployment of advanced services. Ms. Choroser maintains that the transaction will produce significant public interest benefits through economies of scale by combining the two companies into a stronger, more cost-efficient competitor that can offer new options and aggressively priced services to small- and medium-sized businesses across a wider area of Colorado, challenging the incumbents that currently dominate this marketplace. Ms. Choroser predicts that the combined company's larger footprint in Colorado will also allow it to compete more effectively against incumbent providers with broader scale and scope for larger business customers, including super-regional business customers in Colorado that have multiple office locations in various states.

34. As to the specific effects of the proposed merger on medium-sized and enterprise businesses, Ms. Choroser sees benefits occurring for them as well. Ms. Choroser testifies that Comcast currently offers some services to business customers that TWCIS does not, including Comcast's Business VoiceEdge (BVE), which provides web-based PBX functionality with a host of nomadic features. This includes a “Be Anywhere” feature that allows customers to

make and receive calls from any device at any location with one phone number, and to use four-digit extensions to contact colleagues from their mobile phones. BVE also includes “Teleworker,” which enables seamless integration of remote and work-at-home employees into a company's phone infrastructure.

35. As regards small business customers, Ms. Choroser indicates that since 2006, Comcast has offered small businesses a competitive alternative for their data, voice, and video needs. Ms. Choroser goes on to state that Comcast's investments and innovations in this area have led to growing marketplace success, which has led to several awards for Comcast's small business services, including the Leading Lights Award last year for Most Innovative SMB Service and the Hosted VoIP leader award in 2012 and 2013.

36. Ms. Choroser points to analyst reports which have underscored aggressive price competition by Comcast and TWCIS in the small and medium-sized business segments, with a 2013 research report which noted that new entry was decreasing Ethernet pricing for business by 10 percent or more a year.² However, Ms. Choroser opines that the combined company will be an even more effective competitor against established incumbent providers.

37. The merger will result in the combined investments and network upgrades that are necessary to serve medium-sized, enterprise, and wholesale wireless backhaul customers across the combined company footprint which will also inure to the benefit of

² Citing to, Insight Research Corp., *US Carriers and Ethernet Services, 2013-2018*, at 5 (Aug. 2013); see also TeleGeography, *Global Enterprise Networks: Enterprise Service Pricing*, at 16 (Jan. 2013) (“Median Ethernet market prices remain volatile, fluctuating considerably year to year - With this said however, the long-term price trend is clearly down.”); *id.* at 20 (“As a growing number of carriers offer the service, [Virtual Private LAN Service] prices continue to decline.”); Craig Galbraith, *Cable Cos Gain Ground in Ethernet, But AT&T, Verizon Still Lead*, Channel Partners, Feb. 12, 2014:

<http://www.channelpartnersonline.com/news/2014/02/cablecos-gain-ground-in-ethernet-but-at-t-verizon.aspx>

(“Cable companies have developed a winning formula for the U.S. business Ethernet market. They are successfully leveraging their on-net fiber footprints to offer aggressive pricing and rapid service provisioning.”).

small business customers by Ms. Choroser's reckoning. Ms. Choroser posits that since products developed for the medium-sized or enterprise segments can be offered to or repackaged for small businesses, new product development driven by greater competition for larger businesses will also benefit small business customers. Small businesses will also enjoy the spillover effects from the merged company's investments and plant upgrades made to serve larger businesses.

38. Ms. Choroser states that the merger will also benefit wireless backhaul service customers. Ms. Choroser observes that wholesale wireless backhaul is an emerging and significant service that the merged company will be better positioned to provide since mobile data traffic is currently growing at a rapid rate. Ms. Choroser represents that Comcast and TWCIS have both recognized the growing need for wireless carriers to transport wireless traffic from their cell towers on high-capacity fiber facilities to make the mobile broadband system work more efficiently and reliably and provide better service to customers. However, Ms. Choroser admits that Comcast's and TWCIS's current shares in this segment are small with a combined, estimated 2.8 percent national market share in 2013 for both companies.

