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

In the Matter of:)	
)	
Applications of CHARTER COMMUNICATIONS,)	
INC., TIME WARNER CABLE INC., and)	WC Dkt. No. 16-197
BRIGHT HOUSE NETWORKS, LLC for Consent To)	
Assign or Transfer Control of Licenses and)	
Authorizations)	

**INDEPENDENT COMPLIANCE OFFICER’S FIFTH REPORT ON CHARTER’S
COMPLIANCE WITH THE RESIDENTIAL BUILD-OUT AND DATA CAPS AND
USAGE-BASED PRICING CONDITIONS**

JANUARY 15, 2019

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INTRODUCTION

On May 10, 2016, the Federal Communications Commission issued an order approving the merger of Charter Communications, Inc. (“Legacy Charter”), Time Warner Cable Inc. (“Legacy TWC”), and Advance/Newhouse Partnership (“Legacy Bright House”) (as a combined entity, “Charter”), subject to certain conditions (the “Conditions”). (Mem. Op. & Order, MB Dkt. No. 15-149, FCC 16-59, May 10, 2016.) The FCC appointed the Honorable Barbara S. Jones (ret.) as Independent Compliance Officer (“ICO”) to monitor and assess Charter’s compliance with the Conditions. (See App’x B § IX(3)(e).)

On November 16, 2018, Charter filed its fourth semi-annual reports pursuant to the Residential Build-Out Condition (the “Build-Out Condition”) and the Data Caps and Usage-Based Pricing Condition (the “Data Caps Condition”). This Report addresses Charter’s progress on satisfying those conditions since the ICO issued her Fourth Report on July 17, 2018.

EXECUTIVE SUMMARY

Based on interviews the ICO has conducted, the ICO’s review of documents and materials, and the results of field tests conducted by the ICO, it appears that Charter is in compliance with the Build-Out and Data Caps Conditions.

COOPERATION WITH THE ICO

Charter has continued to cooperate with the ICO and her staff throughout this reporting period.

COMPLIANCE WITH MERGER CONDITIONS

The ICO’s observations and recommendations regarding each Condition are set forth in detail below.

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I. BUILD-OUT CONDITION

A. STATEMENT OF THE CONDITION

In accordance with the FCC's April 3, 2017 Order on Reconsideration, the ICO reads the Build-Out Condition as follows:¹

1. Introduction. The Applicants have offered to invest in residential broadband facilities. The purpose of this Condition is to ensure the promised public benefits as a result of such investment will inure to consumers. This Condition also provides an opportunity for increased competition from services that rely on wired BIAS to deliver video by creating more customer locations or more service options that can receive higher speed broadband service.
2. Condition.
 - a. Within five (5) years of the Closing Date, in accordance with the timing requirements set forth in subparts 2.a.(i) through 2.a.(v) below and the composition requirements in subpart 2.b, the Company shall pass, deploy and offer BIAS capable of providing at least a 60 Mbps download speed to at least 2 million additional mass market customer locations,² such as those occupied by residences, home offices, and very small businesses (and excluding locations occupied by large enterprises and institutions other than schools and libraries), than the Company passes as of the monthly Closing Date for each Applicant for the month prior to which the Closing Date occurs:
 - i. By twelve (12) months after the Closing date the Company shall expand its Broadband Internet Access Service to at least 150,000 of the aforementioned customer locations;
 - ii. By December 31, 2017, the Company shall expand its Broadband Internet Access Service to at least 400,000 of the aforementioned customer locations;
 - iii. By December 31, 2018, the Company shall expand its Broadband Internet Access Service to at least 800,000 of the aforementioned customer locations;
 - iv. By December 31, 2019, the Company shall expand its Broadband Internet Access Service to at least 1.2 million of the aforementioned customer locations;

¹ The stricken language represents the ICO's interpretation of how the FCC's Order on Reconsideration changed the text of the Build-Out Condition. The Order itself stated that it was striking the overbuild provisions from the Condition; it did not specify textual changes to the Condition. (Order on Reconsideration, MB Dkt. No. 15-149, FCC 17-34.)

² For purposes of this Order and these Conditions, "customer locations" exclude enterprise customers and broadband-connected locations such as gates, ATMs, and elevators.

