Charter
COMMUNICATIONS

ELIZABETH ANDRION
Senior Vice President
Regulatory Affairs

REDACTED FOR PUBLIC INSPECTION

April 10, 2020

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: Request for Confidential Treatment of Exhibits Submitted by Charter in Connection with Its Petition for Waiver

Dear Ms. Dortch:

Attached to this request for confidential treatment is Charter Communications, Inc.'s ("Charter") petition for waiver of the Commission's rule relating to census block eligibility for Phase I of the Rural Deployment Opportunity Fund ("RDOF"),[1] as well as Exhibits A, B, C, and D thereto. Portions of these exhibits contain commercially, competitively, and financially sensitive material that Charter would not reveal to the public in the normal course of business. Charter therefore requests that the Commission withhold from public inspection and afford confidential treatment to all of the information marked confidential in the attached materials ("Confidential Information"), pursuant to the Commission's *Confidential Information Order*[2] and in accordance with the Freedom of Information Act ("FOIA")[3] and the Commission's rules relating to public information and inspection of records.[4] Consistent with the Commission's rules and March 19, 2020 public notice,[5] Charter is also submitting confidential versions of the petition and exhibits via mail and email.

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[1] *In re Rural Digital Opportunity Fund*, 35 FCC Rcd 686 Appendix A (2020) ("*RDOF Order*").

[2] *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24,816 (1998) ("*Confidential Information Order*").

[3] 5 U.S.C. § 552.

[4] *E.g.*, 47 C.F.R. §§ 0.457, 0.459.

[5] FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing, DA 20-34, https://docs.fcc.gov/public/attachments/DA-20-304A1.pdf.

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Section 552(b)(4) of the Freedom of Information Act ("FOIA Exemption 4") permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[6]

Sections 0.457(d)(2) and 0.459 of the Commission's rules allow persons to file a request for non-disclosure when submitting materials that they request be withheld from public inspection.[7]

Pursuant to § 0.459(b), Charter submits the following:

1. Identification of the Specific Information for Which Confidential Treatment Is Sought:

The Confidential Information is confidential commercial information under FOIA Exemption 4. Accordingly, pursuant to § 0.459(a), Charter requests that such information not be made routinely available for public inspection. The Confidential Information contains detailed information about, among other things, unserved and underserved homes and businesses Charter will target for build-out of services, as well as Charter's plans to implement network expansion over the next several years. The Confidential Information will be the basis for Charter's future deployments, service quality improvements, and business plans.

2. Description of the Circumstances Giving Rise to the Submission:

In February, the Commission issued its Report and Order adopting the RDOF framework.[8] The *RDOF Order* excludes certain census blocks from eligibility for Phase I of the RDOF auction, including blocks where a provider possesses a government-subsidized commitment to deploy broadband, but declines to exclude census blocks where providers possess unfunded government commitments to deploy. Charter is petitioning the Commission for a waiver to exclude from Phase I of the RDOF auction approximately 2,400 census blocks in New York State in which Charter has unfunded but nonetheless binding state obligations to deploy at least 25/3 Mbps broadband service. The Confidential Information is being submitted to help explain those obligations to the Commission and how and why they demonstrate the propriety of waiver in this case.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged:

The Confidential Information contains detailed information about, among other things, unserved and underserved homes and businesses Charter will target for build-out of services, as well as Charter's plans to expand its network, and thus represents confidential commercial information that should not be released under the FOIA. Identifying where service can most efficiently and feasibly be expanded is costly and time-consuming, and the Confidential Information is the product of Charter's significant investment in and effort toward doing so.

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[6] 5 U.S.C. § 552(b)(4).

[7] 47 C.F.R. §§ 0.457(d)(2), 0.459.

[8] *RDOF Order*, 35 FCC Rcd at 687 ¶ 2.

Charter's competitors could use the Confidential Information to help target their network expansion efforts, thereby enhancing their competitive positions and degrading Charter's.[9]

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition:

The Confidential Information involves network deployment of broadband services provided by Charter. Charter faces competition from a variety of providers using different technology. This information constitutes highly sensitive commercial information "which would customarily be guarded from competitors."[10] The Commission has recognized that, for purposes of Exemption 4, "records are 'commercial' as long as the submitter has a commercial interest in them."[11] In this regard, the Confidential Information, which contains detailed information about, among other things, unserved and underserved homes and businesses Charter will target for build-out of services, as well as Charter's plans to implement network expansion over the next several years, is commercial information that may be withheld under FOIA Exemption 4.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm:

FOIA Exemption 4 requires a federal agency to withhold from public disclosure a person's confidential or privileged commercial information unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4. In *Food Marketing Institute v. Argus Leader Media*,[12] the U.S. Supreme Court held that information submitted to the government is confidential under FOIA Exemption 4 "where commercial or financial information is both customarily and actually treated as private by its owner and provided to the [G]overnment under an assurance of privacy"—in other words, regardless of whether its disclosure could result in substantial competitive harm.[13] All of the Confidential Information is commercial information that Charter customarily and actually treats as private and is providing to the Commission under an assurance of privacy. While the Confidential Information plainly satisfies *Food Marketing Institute*'s standard, we describe below how it also satisfies long-standing precedent.

Two lines of cases have emerged for determining whether agency records fall within FOIA Exemption 4.

a. Under *Critical Mass Energy Project v. Nuclear Regulatory Commission*, commercial information that is voluntarily submitted to the Commission must be withheld from

[9] *See, e.g.*, *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994), *overruled on other grounds by Animal Legal Defense Fund v. U.S. FDA*, 836 F.3d 987 (9th Cir. 2016).

[10] 47 C.F.R. § 0.457.

[11] *Robert J. Butler*, Memorandum Opinion and Order, 6 FCC Rcd 5414, 5415 ¶ 12 (1991) (citing *Pub. Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines v. Nat'l Mediation Bd.*, 588 F.2d 863, 868 (2d Cir. 1978)).

[12] 139 S. Ct. 2356 (2019).

[13] *Id.* at 2366.

public disclosure if such information is not customarily disclosed to the public by the submitter.[14]

b. For materials not subject to *Critical Mass*, *National Parks & Conservation Ass'n v. Morton* established that if disclosure of the information is likely to either (1) "impair the [g]overnment's ability to obtain necessary information in the future," or (2) "cause substantial harm to the competitive position of the person from whom the information was obtained," it is exempted from disclosure under FOIA Exemption 4.[15]

The Confidential Information thus also falls within FOIA Exemption 4 under either *Critical Mass* or *National Parks*. The Confidential Information being provided today to the Commission in the attached petition and aforementioned exhibits thereto is not customarily released to the public and is maintained on a confidential basis. Disclosure would subject Charter to substantial competitive harm.

The Confidential Information contains detailed information about, among other things, unserved and underserved homes and businesses Charter will target for build-out of services, as well as Charter's plans to implement network expansion over the next several years, and thus represents confidential commercial information that should not be released under the FOIA. As explained above, competitors could use the Confidential Information to help target their service offerings and enhance their competitive positions, to the detriment of Charter's competitive position.[16]

Commission precedent has clearly found the general types of information produced here to be competitively sensitive and withholdable under FOIA Exemption 4.[17] Specifically, the Commission has recognized that competitive harm can result from the disclosure of confidential

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[14] 975 F.2d 871, 879 (D.C. Cir. 1992) (*Critical Mass*).

[15] 498 F.2d 765, 770 (D.C. Cir. 1974) (*National Parks*), *abrogated by Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

[16] *See, e.g.*, *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994), *overruled on other grounds by Animal Legal Defense Fund v. U.S. FDA*, 836 F.3d 987 (9th Cir. 2016).