39. The merger will make the combined company a more effective wireless backhaul competitor to the ILECs due to improved network reach which will provide for a greater number of on-network locations, as well as greater network consistency, and an ability to invest in infrastructure, according to Ms. Choroser. In addition, it is Ms. Choroser's position that by utilizing TWCIS's assets, as well as its knowledge and expertise, the post-merger company will be better positioned to offer mobile operators the services they want, in more locations, which will enhance consumer welfare in Colorado.

40. Ms. Choroser specifically addresses the effect on competition the proposed merger will have in Colorado. She argues that the merger will not reduce competition because Time Warner Cable and Comcast do not compete directly with one another. Ms. Choroser states that Comcast has identified a limited number of ZIP codes in Colorado in which Comcast and Time Warner Cable both serve customers, but the total number of customers served by both companies in these areas is *de minimis*.

41. In addition, Ms. Choroser points out that residential and business customers in Colorado have numerous competitive alternatives for telephone service, high-capacity business services, and wireless backhaul. Ms. Choroser references residential voice competitors such as traditional providers of phone service such as ILECs and other CLECs, providers of fixed and nomadic VoIP services, and wireless providers, as well as Vonage and other over-the-top voice service options as available options to customers post-merger. Ms. Choroser also refers to the trend in telephony toward wireless substitution of fixed telephone lines. Additionally, other providers of high-capacity business and wireless backhaul services exist in Colorado such as ILECs and CLECs such as Level 3 Communications, LLC. Ms. Choroser concludes that the transaction will not result in the combined company holding a dominant share of the market in Colorado for any of these services.

D. Comcast's Managerial Financial and Technical Fitness

42. Addressing Comcast's fitness in order to provide reliable service and acquire control of TWCIS, the Joint Application and Ms. Choroser's testimony provide information on the company's financial, technical, and managerial qualifications.

43. Information contained in the Joint Application and Ms. Choroser's testimony provide that Comcast is a financially strong, publicly traded corporation well positioned to effectively manage TWCIS in Colorado. According to that information, in 2013, Comcast saw an increase in consolidated revenue of 3.3 percent to \$64.7 billion and an increase in consolidated operating income of 11.4 percent to \$13.6 billion. Additionally, revenues from voice services increased 2.8 percent to \$3.6 billion. As a result, Ms. Choroser concludes that Time Warner Cable and TWCIS will become part of an organization with a solid balance sheet and the financial capabilities to undertake the proposed transaction and continue to provide high quality services in Colorado.

44. In addition, Ms. Choroser maintains that Comcast has the requisite technical expertise in providing innovative voice, broadband, and video services. Moreover, Ms. Choroser notes that Comcast, since 1996, has invested heavily in network infrastructure in its markets exceeding tens of billions of dollars to provide a robust network for today's needs that is capable of evolving to meet tomorrow's consumer and business demands.

45. Comcast also has an experienced and talented managerial team that has contributed to the strong financial performance noted above, according to Ms. Choroser.

46. It is also pointed out that Comcast has long-established relationships with traffic exchange partners, suppliers, regulators, and customers. Ms. Choroser is confident that Comcast's technological capabilities, its service record, its commitment to investment,

and its solid balance sheet will ensure that Time Warner Cable's customers will continue to receive the same or higher quality products and services that they currently enjoy.³

E. Service Quality

47. Comcast expects that customers will experience the same or better service after the merger transaction. Through its operating subsidiaries Comcast has offered innovative products and provided outstanding service in order to attract customers in Colorado. Given the substantial voice service competition in the vast majority of the footprint Comcast's voice service subsidiary serves in Colorado, Ms. Choroser argues that Comcast must and will continue to offer superior service in Colorado, including areas served by Time Warner Cable.

F. Fees and Interconnection

48. Comcast pays into the Fixed Utility Fund, the Colorado High Cost Support Mechanism, 9-1-1 fees, the Low Income Telephone Assistance Program, and the Colorado Telephone Relay Service. Ms. Choroser represents that Comcast does not anticipate any changes concerning the continuing payment of these fees.

49. As for existing interconnection agreements, since the proposed merger is a holding company transaction, Ms. Choroser states that all existing interconnection agreements and obligations will remain in place. Comcast will comply with all applicable legal and regulatory requirements pursuant to the existing agreements.