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- v. By December 31, 2020, the Company shall expand its Broadband Internet Access Service to at least 1.6 million of the aforementioned customer locations; and
- vi. Within five (5) years of the Closing Date the Company will complete the aforementioned deployment to all 2 million customer locations.
- ~~b. The aforementioned 2 million additional mass market customer locations shall include at least 1 million mass market customer locations (hereinafter “out-of-footprint locations”) where:~~
 - ~~i. at least one other BIAS provider offers, before or within 12 months of the Company’s deployment at such location, 25 Mbps or faster advertised service in the downward direction to the same mass market customer location; and~~
 - ~~ii. the customer location is in an area where the Company does not have existing facilities as of the Closing Date.~~
- c. A mass market customer location is passed for purposes of this Condition where the Company does, or could, within a typical service interval (7 to 10 business days), without an extraordinary commitment of resources, provision two-way data transmission to and from the Internet capable of a download speed of at least 60 Mbps.
- ~~d. A mass market customer location is considered to be in an area where the Company does not have existing facilities as of the Closing Date under subpart 2.b.ii. when it is located in a census block that the Applicants did not list as a census block in their respective December 2015 Form 477 filings (including corrective filings submitted as of the Closing Date) in which the Company did, or could have, within a typical service interval (7 to 10 business days), without an extraordinary commitment of resources, provision two-way data transmission to and from the Internet.~~
- ~~e. The Commission’s Office of General Counsel will also credit newly passed mass market customer locations in other census blocks as being in an area where the Company does not have existing facilities as of the Closing Date if the Company demonstrates that:~~
 - ~~i. the newly passed mass market customer location lies beyond the Company’s nodes deployed as of the Closing Date; and~~
 - ~~ii. the nodes deployed as of the Closing Date are incapable of supporting 60 Mbps service in the downward direction to the newly passed mass market customer location because the nodes deployed as of the Closing Date are located too far from the newly passed mass market customer location to make 60 Mbps service possible (but not if this inability is due to the nodes’ capacity or density limitations or where node-splitting would enable the provision of 60 Mbps service in the downward~~

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~~direction from the location of any node deployed as of the Closing Date).~~

- f. The Company may not use, receive, or request any Connect America Funds (“CAF”) for the investments required to satisfy, in whole or in part, the deployment of the additional 2 million mass market customer locations required under this buildout Condition or for operating expenses for such locations after such are deployed. Specifically, 2 million geocoded locations reported for purposes of these Conditions cannot be counted towards satisfying any CAF requirements.³
 - g. The Company may not use the acquisition of other BIAS providers to satisfy, in whole or in part, the deployment of the additional 2 million mass market customer locations required under this Condition, ~~except that for mass market customer locations that would otherwise qualify as out-of-footprint locations, the Commission will credit no more than 250,000 mass market customer locations towards the out-of-footprint locations requirement of subpart 2.b. when the Company acquires BIAS providers and upgrades them to 60 Mbps or faster service in the downward direction if the relevant passings of those BIAS providers meet the following requirements at the time of purchase: (i) they are not capable of providing speeds of at least 25 Mbps in the downward direction; (ii) they compete against one or more wireline BIAS providers offering at least 25 Mbps in the downward direction; and (iii) they would be unlikely to be upgraded by the acquired BIAS provider to offer 60 Mbps or faster service in the downward direction by 2020 due to technical or financial limitations.~~
3. Reporting. The Company shall submit a report in accordance with the filing and service requirements set forth in Section IX.5 herein on a semi-annual basis that describes its compliance with this Condition, with the first such report to be submitted six (6) months after the Closing Date in a format and containing data fields approved and/or selected by the Commission’s Office of General Counsel, which shall include at least the following, in electronic format:
- a. The number of additional new mass market customer locations to which Broadband Internet Access Service has been deployed on a monthly basis during the reporting period ending as of June 30 for reports submitted in the second half of each year and ending as of December 31 for reports submitted in the first half of each year;
 - b. ~~The number of additional new out-of-footprint locations to which Broadband Internet Access Service has been deployed on a monthly basis during the reporting period;~~
 - c. A CSV (comma separated values) file or other form approved by the Commission staff providing for each location to which Broadband

³ This would include but is not limited to any of the Connect America Fund (“CAF”) programs, as well as any other Universal Service Fund (“USF”) programs that the Commission may implement at a future date.