[17] *See, e.g.*, *In re Pacific Bell Telephone Co. Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Protective Order, 15 FCC Rcd 22,845, 22,846 ¶ 2 (CPD 2000) (supporting confidentiality for collocation data); *In re Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, Order, 13 FCC Rcd 13,615, 13,617-18 ¶ 5 (1998) (keeping administrative operating expenses confidential because it would provide insight into business strategies); *In re Application of GTE Corp. and Southern Pacific Co. for Consent to Transfer Control of Southern Pacific Communications Co. and Southern Pacific Satellite Co.*, Memorandum Opinion and Order, 9 FCC Rcd 2610, 2620-22 ¶¶ 12-15 (1983) (keeping confidential accounting records showing account balance information), attachment to Letter from Gregory A. Weiss, Acting Chief, Enforcement Division, Common Carrier Bureau, FCC to Francine J. Berry, AT&T Corp. (May 13, 1994); *In re Mercury PCS II, LLC*, Memorandum Opinion and Order, 15 FCC Rcd 14,559, 14,562 ¶ 7 (2000) (noting that marketing plans and business strategies are generally competitively sensitive within FOIA Exemption 4's meaning).

business information that gives competitors insight into a company's costs and market strategies.[18] The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has stated that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."[19] The foregoing information plainly pertains to Charter's commercial and financial interests. It is, therefore, sensitive competitive information.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure:

The Confidential Information is treated on a confidential basis and, pursuant to Charter's internal operating standards, practices, and procedures, would not ordinarily be disclosed to the public.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties:

Charter has not made the Confidential Information available to the public. As required by an order and settlement agreement with the New York Public Service Commission ("NYPSC") and New York Department of Public Service ("NYDPS") (the "NYDPS Settlement"), Charter shares the Confidential Information confidentially with the NYPSC and NYDPS, and with certain municipal government entities that have entered a nondisclosure agreement governing that information. The NYDPS Settlement also requires Charter to provide a public portal that permits individual users to look up specific addresses. That portal does not, however, permit access to the Confidential Information as a whole.

8. Justification of the Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure:

Given the highly proprietary and non-public nature of the Confidential Information, Charter does not foresee a date after which it would no longer consider this information highly confidential, and therefore requests that confidential treatment apply indefinitely.

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[18] *See, e.g.*, *In re Local Exchange Carriers' Rates, Terms, & Conditions for Expanded Interconnection Through Physical Collocation for Special Access & Switched Transport Southwestern Bell Telephone Co., Cost Support Filed Under Request for Confidential Treatment Cincinnati Bell Telephone Co., Cost Support Filed Under Request for Confidential Treatment*, Order, 14 FCC Rcd 978, 990 ¶ 7 (CPD 1999), *petition for review denied by Sw. Bell Tel. v. FCC*, 168 F.3d 1344 (D.C. Cir. 1999). Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *See In re Allnet Communications Services, Inc. Freedom of Information Act Request*, Memorandum Opinion and Order, 7 FCC Rcd 6329, 6330 ¶ 13 (1992) (barring public disclosure of commercial information that would allow competitors to determine the disclosing entity's costs and tailor their pricing strategies accordingly). The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

[19] *Confidential Information Order*, 13 FCC Rcd at 24,822-23 ¶ 8.

9. Any Other Information that the Party Seeking Confidential Treatment Believes May Be Useful in Assessing Whether Its Request for Confidentiality Should Be Granted:

The Confidential Information qualifies for FOIA Exemption 4, which protects information that is (i) commercial or financial; (ii) obtained by a person outside of the government; and (iii) privileged or confidential.[20] As explained above, the Confidential Information clearly satisfies all three elements.

Please contact me if you have any questions regarding these matters.

Respectfully submitted,

/s/ Elizabeth Andrion

Elizabeth Andrion
Senior Vice President
Regulatory Affairs

[20] 5 U.S.C. § 552(b)(4).

REDACTED FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

PETITION FOR WAIVER

Charter Communications, Inc. ("Charter"), pursuant to section 1.3 of the Commission's rules,[1] requests that the Federal Communications Commission ("Commission") waive section 54.802(a) of the Commission's rules[2]—setting forth census block eligibility criteria for Phase I of the RDOF auction[3]—to exclude the approximately **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** census blocks in New York State in which Charter, in order to satisfy binding state obligations, is in the process of deploying service of at least 300/10 Mbps, exceeding the *RDOF Order*'s exclusion threshold of voice and 25/3 Mbps or better broadband service ("New York Census Blocks").[4] Indeed, Charter has voluntarily launched download speeds of up to 940 Mbps across New York.

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[1] 47 C.F.R. § 1.3.

[2] As amended by the Commission's Report and Order adopting the Rural Digital Opportunity Fund ("RDOF") framework, *In re Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686 (2020) ("*RDOF Order*"), which also prescribes the process for challenging the inclusion of areas as eligible for Phase I, *id.* at 692-93 ¶ 14.

[3] *See RDOF Order*, 35 FCC Rcd at 750-51 Appendix A.

[4] *See* RDOF Petition -- Census Blocks, attached as Exhibit A (listing census blocks that are eligible for inclusion in Phase I of the RDOF Auction, but which contain addresses to which Charter is required to extend service under its New York commitment); *compare* Order Adopting 2019 Settlement Agreement and Reconsidering Other Related Actions, New York State Public Service Commission ("*NYPSC 2019 Order*") (2019) (imposing final buildout obligations), attached as Exhibit B, *with* Order Granting Joint Petition Subject to Conditions, New York State Public Service Commission ("*NYPSC 2016 Order*"), Appendix A (2016), attached as Exhibit C (requiring Charter to "offer broadband Internet service with speeds up to 300 Mbps to all customers served by its New York networks").

The Commission may waive any provision of its rules "if good cause therefor is shown."[5] Good cause plainly exists to grant the waiver to avoid overbuilding areas in which Charter has already begun the process of deploying service and is investing private capital well in excess of $600 million.[6] This will ensure scarce universal service support is deployed to close the gap/digital divide in actually unserved areas. The Commission has previously granted rule waivers where, as here, the purposes of the rule would be disserved by its strict application, and where waiver would affirmatively serve the public interest.[7]

I. THE COMMISSION HAS GOOD CAUSE TO EXCLUDE FROM PHASE I OF THE RDOF AUCTION CENSUS BLOCKS IN NEW YORK IN WHICH CHARTER HAS BINDING STATE COMMITMENTS TO DEPLOY 25/3 MBPS OR BETTER BROADBAND SERVICE AND WILL BE DEPLOYING VOICE SERVICE IN THE COURSE OF SATISFYING THOSE COMMITMENTS.

The Commission has found that good cause exists "where special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be

[5] 47 C.F.R. § 1.3.

[6] *See NYPSC 2019 Order*, Exhibit B at 26.

[7] *See, e.g.*, *In re Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 16,761, 16,763-64 ¶¶ 8-9 (WCB 2005) (waiving universal service support filing deadlines where failing to do so "could cause significant hardship in the rural, insular, and high-cost areas served by" the late-filing applicant); *In re Federal-State Joint Board on Universal Service FiberNet, LLC*, Order, 20 FCC Rcd 20,316, 20,318 ¶ 7 (WCB 2005) (waiving universal service support filing deadlines where "the requested waiver would enable [petitioner] to continue uninterrupted its efforts to maintain and promote access to advanced services in its rural, insular, and high-cost areas"); *In re Federal-State Joint Board on Universal Service*, Order, 21 FCC Rcd 14,937, 14,939 ¶ 6 (WCB 2006) (noting that the Commission has granted waivers to "ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services") (internal quotation marks omitted) (quoting 47 U.S.C. § 254(b)); *Telesaurus Holdings Gb, LLC*, Letter, 28 FCC Rcd 1285, 1288 (WTB 2013) (declining to waive ten-year construction requirements because the petitioner "offers no *near-term plan to expand coverage in the market*, so the majority of the market would remain unserved if a waiver is granted" (emphasis added)); *In re Application of Columbia Communications Corporation*, Order and Authorization, 14 FCC Rcd 3318, 3324-25 ¶ 16 (Int'l Bureau 1999) (granting waiver of financial qualifications rules for international satellite services because waiver would "enable Columbia to increase capacity and significantly expand its service offerings without preventing additional entry, thereby enhancing competition in the market for international satellite services"); *In re Marine Rescue Technologies Ltd.*, Order, 28 FCC Rcd 12,194, 12,195-96 ¶ 6 (WTB 2013) (granting waiver to authorize the use of Maritime Survivor Locating Devices to transmit identity and location information on the international Automatic Identification System channels because the devices would "facilitate recovery of lost mariners and other persons in distress").

consistent with the principles underlying the rule."[8] This standard is clearly satisfied here: Charter's New York broadband commitments constitute special circumstances warranting deviation from the rule, *i.e.*, exclusion of those areas from the RDOF auction, and such deviation serves the public interest and furthers the Commission's goals by focusing limited support on areas that are unserved, preventing subsidized overbuilding and ensuring more Americans reap the life-enhancing benefits associated with access to high speed broadband.