³ It is pointed out that based on its commitment to innovation and advancement, Comcast has been recognized by Fortune Magazine in its survey of the World's Most Admired Companies, ranking first among cable and satellite providers. In addition, it is noted that Comcast's commitment to providing cutting-edge broadband services earned it a 2013 Best Practice Award from Frost and Sullivan, which ranked Comcast first among all North American broadband providers in technology innovation.

G. Conclusions

50. As the standard has been defined by the Commission, it is the burden of the Joint Applicants to show that the proposed merger results in consumer and producer welfare maximization. The statements contained in the Joint Application, coupled with the sworn testimony of Ms. Choroser and Ms. Laine (as adopted by Mr. Quinn) provides sufficient information to find that the proposed merger is not contrary to the public interest.

51. The undersigned ALJ is satisfied that the Joint Applicants have shown that consumer welfare gains will occur which produce significant public interest benefits through economies of scale by combining the two companies into a stronger, more cost-efficient competitor that can offer new options and aggressively priced services to small- and medium-sized businesses across a wider area of Colorado, challenging the incumbents that currently dominate the marketplace. It is also found that the combined company's increased presence in Colorado will allow it to compete more effectively against incumbent providers with broader scale and scope for larger business customers, including super-regional business customers in Colorado.

52. The benefits derived from the proposed merger will inure not only to small and medium-sized business customers, but also to business voice and data customers; enterprise businesses; wholesale wireless backhaul customers; and to residential customers. As provided by the testimony, the proposed merger will provide economies of scale and added benefits for each customer class through combined investments and network upgrades that are necessary to serve all customer classes.

53. In addition, there is no discernible negative effect on competition in the telecommunications market in Colorado as a result of the proposed merger. It is important to

observe that the merger of the two companies will not reduce telecommunications competition in Colorado. As indicated in the testimony and Joint Application, Time Warner Cable and Comcast do not compete directly with one another. Sufficient competition for residential and business customers exists through other ILECs, CLECs, VoIP, and wireless providers. The proposed merger will merely provide Comcast with a stronger foothold in order to compete more aggressively with those other providers. The benefits emanating from the proposed merger will improve competition by making Comcast a more viable choice for business and residential customers.

54. The information provided in the Joint Application and through testimony certainly shows that Comcast is managerially, financially, and technically able to continue to provide reliable and adequate service to its customers as well as the customers of TWCIS. However, as indicated by the Joint Applicants, the proposed merger will be seamless to TWCIS customers since it will be conducted at the holding company level.

55. The Joint Applicants have met their burden to show that significant producer welfare gains should also be achieved through the various economies of scale and synergies resulting from the combined resources of the two companies. As discussed previously, the Joint Applicants have shown that the increased efficiencies derived from the merger of the two companies will allow Comcast to compete more effectively in the marketplace, while providing business and residential customers with better, more reliable service. It is hoped that any savings realized by the anticipated increase in efficiencies will be passed on directly to ratepayers.

56. Comcast's representation that it will continue to pay into the Fixed Utility Fund, the Colorado High Cost Support Mechanism, 9-1-1 fees, the Low Income Telephone Assistance Program, and the Colorado Telephone Relay Service Approval, as well as keep all

existing interconnection agreements and obligations in place, in addition to complying with all applicable legal and regulatory requirements pursuant to the existing agreements, provides further persuasive evidence to find that the proposed merger is not contrary the public interest.

57. Because the merger will occur at the holding company level, it is not anticipated that any filings will be required to be made by Comcast regarding tariff changes or any other such changes regarding TWCIS. Nonetheless, Comcast will be required to provide Commission Telecommunications Staff with a letter notifying it when the merger transaction has been consummated.

58. For all the above reasons, it is found the proposed transfer of control of TWCIS to Comcast is not contrary to the public interest and will therefore be approved.

59. Pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this Recommended Decision containing findings of fact and conclusions thereon, and a recommended order.

III. ORDER

A. The Commission Orders That:

1. The Joint Application Filed by Time Warner Cable Information Services, LLC and Comcast Corporation Requesting Approval of Merger Transaction is granted consistent with the discussion above.

2. No later than 20 days after the date the merger transaction is consummated, Comcast Corporation shall notify Commission Telecommunications Staff in writing that the transaction has been completed.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director