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Internet Access Service has been deployed in satisfaction of this Condition, including information identifying:

- i. for mass market customer locations:
 - (A) latitude and longitude;
 - (B) alternative address and/or location information;
 - (C) unit or apartment identifier where applicable;
 - (D) the date the Company passed the location and began to offer BIAS capable of providing at least a 60 Mbps download speed; and
 - (E) 15-digit census block code;
- ~~ii. additionally for out of footprint locations:~~
 - ~~(A) the identity of the other BIAS provider offering 25 Mbps or faster advertised service in the downward direction to the same mass market customer location;~~
 - ~~(B) the maximum advertised downstream bandwidth speed that each of the other BIAS providers offer; and~~
 - ~~(C) if the other BIAS provider begins to offer service after the Company's deployment to the out of footprint location, then the date the other BIAS provider began offering or advertising 25 Mbps or faster service in the downward direction;~~
- ~~iii. additionally for out of footprint locations where the Company seeks credit pursuant to subpart 2.e:~~
 - ~~(A) the location, capacity, and density of all nodes deployed as of the Closing Date within a set radius, to be determined by the Commission's Office of General Counsel, of any new mass market customer location to which BIAS has been deployed or, if there are no such nodes, the closest node deployed as of the Closing Date.~~
- d. GIS data for the mass market customer locations, ~~the out of footprint customer locations, and the nodes required to be identified pursuant to this Condition's reporting requirements;~~
- e. Any explanatory notes as required;
- f. Any other information the Independent Compliance Officer or the Commission's Office of General Counsel determines is reasonably necessary to report on compliance with this Condition; and
- g. In the first such report, the Company's June 2015 and December 2015 Form 477 filing and the number of existing mass market customer locations as of the Closing Date for each Applicant for the month prior to which the Closing Date occurs where the Company offers

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Broadband Internet Access Service.

4. Enforcement. Failure to comply with this Condition may result in:
- a. extension of all of the Conditions set forth in this Appendix B until completion of the required buildout;
 - b. a 5% increase in the total number of mass market customer locations that must be passed for each year an incremental target listed in subparts 2.a.(i) through 2.a.(vi) is missed; and
 - c. ~~a 5% increase in the minimum number of out-of-footprint locations that must be passed for each year an incremental target listed in subparts 2.a.(i) through 2.a.(vi) is missed.~~

(See App'x B § V; Order on Reconsideration, MB Dkt. No. 15-149, FCC 17-34.)

B. OBSERVATIONS

The following are the ICO's observations on Charter's compliance with the Build-Out Condition and the contents of Charter's November 2018 Build-Out Report (the "November 2018 Build-Out Report"), which covers the period from January 1, 2018 to June 30, 2018.

1. Charter's Process for Gathering Reportable Data

Since the ICO's Fourth Build-Out Report, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

⁴ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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[END HIGHLY CONFIDENTIAL INFORMATION]

2. The November 2018 Build-Out Report

As reported in the November 2018 Build-Out Report, Charter has generated [BEGIN
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of the Build-Out Condition, which is over [BEGIN HIGHLY CONFIDENTIAL
INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] more
passings than the 800,000 passings required by the Condition by December 31, 2018,⁵ and more
than [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY
CONFIDENTIAL INFORMATION] of the way toward the two million passings required by
May 2021 under the Condition.

a. Contents of the November 2018 Build-Out Report

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⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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[END HIGHLY CONFIDENTIAL INFORMATION]

b. Overall Assessment of the November 2018 Build-Out Report

i. Fields Included

The November 2018 Build-Out Report satisfies field requirements of the Build-Out Condition, as modified by the FCC’s April 3, 2017 Order on Reconsideration.

ii. Internal Verification

To internally verify Charter’s data in the November 2018 Build-Out Report, the ICO confirmed the following:

- All passings have a geographically possible latitude and longitude;
- All passings have an identified city;
- All passings have a state;
- All passings have a five digit zip code; and
- All passings are associated with a 15-digit census block.

None of the ICO’s checks revealed concerns. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

⁶ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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iii. Quality Checks

In addition to reviewing Charter's November 2018 Build-Out Report for internal consistency, the ICO reviewed Charter's documentation of the quality checks it conducted in connection with that report. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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iii. Additional ICO Analysis

As an additional quality check during this reporting period, the ICO conducted an analysis of the change in the number of reported passings across Charter's Build-Out reports on a month-by-month basis. For example, the ICO looked at the number of passings reported as activated in May 2016 in each of the five Build-Out reports Charter has filed. Those numbers are as follows: **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

⁷ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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3. Conclusions

Based on Charter's continued employment of the same general processes for gathering and reporting passings, the ICO's internal checks and analyses, the results and ICO's review of Charter's own quality control efforts, and the field testing conducted by the ICO's engineer in connection with prior reports,⁸ the ICO remains confident that Charter is in compliance with the terms of the Build-Out Condition.

C. RECOMMENDATIONS

It is the ICO's view that Charter is in compliance with the Build-Out Condition and is on track to satisfy the terms of the Condition going forward. Accordingly, the ICO has no recommendations with respect to the Build-Out Condition at this time.