The *RDOF Order* excludes as eligible areas from Phase I of the RDOF auction census blocks "which have been identified as having been awarded funding through the U.S. Department of Agriculture's ReConnect Program, or awarded funding through other similar federal or state broadband subsidy programs to provide 25/3 Mbps or better service."[9] The Commission excluded such areas to fulfill "[its] overarching goal of ensuring that finite universal service support is awarded in an efficient and cost-effective manner and does not go toward overbuilding areas that already have service," noting that its "intent is to exclude areas where 25/3 Mbps or better service has been or will be deployed without Rural Digital Opportunity Fund support."[10] This rationale supports Charter's requested waiver.

A. Charter's New York Broadband Commitments Constitute Special Circumstances Justifying Waiver of a Rule that Would Cause Overbuilding.

In New York, Charter committed in a settlement agreement with the New York Public Service Commission and New York Department of Public Service ("NYDPS Settlement") to "expand its network to provide high-speed broadband service to 145,000 residences and

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[8] *In re Applications of Intelsat LLC*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15,460, 15,486 ¶ 59 (2000).

[9] *RDOF Order*, 35 FCC Rcd at 692 ¶ 13.

[10] *Id.* at 692 ¶ 13 & n.32.

businesses" by September 2021,[11] offering speeds of up to 300 Mbps.[12] The NYDPS Settlement, which Charter must fulfill regardless of the RDOF auction, requires Charter to extend its network to pass an itemized list of specific addresses in upstate New York.[13] This list includes **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** passings located within **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** census blocks currently identified as eligible for inclusion in Phase I of the RDOF program and in which Charter has already begun deployment through some combination of physically walking out the census block, preparing detailed network design plans, filing applications for pole permits, and installing the necessary network elements—all of which incurred significant costs. Absent unseen circumstances, Charter will have deployed service to passings located within **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** blocks before the auction starts in October 2020 and to passings in a total of **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** blocks by the end of 2020. Charter has applied for pole attachment permits in **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** census blocks and physically "walked out" [**BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**

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[11] Press Release, N.Y. Pub. Serv. Comm'n, *PSC Approves Settlement with Charter Communications*, 15-M-0388 (N.Y. Pub. Serv. Comm'n July 12, 2019), http://webcache.googleusercontent.com/search?q=cache:7l2z0WZqcL0J:documents.dps.ny.gov/public/Common/ViewDoc.aspx%3FDocRefId%3D%7B15297CA6-63CB-4D11-9E98-D541B5892A89%7D+&cd=2&hl=en&ct=clnk&gl=us.

[12] *See NYPSC 2016 Order*, Exhibit C.

[13] The NYDPS Settlement allows for only modest future substitutions to this list of the specific addresses to be served, and many of the allowable bases for substitutions (*e.g.*, where a competing broadband provider extends service to the same address before Charter does, addresses in certain urban areas, and addresses that are duplicates or reflect other technical errors) would similarly be inconsistent with extending RDOF support to the areas in question. *See NYPSC 2019 Order*, Exhibit B at A-4.

census blocks and then completed elaborate network construction designs in [**BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** census blocks.[14] Deployment on these census blocks will be *complete* by September 2021[15] (and possibly earlier given that Charter is ahead of its build-out obligations), before an entity receiving subsidies for these census blocks at an October 2020 auction would be expected to even begin building.

Given that the Commission's goal is to connect as many unserved areas as possible and avoid overbuilding, the fact that over **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** census blocks eligible for Phase I of the RDOF auction overlap with Charter's New York broadband commitments that are already underway is clearly a special circumstance justifying a departure from the rule. Doing so would fulfill the Commission's "intent . . . to exclude areas where 25/3 Mbps or better service has been or will be deployed without Rural Digital Opportunity Fund support."[16]

B. Granting the Waiver Would Serve Both the Purposes of the Rule and the Public Interest Better than Would Strict Application of the Rule.

The *RDOF Order* explicitly recognizes the importance of preventing overbuilding by excluding "census blocks which have been identified as having been awarded funding through the U.S. Department of Agriculture's ReConnect Program, or . . . other similar federal or state broadband subsidy programs to provide 25/3 Mbps or better service."[17] Like the areas made ineligible for RDOF by the presence of a government subsidy, Charter's commitment to build in New York census blocks is binding and requires the provision of 25/3 Mbps or better service (in

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[14] *See* Charter NY Interim Milestone Report March 2, 2020, attached as Exhibit D.

[15] This deadline is imposed by the NYDPS Settlement. *See NYPSC 2019 Order*, Exhibit B at 2.

[16] *RDOF Order*, 35 FCC Rcd at 692 ¶ 13 n.32.

[17] *Id*. at 692 ¶ 13.

Charter's case, 300/10 Mbps or better service), and Charter will be extending voice service to those same areas as a necessary consequence of that deployment. Treating these areas as eligible for Phase I of the RDOF auction runs counter to the Commission's "overarching goal of ensuring that finite universal service support is awarded in an efficient and cost-effective manner and does not go toward overbuilding areas that already have service."[18]

Moreover, it would be difficult for the Commission to reconcile preventing overbuilding in census blocks where a provider has a *subsidized* binding commitment, while permitting overbuilding in areas where a provider has an *unsubsidized* binding commitment to deploy at least 25/3 Mbps service. As required by the condition, Charter will cover 100% of the cost of the investment, totaling well in excess of $600 million, in this New York buildout. Excluding the New York Census Blocks from the RDOF-eligible areas not only prevents other providers from overbuilding these areas using federal funding, but also offers the Commission an opportunity to use scarce federal funds in other areas, where federal subsidies are necessary to ensure broadband buildout.

Finally, excluding the New York Census Blocks from RDOF also ensures parity with the Commission's treatment of preexisting build commitments in other universal service contexts. Indeed, Chairman Pai recently recognized the need to allocate public funds away from areas with preexisting build commitments, proposing that "[t]he 5G Fund would specifically target rural areas that would not see timely deployment of 5G service absent support and are not likely to be covered by the T-Mobile transaction commitments."[19] The same logic applies here. The RDOF and the proposed 5G Fund are both structured to distribute "finite universal service support" to deploy

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[18] *Id.*

[19] *Chairman Pai Moves Forward to Establish 5G Fund for Rural America*, FCC News, 2020 WL 1652703, at *1 (Apr. 1, 2020).

service to rural areas, and to maximize the impact of those distributions by allocating them to areas that would not obtain service but for that assistance.

CONCLUSION

For the foregoing reasons, there is good cause to waive section 54.802(a) of the Commission's rules as necessary to exclude from Phase I of the RDOF auction the attached census blocks in which Charter has a binding New York State commitment to deploy broadband services. Doing so will further the Commission's goals as well as serve the public interest.

Dated: April 10, 2020

Respectfully submitted,

By: Elizabeth Andrion
Senior Vice President, Regulatory Affairs
Christine Sanquist
Vice President, Regulatory Affairs
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EXHIBIT A

REDACTED FOR PUBLIC INSPECTION

block_id	Walked Out	Design Status	Project Pole Permits Filed	At least 1 Pole License Received for Project

[BEGIN CONFIDENTIAL]

[redacted]

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[END CONFIDENTIAL]

EXHIBIT B

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on July 11, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards

CASE 15-M-0388 – Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements.

CASE 18-M-0178 - Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises.

ORDER ADOPTING 2019 SETTLEMENT AGREEMENT
AND RECONSIDERING OTHER RELATED ACTIONS

(Issued and Effective July 11, 2019)

BY THE COMMISSION:

INTRODUCTION

By this Order, the Commission adopts the Settlement Agreement filed on April 19, 2019 (the 2019 Settlement Agreement), which, among other things, addresses certain disputes by and between Charter Communications, Inc. (Charter) and the Department of Public Service Staff (DPS Staff) over the network expansion requirement imposed by the Commission in its

Approval Order and Section I(B)(1)(c) of Appendix A thereof.[1] Such disputes arise out of the condition that Charter's network pass 145,000 unserved and underserved residential housing and/or business units in its New York State service territory (the Network Expansion Condition).

Generally, the 2019 Settlement Agreement (attached hereto as Appendix A) requires, among other things, that Charter continue to invest in network expansion to bring high speed broadband to 145,000 unserved and underserved addresses entirely in Upstate New York by September 30, 2021; that Charter provide $12 million in additional funds to further expand broadband coverage in Upstate New York beyond these 145,000 addresses; and, that Charter meet enforceable interim milestones and provide monthly reports to track its progress. The 2019 Settlement Agreement, will, in short, ensure that Charter's network expansion only takes place in areas of Upstate New York where for the most part wireline broadband does not currently exist; it is therefore a reasonable resolution to the disputes by and between Charter and DPS Staff that have previously arisen in this case.

Through this Order the Commission adopts the 2019 Settlement Agreement in full as a means of resolving the continuing New York State Supreme Court litigation and consequently finds that the Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and

[1] Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued January 8, 2016) (Approval Order). Television, Internet and Voice services are now provided in New York under the name "Spectrum."

Denying Good Cause Justifications;[2] the Order on Compliance (only with regard to the Network Expansion Condition);[3] and, the Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification[4] (Compliance Order) are rendered moot. Moreover, through this Order the Commission determines that the Order to Show Cause in Case 18-M-0178 regarding the New York City cable franchise should be closed, without prejudice.[5] Finally, through this Order the Commission reconsiders and supersedes its Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval Order (Revocation Order),[6] as explained in more detail below.

BACKGROUND AND PROCEDURAL HISTORY

On January 8, 2016, the Commission approved the Joint Petition of Time Warner Cable, Inc. and Charter (the Petitioners) seeking approval of the merger of the two companies. In approving the transaction, the Commission stated that, for the transaction to meet the enumerated statutory "public interest" standard, the Petitioners must demonstrate the transaction yields positive net benefits, after balancing the expected benefits

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[2] Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018).

[3] Id., Order on Compliance (issued June 14, 2018).

[4] Id., Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification (issued July 27, 2018).

[5] Case 18-M-0178, Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises, Order to Show Cause (issued March 19, 2018).

[6] Case 15-M-0388, Charter Communications and Time Warner Cable - Transfer of Control, Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (issued July 27, 2018).

properly attributable to the transaction offset by any risks or detriments that would remain after applying reasonable mitigation measures.[7]

The Commission identified several potential detriments, including potential negative impacts to customer service in New York, network expansion and upgrades focused outside of New York, job losses in New York, and the issuance of substantial debt.

Accordingly, given the public interest standard, the Commission explicitly conditioned its approval on a host of conditions designed to yield incremental net benefits. Among those established conditions, was the Network Expansion Condition, wherein the Commission required the extension of Charter's network to pass an additional 145,000 unserved and underserved homes and businesses across the State within four years of the close of the transaction.

Charter's initial four-year build out plan was filed with the Commission on July 6, 2016, with a subsequent revision filed July 26, 2016, and additional updates on November 18, 2016 and February 17, 2017. As a result of delays in the schedule in February 2017, Charter and DPS Staff began the first settlement discussions aimed at modifying the timelines of network deployment associated with the Approval Order. The result of those discussions was a settlement agreement adopted by the Commission in September 2017 (2017 Settlement Agreement).[8] In addition to modifying the timelines for Charter's Network Expansion Condition, the 2017 Settlement Agreement also required that Charter establish a communications plan designed to provide information to consumers and local officials regarding the timing and locations of its network expansion.

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[7] Approval Order, p. 19.

[8] Id., Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement (issued September 14, 2017).

The 2017 Settlement Agreement did not address concerns over where Charter should deploy its network under the Network Expansion Condition to pass an additional 145,000 unserved or underserved homes and/or businesses. As a result, Charter and the DPS Staff subsequently disagreed on the eligibility of certain addresses included in Charter's network build out.[9] What followed was the issuance of several Commission Orders seeking to clarify which addresses were eligible and which addresses were not eligible[10] culminating in the Commission's Revocation Order and Compliance Order.[11]

The Revocation Order revoked the Commission's Approval Order and directed Charter to file, within 60 days, a six-month exit plan (the Six-Month Plan) to effect an orderly transition to one or more successor providers in areas previously served by Time Warner Cable, Inc. in New York. In the accompanying Compliance Order, the Commission determined that Charter did not satisfy both the December 18, 2017 and June 18, 2018 network

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[9] In a related action, the Commission initiated a show cause proceeding involving Charter's build out in the City of New York. See, Case 18-M-0178, Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises, Order to Show Cause (issued March 19, 2018).

[10] See, id., Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018) and Order on Compliance (issued June 14, 2018).

[11] See, Case 15-M-0388, Charter Communications and Time Warner Cable - Transfer of Control, Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (issued July 27, 2018) (Revocation Order); id., Order Confirming Missed June 2018 Compliance Obligation and Denying Good Cause Justification, (issued July 27, 2018) (Compliance Order).

expansion targets spelled out in the 2017 Settlement Agreement,[12] and that Charter had not made a sufficient Good Cause showing for the missed June 2018 compliance obligation; the Commission also authorized the commencement of enforcement litigation.

Subsequently, discussions ensued between Charter and the DPS Staff aimed at resolving the Network Expansion Condition disputes related to areas of deployment throughout Charter's footprint. Those discussion began in August 2018. On August 17, 2018, Charter filed a letter requesting an extension of the 60-day deadline to file the Six-Month Plan with the Secretary, and the 30-day period to file petitions for rehearing of both the Revocation Order and the Compliance Order pursuant to Public Service Law (PSL) §22.[13] On August 20, 2018, Charter's request to extend the deadline to file the Six-Month Exit Plan was granted to October 9, 2018.[14] Also, on August 22, 2018, Charter's request for an extension of the 30-day deadline for the filing of rehearing petitions pursuant to PSL §22 was granted to September 10, 2018.[15] Similar requests to stay or adjourn the related New York Supreme Court Enforcement

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[12] This June 2018 build out obligation was established in a Settlement Agreement approved by the Commission in a September 14, 2017 Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement.

[13] Case 15-M-0388, Request for Extension of Time (filed August 17, 2018).

[14] An extension of the 60-day deadline from September 25, 2018 to October 9, 2018 was granted by the Secretary to the Commission pursuant to Order Clause 6 of the Revocation Order. See, Case 15-M-0388, Ruling on Extension Request (issued August 20, 2018).

[15] Case 15-M-0388, One Commissioner Order Granting Extension (issued August 22, 2018).