II. DATA CAPS CONDITION

A. STATEMENT OF THE CONDITION

1. Introduction. We find that as a result of the transaction, the Company will have an increased incentive to discriminate against online video distributors which could have the effect of harming video competition. One manner to limit such access is the imposition of data caps and usage-based allowances at levels intended to blunt competition from online video distributors. The purpose of this Condition is to

⁸ The ICO did not request that her engineer conduct field tests in connection with this report.

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address the incentive and ability to use data caps and other usage based practices against video content delivered to customers through wired BIAS. The Condition eliminates the risk that that the Company will use its BIAS to engage in practices that favor its own or affiliated video content.

2. Conditions. Commencing on the Closing Date, and ending on the seventh anniversary of the Closing Date, or as otherwise adjusted by the Commission under the terms of this Appendix B, the Company shall not offer any fixed mass market BIAS plans that subject mass market BIAS customers to data caps or any other usage-based pricing mechanisms. Nothing herein shall require the Company to provide, or continue to provide, a residential BIAS plan to a business operating from a property zoned for commercial use (e.g., enterprise customers and restaurants). Usage-based pricing mechanisms include, but are not limited to, the following actions:
 - a. charging fixed mass market BIAS customers different prices based on the amount of data consumed;
 - b. preventing fixed mass market BIAS customers from consuming data beyond a certain threshold;
 - c. imposing additional fees on fixed mass market BIAS customers who consume data beyond a certain threshold;
 - d. requiring fixed mass market BIAS customers who have consumed data beyond a certain threshold to upgrade to a higher priced service product, except that this Condition IV.2.d. shall not apply to a fixed mass market BIAS customer who, after an opportunity to discuss with the Company, is reasonably found by the Company to be: 1) not primarily using its BIAS to consume edge provider traffic in the downward direction; and either 2) running a server to upload or exchange large volumes of traffic in a manner that is not consistent with residential use; or 3) using, and/or enabling others to use, a BIAS data plan to operate any type of business or commercial enterprise (indicia of commercial usage include, without limitation, sending and receiving high volumes of symmetrical traffic and not consuming traffic in a typical residential manner where the majority of traffic travels in downward direction); or
 - e. impairing or otherwise degrading the speed or quality of the customer's fixed mass market BIAS connection once the customer surpasses a certain data consumption threshold or consumes a certain amount of data.⁹

3. Reporting. For the duration of this Condition, the Company shall submit a report in

⁹ For avoidance of doubt, nothing in this Section IV shall be construed to prevent the Company from taking any action consistent with reasonable network management or to comply with the requirements under the Digital Millennium Copyright Act.

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accordance with the filing and service requirements set forth in Section IX.5 herein on a semi-annual basis, with the first such report to be submitted within six (6) months after the Closing Date. Each such report will include the following:

- a. a description, including any terms and conditions, of any data caps or usage-based pricing mechanism proposed to any of the Company's Executive Officers or Directors, or planned by the Company; and
- b. any other reasonable information the Independent Compliance Officer determines is reasonably necessary to report as required by this Condition.

(App'x B § IV.)

B. OBSERVATIONS

On November 16, 2018, Charter filed its Semi-Annual Data Caps and Usage-Based Pricing Report (the "November 2018 Data Caps Report"). The November 2018 Data Caps Report provides all the information required by the Data Caps Condition. Among other things, it states that "Charter is in full compliance with the Condition," "imposing data caps and/or usage-based pricing for broadband is inconsistent with [its] business model," and it "has taken appropriate steps to confirm that all senior executives with the authority to propose or approve the imposition of data caps and/or usage-based pricing plans are aware of both the Condition and the obligation to include any proposals of data caps or usage-based pricing mechanisms in the semi-annual reports filed with the Commission." (November 2018 Data Caps Report at 1-2.) The Report further confirms that "[d]uring the period covered by this report, there have been no proposals made to any of Charter's Executive Officers or Directors, or planned by Charter, to use either data caps or usage-based pricing mechanisms in conjunction with any fixed mass market BIAS plans." (*Id.* at 2)

The ICO has taken several steps to confirm Charter's compliance with the Data Caps Condition. The ICO reviewed marketing materials showing that the Company's internet services are advertised and marketed as featuring no data caps. The ICO also reviewed minutes of the

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CONFIDENTIAL INFORMATION] which reflect that there were no data caps or usage-based pricing proposals presented to Charter’s Executive Officers or Directors, or planned by the Company. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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C. RECOMMENDATIONS

The ICO has no additional recommendations with respect to the Data Caps Condition at this time.

SUMMARY OF RECOMMENDATIONS

The ICO has no new recommendations with respect to the Build-Out and Data Caps Conditions.

EXHIBIT A

This entire exhibit has been redacted.