Proceeding and Article 78 Proceeding were also submitted and granted throughout these settlement discussions.[16]

On September 7, 2018, Charter filed a letter requesting an additional 30-day extension of the deadline to file petitions for rehearing of both the Revocation Order and the Compliance Order pursuant to PSL §22.[17] The same day, Charter also submitted a request to extend the date for the submission of the Six-Month Exit Plan by 30 days.[18] That request was granted on September 10, 2018.[19]

On October 9, 2018, Charter filed a further Request for Extension of Time to File Applications for Rehearing and Extension of the Deadline in Ordering Clause No. 4 of the July 27, 2018 Order,[20] seeking sixty-day extensions of the deadline to file a Six-Month Exit Plan and the period to file petitions for rehearing of both the Revocation Order and

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[16] The enforcement proceeding by the Commission against Charter in the Supreme Court of the State of New York, Albany County, was filed on July 27, 2018, under the caption State of N.Y. Pub. Serv. Comm'n v. Charter Commc'ns, Inc., Index No. 4819–18 (the Enforcement Proceeding); and the special proceeding initiated by Charter against the Commission and its commissioners in their official capacities was filed in the Supreme Court of the State of New York, Albany County, on November 26, 2018, under the caption Charter Commc'ns, Inc. v. N.Y. Pub. Serv. Comm'n, Index No. 907147-18 (the Article 78 Proceeding).

[17] Case 15-M-0388, Request for Extension of Time (filed September 7, 2018).

[18] Id., Request for Extension of Deadline in Ordering Clause No. 4 of July 27, 2018 Order (filed September 7, 2018).

[19] Id., One Commissioner Order Granting Requests for Extension (issued September 10, 2018). The August 22, 2018 and September 10, 2018 orders were confirmed in two Confirming Orders issued on September 12, 2018.

[20] Id., Request for Extension of Time to File Applications for Rehearing and Extension of the Deadline in Ordering Clause No. 4 of the July 27, 2018 Order (filed October 9, 2018).

Compliance Order pursuant to PSL §22. That request was granted in limited part on October 10, 2018.[21] The October 10 Order granted limited, 45-day extensions to the respective deadlines, but directed that in the event a settlement agreement was not reached by that date, any further consideration of extensions would require a joint filing providing good cause justification for why the deadlines should be further extended.

On November 21, 2018, DPS Staff and Charter filed a joint letter stating that they had not yet been able to reach a fully executed settlement agreement, but that they had established a framework for the structure of a settlement agreement and that discussions were ongoing. The letter also stated that a further 18-day extension of the deadlines to file a Six-Month Exit Plan with the Secretary and to file petitions for rehearing of both the Revocation Order and Compliance Order pursuant to PSL §22 was therefore warranted.[22] This request was granted on November 23, 2018.[23] According to that joint letter, such a settlement agreement would necessarily address: issues relating to the inclusion of certain categories of addresses and whether they are valid "passings" under the Approval Order; penalty actions and amounts under dispute in Supreme Court; and, a schedule for compliance (including enforcement mechanisms) going forward.

On December 13, 2018, Charter and DPS Staff again filed a joint letter requesting that the deadline to file a Six-Month Exit Plan with the Secretary be extended until

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[21] Id., Order Granting Requests for Extension (issued October 10, 2018). This Order was confirmed on October 18, 2018.

[22] Id., Joint Request for Extension of Time (filed November 21, 2018).

[23] Id., One Commissioner Order Granting Further Request for Extensions (issued November 23, 2018). This Order was confirmed on December 14, 2018.

February 11, 2019, and the deadline to file petitions for rehearing of both the Revocation Order and Compliance Order pursuant to PSL §22 be extended until January 14, 2019.[24] That request was granted on December 14, 2018.[25]

By letter dated January 12, 2019, Charter requested that the Commission grant further 30-day extensions by January 14, 2019.[26] By One Commissioner Order issued January 14, 2019, a limited 21-day extension was granted.[27] A further request for additional extensions was filed on February 1, 2019.[28] By One Commissioner Order issued February 4, 2019, an additional 30-day extension was granted.[29] That Order also set forth the expectation that the parties would reach an agreement within four weeks.

By letter dated March 5, 2019, Charter requested an additional 30-day extension so that the parties could continue their negotiations.[30] By One Commissioner Order issued March 6, 2019, an additional 30-day extension was granted. That Order noted that Charter stated that "[c]onsiderable time and resources have been deployed to analyze and consider proposed settlement frameworks, which have required extensive internal

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[24] Id., Joint Request for Further Extension (filed December 13, 2018).

[25] Id., One Commissioner Order Granting Additional Request for Extensions (issued December 14, 2018). This Order was confirmed on January 17, 2019.

[26] Id., Request for Extension of Time (dated January 12, 2019).

[27] Id., One Commissioner Order Granting Additional Extensions (issued January 14, 2019). This Order was also confirmed on January 17, 2019.

[28] Id., Request for Extension of Time (filed February 1, 2019).

[29] Id., One Commissioner Order Granting Additional Extensions (issued February 4, 2019). This Order was confirmed on February 7, 2019.

[30] Id., Request for Extension of Time (filed March 5, 2019).

review both at Charter and by the Department," and that the parties had exchanged term sheets and reached agreement on many key issues.[31]

On April 5, 2019, Charter requested an additional 14-day extension so that the parties could complete their negotiations.[32] A 14-day extension was granted on April 5, 2019.[33] Charter and DPS Staff jointly filed the 2019 Settlement Agreement proposed for adoption herein by the Commission on April 19, 2019.

Thereafter, by One Commissioner Order further extensions of the deadline for the filing of rehearing petitions pursuant to PSL §22 in connection with the Commission's Revocation Order and Compliance Order were granted until July 18, 2019. Moreover, the deadline for the filing of the Six-Month Exit Plan was further extended until August 15, 2019. Finally, the DPS Staff was directed to prepare a Notice of Proposed Rulemaking pursuant to the State Administrative Procedures Act §202(1) on the 2019 Settlement Agreement and related actions.[34] Again, relevant Supreme Court deadlines were either stayed or adjourned.

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[31] Id., One Commissioner Order Granting Request for Additional Extension of Deadlines (issued March 6, 2019), p. 6. This Order was confirmed on March 14, 2019.

[32] Id., Request for Extension of Time to File Applications for Rehearing and Extension of Deadline (filed April 4, 2019).

[33] Id., One Commissioner Order Granting Request for Further Extension of Deadlines (issued April 5, 2019). This Order was confirmed on April 18, 2019.

[34] One Commissioner Order Extending Deadlines and Directing Further Process (issued April 19, 2019). This Order was confirmed on May 16, 2019.

NOTICES SOLICITING COMMENTS

Following the filing of the 2019 Settlement Agreement, the Commission issued a Notice Seeking Comments (Notice) dated May 15, 2019.[35] The time for submissions in response to the Secretary's Notice expired on July 8, 2019.

In addition, pursuant to the SAPA §202(1), a Notice of Proposed Rulemaking was published in the State Register on May 8, 2019, requesting comments on, among other things, the Commission's consideration of the proposed 2019 Settlement Agreement.[36] The Commission also explicitly sought comments on whether to modify, reexamine, or otherwise reconsider the actions taken in the following Orders in Case 15-M-0388: Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018); Order on Compliance (issued June 14, 2018) (only with regard to the Network Expansion Condition); Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification (issued July 27, 2018); Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (issued July 27, 2018); and in Case 18-M-0178, Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises, Order to Show Cause (issued March 19, 2018). Finally, the Settlement Agreement also addresses litigation matters that arose out of the Orders in Case 15-M-0388.

[35] See, Case 15-M-0388, Charter Communications and Time Warner Cable - Transfer of Control, Notice Seeking Comments on Settlement Agreement (issued May 15, 2019).

[36] SAPA No. 15-M-0388SP3

Comments were received from elected representatives, business groups, labor unions, and individual members of the public.

Comments supporting adoption of the 2019 Settlement Agreement generally note that the 2019 Settlement Agreement ensures all network expansion will be in Upstate New York and that it represents a reasonable settlement of the issues in the proceeding. Comments opposing adoption the 2019 Settlement Agreement state that Charter should make its plans more public and that the State should seek a new provider instead of giving Charter additional opportunities to live up to its commitments.

The comments from the public at-large focused, in general, on the lack of choices for high-speed broadband services and a desire to see Charter's network expansion be completed in certain areas of the State. International Brotherhood of Electrical Workers (IBEW) member comments generally focus on the ongoing strike of IBEW represented Charter employees in the New York City area, an area of the State that the Commission notes is not eligible to be counted as part of the Network Expansion Condition under the terms of the proposed 2019 Settlement Agreement.

The Town of Ancram proposes that the Commission modify the 2019 Settlement Agreement to require that 1) Charter publicly announce what addresses it intends to build to, 2) following such announcement the Broadband Program Office (BPO) should identify the addresses it intends to bid, 3) the deadline should continue to be September 2020, and 4) Charter should be subject to fines, the proceeds of which should go to the BPO for further build out. Similarly, the Town of Duanesburg suggests that Charter should publicly disclose the locations it intends to build in order for Towns to be able to better fund projects to fill any remaining gaps in service.

The Public Utility Law Project (PULP) recommends that the Commission adopt the 2019 Settlement Agreement with conditions that include 1) broadening Charter's low-income broadband program; 2) modifying the Merger Approval Order's requirement that Charter provide free service to a certain number of community anchor institutions; and 3) implementing additional telephone service quality requirements on Charter.

The New York State Telecommunication Association, Inc. (NYSTA) states that the Commission should reject Section 3(c) of Exhibit A to the 2019 Settlement Agreement because allowing Charter to count passings in BPO wireline grant areas runs counter to the State's policy and would essentially undercut BPO grantees who bid on areas on the expectation that they would be the only provider serving those areas.

Connect Columbia urges the Commission to significantly modify the 2019 Settlement Agreement. The comments state that the Commission should 1) require Charter to confine its buildout to areas with lower density or line extension areas of 35 homes per linear mile; 2) disallow any passings in BPO wireline overlap areas; 3) clarify that Charter must complete network upgrades to provide 300 Mbps service by the end of 2019;[37] 4) clarify whether Charter intends to provide service via satellite or wireless technology; 5) require that Charter make its plans public to allow for municipalities and communities to assess build out; and 6) require that Charter comply with DPS Staff audits going forward.

Stop the Cap! recommends that Charter agree to 1) further extend the availability of its Everyday Low Price Internet ($14.99/month) service to new customers for an additional five year period, reset existing New York customer

[37] The Commission notes that Charter's obligation in this area is ongoing and not yet due to be completed.

pricing for this package to $14.99 for the same period, and publish a regular notice in bill statements about the availability of this tier; 2) remove the restriction preventing New York customers from enrolling in the Spectrum Internet Assist (SIA) program if they already have Spectrum internet service; 3) boost the download speed of its basic Spectrum Internet package from the current 100 Mbps to 200 Mbps and provide New York State customers with access to any other speed improvements or upgrades as soon as they become available in any other state serviced by Charter; 4) extend its service to overlap satellite-designated areas and receive credit towards its buildout requirement for doing so; 5) make public the Plans of Record; and, 6) raise the $10,000 out of pocket expenditure limit related to the Incremental Build Commitment to $20,000, and require Charter to offer the opportunity to extend service to the applicable address with a customer contribution to allow the project to move forward. Finally, Stop the Cap! requests that the Commission study the impact of the Charter strike on service quality and do all it can to encourage Charter to settle the strike at the earliest opportunity.

SLIC opposes the 2019 Settlement Agreement on the basis that 1) allowing nearly 10,000 units to count toward serving the underserved and unserved is contrary to the Approval Order; 2) it is contrary to public policy to partner with Grantees to build out unserved and underserved census blocks utilizing taxpayer funds and then to concurrently credit Charter for serving these same census blocks or portions thereof; 3) it is unreasonable to permit the $6 million allocable for broadband expansion to be inaccessible until 2021; and 4) allowing Charter to maintain the confidentiality of its 145,000 unit build out plan has a dampening effect on potential development. Finally, SLIC requests that if Charter does overbuild in BPO Grantee

census blocks, it asks that the Commission consider requiring the reimbursement to New York State and to the BPO Grantees for the costs for make-ready pole attachment work.

A group of retirees of the Department of Public Service filed comments supporting the Commission's adoption of the 2019 Settlement Agreement. The commenters recommended that the Commission modify the 2019 Settlement Agreement to allow for Charter to use the incremental $6 million allocated to the BPO for its own build out because the BPO program appears to be complete. They also expressed concerns regarding the underlying Commission process with respect to the Revocation Order.

Finally, comments from the Long Lake Homeowner's Association, Inc. request that the timeline for wiring broadband internet for its community be brought up to sometime in 2019, partly in cognizance of the business opportunity that it represents for Charter, both in size and density; and, that there be a minimal gap between completing the build out and actively marketing the broadband service to its community residents.

SUMMARY OF SETTLEMENT

In order to resolve disputes between Charter, DPS Staff and the Commission, Charter and DPS Staff negotiated the proposed 2019 Settlement Agreement. As part of the 2019 Settlement Agreement, Charter, among other things, explicitly agrees to the following:

No address within the boundaries of the City of New York qualifies as a passing, or may be applied toward fulfilling Charter's commitments under the Network Expansion Condition. A residential housing unit or business is eligible to count toward Charter's commitments if it is located outside of the boundaries of the City of New York and is not passed, served, or capable of

being served (by either a standard or non-standard installation), by pre-existing network from Charter or any other provider capable of delivering broadband speeds of 100 Megabits-per-second (Mbps) or higher. Charter may include up to, but no more than, 9,500 addresses located within the boundaries of Charter's municipal cable franchises in Albany, Buffalo, Mt. Vernon, Rochester, Schenectady, and Syracuse; up to, but no more than, 9,400 addresses required to be passed pursuant to a grant awarded through the New NY Broadband Program to a wireline service provider other than Charter as identified in Exhibit B of the proposed 2019 Settlement Agreement; up to, but no more than, 30,000 addresses in Upstate New York that are both identified by Charter in Exhibit B of the proposed 2019 Settlement Agreement, and awarded by the BPO through the New NY Broadband Program by a grant to a wireless/satellite service provider other than Charter.

Charter agrees to a new schedule for completion of its build out, that includes the following milestones:

Date	Interim Milestone
September 30, 2019	76,561
January 31, 2020	87,934
May 31, 2020	99,347
September 30, 2020	110,760
January 31, 2021	122,173
May 31, 2021	133,586
September 30, 2021	145,000

Compliance with these milestones will be reported by Charter on the 15th of every month, starting with the first full month following adoption of the proposed 2019 Settlement Agreement by the Commission. Charter will submit a report to DPS Staff detailing its progress toward the "Total Passings" for the

relevant monthly period including the number and addresses of passings completed and the number and addresses of passings remaining to be completed, if any, for the pertinent four-month "Interim Milestone Reporting Period."

If Charter's progress as reported in any Interim Milestone Report falls short of the Interim Milestone for that Interim Milestone Reporting Period, Charter is required to make a payment to an escrow fund in the amount of $2,800.00 for each individual missed eligible passing below the applicable Interim Milestone. Following Charter's completion of the Network Expansion Condition, any funds remaining in the escrow account will be used to fund additional network expansion efforts.

Charter will also be required to place $6 million in escrow within 60 days of Commission adoption of the proposed 2019 Settlement Agreement for the purpose of funding additional expansion efforts. Under the terms of the proposed 2019 Settlement Agreement such additional expansion will be done at the direction of and in consultation with DPS Staff. In addition, Charter will be required to make a one-time deposit of $6 million into a fund, to be identified by DPS Staff or the Commission, and dedicated to financing incremental broadband expansion projects selected by the BPO through the solicitation of public bids from broadband providers capable of delivering broadband speeds of 100 Mbps or higher including, but not limited to, Charter.

Finally, Charter and DPS Staff agreed that if the Commission adopts the proposed 2019 Settlement Agreement, the Network Expansion Condition, as modified by the 2017 Settlement Agreement shall be modified by the proposed 2019 Settlement Agreement, except Paragraphs 17, 18(b), (c), (d), (f), (g), and (h) of the 2017 Settlement Agreement updated to reflect the Completion Deadline as detailed above. They also request that

the Commission specify that the Commission declare moot or otherwise reexamine the following Orders in these related proceedings:

i. Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018);

ii. Order on Compliance (issued June 14, 2018) (only with regard to the Network Expansion Condition);

iii. Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification (issued July 27, 2018); and

iv. Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (issued July 27, 2018),

and that the Commission also resolve its March 19, 2018 Order to Show Cause in Case 18-M-0178, Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises, because the issues in that matter have, according to Charter, been resolved.

LEGAL AUTHORITY

The Commission is generally empowered to issue orders regarding regulated telephone and cable companies doing business in the State of New York and to interpret and enforce its orders pursuant to PSL §5 and Articles 5 and 11. The Commission is also specifically empowered to examine the practices and facilities of telephone corporations under PSL §94, and to issue, amend or rescind orders regarding cable companies pursuant to PSL §216.

With regard to cable companies specifically, the Commission's jurisdiction is broad. Under PSL §215(c), the Commission is required "… to prescribe standards by which the franchising authority shall determine whether an applicant possesses (i) the technical ability, (ii) the financial ability,

(iii) the good character, and (iv) other qualifications necessary to operate a cable television system in the public interest[.]" Pursuant to PSL §216(1), "[t]he commission may promulgate, issue, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the purposes of this article. Such orders, rules and regulations may classify persons and matters within the jurisdiction of the commission and prescribe different requirements for different classes of persons or matters." And, PSL §216(5) states that the Commission "shall have and may exercise all other powers necessary or appropriate to carry out the purposes of this article."

The Commission jurisdiction over telephone companies is similarly broad. PSL §4(1) provides that the Commission "shall possess the powers and duties hereinafter specified, and also all powers necessary or proper to enable it to carry out the purposes of this chapter." Under PSL §99(2), "[n]o telegraph corporation or telephone corporation hereafter formed shall begin construction of its telegraph line or telephone line without first having obtained the permission and approval of the commission and its certificate of public convenience and necessity…."

Additionally, PSL §94(2) grants the Commission "general supervision of all … telephone corporations…within its jurisdiction … and shall have the power to … examine … their franchises, and the manner in which their lines and property are leased, operated or managed, conducted and operated with respect to the adequacy of and accommodation afforded by their service and also with respect to the safety and security of their lines and property, and with respect to their compliance with all

provisions of law, orders of the commission, franchises and charter requirement."[38]

Pursuant to PSL §22, "[a]fter an order has been made by the [C]ommission any corporation or person interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, but any such application must be made within thirty days after the service of such order, unless the [C]ommission for good cause shown shall otherwise direct…." Moreover, under 16 NYCRR §3.7(b), "[r]ehearing [or reconsideration] may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination."[39]

Under PSL §12, "[i]t shall be the duty of counsel to the commission, subject to the direction of the chairman, to represent and appear for the people of the state and the

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[38] Additionally, PSL §91(1) requires that telephone corporations' facilities be "adequate and in all respects just and reasonable," and PSL §94(2) requires that the Commission review the safety of and manner in which telephone plant is operated. Similarly, PSL §220 requires that facilities installed by cable companies be adequate and conform with the Commission's construction standards, including the National Electric Safety Code (NESC) and PSL §221, requires that cable companies comply with the requirements contained in any franchise agreement confirmed by the Commission.

[39] There is legal support for the proposition that an agency may reconsider/rehear a decision on its own initiative. Where an agency makes a determination that is not quasi-judicial, it "was not bound by the rule that functions of inferior judicial tribunals of or quasi-judicial officers terminate with the entry of judgment and may not afterwards be altered or varied in any respect by the tribunal itself." People ex rel. Finnegan v. McBride, 226 N.Y. 252, 257 (1919). That rule is applicable here because the matter is rulemaking, i.e., quasi-legislative. The New York Court of Appeals expressly held that an agency may reconsider and alter a prior determination when there has been a change in circumstances or new information has been obtained. Matter of Sullivan County Harness Racing Ass'n v. Glasser, 30 N.Y.2d 269, 277 (1972).

commission in all actions and proceedings involving any question under this chapter, or within the jurisdiction of the commission, and, if directed to do so to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized, and to expedite in every way possible final determination of all such actions and proceedings; and generally to perform all duties and services delegated to or required of him."

DISCUSSION

For the reasons stated herein, the Commission determines that the proposed 2019 Settlement Agreement should be adopted in full. The 2019 Settlement Agreement is a reasonable resolution to the disputes that arose in this proceeding and will result in Charter's network expansion efforts being completed in a focused manner. The 2019 Settlement Agreement fully and finally resolves all the issues and concerns raised and/or asserted, or that could properly have been raised and/or asserted with regard to the disputes that gave rise to the Commission's Revocation Order and Compliance Order and subsequent New York State Supreme Court litigation. Charter's New York customer base will benefit from the further deployment of Charter's video, telephone, and broadband network, on a schedule that Charter has agreed is achievable. However, the 2019 Settlement Agreement includes consequences should Charter fail to meet those important milestones. The 2019 Settlement Agreement not only furthers consumer interests, but it provides stronger incentives for Charter to meet its future build out commitments in the form of $2,800 payments to escrow for any missed targets on a per address basis. The revisions to Charter's build out schedule are reasonable and will require

that Charter meet its original commitment to pass 145,000 premises, albeit 18 months later than originally anticipated. Additionally, the 2019 Settlement Agreement ensures that all of the network expansion will take place outside of New York City. Further, the continuation of Charter's communications plan and web portal will provide those without access to broadband service, the information they need to determine whether they will be eligible to receive service under Charter's revised build out commitment here.

The 2019 Settlement Agreement does not constitute a finding or admission of any violation by Charter nor does it constitute a penalty or forfeiture under the PSL. The adoption of the 2019 Settlement Agreement does, however, constitute changed circumstances that impact several Commission actions taken as a result of the subject disputes by and between Charter and the DPS Staff, and the Commission will address each of them as follows.

Regarding the Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018) and the Order on Compliance (issued June 14, 2018) (only with regard to the Network Expansion Condition), the Commission determines that those Orders are effectively rendered moot by changed circumstances through the terms contained in the 2019 Settlement Agreement adopted by the Commission herein.

Specifically, the Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018) determined, among other things, that Charter had failed to provide sufficient evidence as to why the Commission should not disqualify certain "passings" in New York City and in other areas of the State and also ordered the removal of additional

addresses from its 145,000 build out plan. As a result, the Commission directed that Charter forfeited its right to earn back an additional $1,000,000 in accordance with the 2017 Settlement Agreement and the Letter of Credit be drawn down accordingly.[40] Moreover, in the Order on Compliance (issued June 14, 2018), the Commission determined, among other things, that Charter "did not provide the necessary unconditional acceptance… [and] "did so in an effort to limit the scope of, among other things, the Network Expansion Condition, a material commitment central to the Commission's conditional approval" (footnotes omitted).[41]

Therefore, with respect to the Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018) and Order on Compliance (issued June 14, 2018) (limited to the Network Expansion Condition exclusively), the Commission determines that the adoption of the 2019 Settlement Agreement renders the Commission findings in those matters moot. The issues raised in the Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (issued June 14, 2018) and Order on Compliance (issued June 14, 2018) (limited to the Network Expansion Condition exclusively), have been sufficiently resolved. The 2019 Settlement Agreement effectively resolves the disputes

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[40] According to the 2017 Settlement Agreement, however, under ¶ 9 thereof, "[t[he Letter of Credit may be drawn upon in the amount of a respective forfeiture whenever the right to earn back a portion of the $12,000,000 has been forfeited, provided that with respect to any forfeiture the amount of which is to be determined by whether or not Charter has established Good Cause Shown, no drawdown shall occur as to any disputed amount until such dispute has been finally resolved, including any rehearing or judicial review.

[41] Order on Compliance, pp. 7-8.

related to the Approval Order's Network Expansion Condition by clarifying passings eligible to be counted toward total passings.[42] With the adoption of the modified build out terms adopted pursuant to the SAPA rulemaking, the 2019 Settlement Agreement resolves any disputes involving where Charter can deploy its network in the State. Similarly, with respect to the Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification (issued July 27, 2018), the Commission followed the same logic as in the June 14 Orders and, therefore, the findings in that Order are likewise moot given the 2019 Settlement Agreement. In sum, the Approval Order's conditions remain in effect except to the extent that the Network Expansion Condition is modified by the adoption of the 2019 Settlement Agreement in this Order.

Regarding the Revocation Order (issued July 27, 2018), the circumstances have similarly changed, and the Commission must now revisit its decision. In light of the fact that Charter has now agreed to include only those addresses eligible under the 2019 Settlement Agreement for purposes of complying with the 145,000 addresses requirement, has agreed to additional build out beyond the 145,000 addresses, and has agreed to compliance and reporting protocols to ensure its compliance, the rationale underlying the Commission's decision to revoke its approval of the Charter/Time Warner merger no longer exists. Therefore, the Commission reconsiders that decision here and determines that the Revocation Order is no longer in effect and that its directive to file compliance filings – including submission of the Six-Month Exit Plan - are no longer required.

Finally, with respect to Case 18-M-0178 (Order to Show Cause (issued March 19, 2018), on June 13, 2019, Charter

[42] See, 2019 Settlement Agreement, Exhibit A, ¶¶ 1-4.

provided the Commission, under confidential cover, with correspondence between itself and the City of New York that resolves the dispute that led, in part, to the Commission's opening Case 18-M-0178, that being a franchise fee dispute. As a result of that agreement between Charter and the City of New York, as well as the commitment by Charter that it will not count any addresses in New York City toward its Network Expansion Condition, the investigation opened by the Commission in that proceeding need not be pursued any further and therefore, the Commission determines here that Case 18-M-0178 shall be closed, without prejudice.

The actions the Commission is taking here are reasonable for several reasons. First, under the 2019 Settlement Agreement, among other things, Charter will continue to invest in network expansion to bring high speed broadband to tens of thousands of unserved and underserved residential and/or business addresses, including 145,000 addresses entirely in Upstate New York;[43] this expansion will be completed by September 30, 2021, in accordance with a schedule providing frequent interim milestone requirements, with corresponding reporting and accountability, including processes and procedures to ensure proper oversight, and monitoring of progress by DPS Staff and compliance by Charter; it also will include Charter's agreement - over and above its undertaking at the time of its original entry into the State - to spend $12 million for broadband expansion projects at locations to be selected by the DPS Staff and the BPO. With respect to the not yet completed passing addresses referred to in the 2019 Settlement Agreement,

[43] For purposes of this Order, the Commission clarifies that Charter's footprint includes any area in which it holds a cable franchise, or operates a cable television system that serves customers in that municipality.

Exhibit A Section 3(c), that overlap with BPO wireline grant areas, Charter is limited to only those BPO wireline overlap passing addresses included in the Plan of Record as of the date of this Order (Exhibit B of the 2019 Settlement Agreement). Charter confirmed its understanding of this requirement in comments filed on July 8, 2019, as updated and corrected in a July 10, 2019 filing to the Department's Record Access Officer, and stated that it acknowledges that it will be limited to build only to the approximately 6,614 BPO wireline overlap addresses included in the Plan of Record as of July 10, 2019 and that it will not seek to include additional BPO wireline overlap passings.[44] [45]

Allowing this limited number of BPO wireline overlap passings is a reasonable compromise to settle the dispute over the eligibility of these addresses considering that approximately 4,300 of these passings have already been completed and allowing an additional 2,000 limits the impact to BPO Grantees, which NYSTA and Connect Columbia articulate in their comments. Indeed, considering that the combined buildout of the BPO Grantees and Charter will reach nearly 500,000 homes and businesses, an overlap of approximately 6,600 addresses is relatively insignificant.

As the result of the 2019 Settlement Agreement, DPS Staff estimates that Charter will need to spend more than $600 million, more than two times the amount originally estimated by the Commission as the public benefit value of the Network Expansion Condition and will bring high-speed broadband to more

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[44] Case 15-M-0388, Charter Comments Regarding the Proposed 2019 Settlement Agreement (filed July 8, 2019).

[45] Id., Charter's Request for Confidential Treatment of Charter Communications, Inc.'s Confidential Corrected Plan of Record (filed July 10, 2019).

than 145,000 homes and businesses in Upstate New York. Coupled with Charter's deployment of faster broadband speeds in New York State since and as a result of the commitments it made in the merger, this infusion of resources will ensure that even more homes and businesses in our state have access to high-speed broadband.

While some of the comments in the record suggest that the Commission should not adopt the 2019 Settlement Agreement because of concerns about Charter's prior performance, the Commission notes that, this new Agreement has more granular targets and reporting requirements that will enable the Commission to more efficiently track Charter's performance. It also includes performance incentives that are self-effectuating, in the form of additional monies being committed to build out in Upstate New York. These additional protections, as well as the 2019 Settlement Agreement's clarity about the areas in which Charter may build out in order to satisfy the condition, offer sufficient protections for consumers and the State.

PULP's suggestions for additional protections for low-income consumers, the modification of community anchor institution condition and the imposition of telephone service quality standards are not associated with Charter's build out. While the goals PULP states are admirable, they go beyond the scope of the proposed 2019 Settlement Agreement and therefore, the Commission must decline to impose them here.

With regard to Connect Columbia's comments, the 2019 Settlement Agreement ensures that the build out is to be completed entirely in Upstate New York and that in six of the largest cities, only a limited number of passings will be allowed thereby ensuring that less densely populated areas of the State are built. In addition, the 2019 Settlement Agreement also requires that eligible passings not be capable of being

served by Charter or another provider of broadband at speeds of 100 Mbps or more. Thus, there is no reason to limit the 2019 Settlement Agreement to only line extension areas. Additionally, the Commission is not aware of any proposal by Charter to provide service using either wireless or satellite technology in order to comply with the 2019 Settlement Agreement. Finally, as a condition of the 2019 Settlement Agreement, Charter is required to comply with the Agreement and any audits thereunder. Modification of the 2019 Settlement Agreement is therefore unnecessary to ensure that Connect Columbia's concerns are any further addressed.

The continuation of the communications plan required by the 2017 Settlement Agreement will provide those without broadband the information they need to determine whether they will be eligible to receive service under Charter's commitment. The Towns of Duanesburg and Ancram should pursue information through this communications plan in order to determine where Charter will be building out in those respective communities to remedy their concerns (as well as those of Connect Columbia) with respect to the transparency of Charter's plans.

Turning to Stop the Cap!'s comments, it endorses the broad outlines of the build out requirements of the 2019 Settlement Agreement in Upstate New York. Many of its comments, however, go beyond the scope of the buildout issues in dispute. For example, the request to modify the 2019 Settlement Agreement on the basis of extending the "Everyday Low Price" internet service, removing the restriction on enrolling in the SIA program, or to study the impact of the ongoing strike are not germane to the Company's deployment under the Network Expansion Condition at issue here. Moreover, its request for internet speed upgrades are also beyond the scope of the 2019 Settlement agreement, but the Commission notes that Charter is already

required to increase its network speed to 300 Mbps by the end of 2019. Similarly, its request to establish the proposed incremental build requirement and associated Spectrum-funded escrow account of not less than $6 million is consistent with the 2019 Settlement Agreement. Regarding the Plan of Record, individuals can look up their addresses and municipalities can obtain the Plan of Record. As for purported new passings based on superior internet speed, Charter is free to build anywhere it has a franchise.

For purposes of complying with the build out condition, however, it is prudent to limit addresses that were already awarded to BPO Grantees. We note that other commenters objects to any overlap at all, and the fact that the Company has reduced the number of BPO wireline overlap to 6,614 addresses. This will allow other truly unserved addresses to be served through the Network Expansion Condition. Finally, Stop the Cap! observes that the 2019 Settlement Agreement would allow Charter to object to any passing funded by the $6 million Incremental Buildout Commitment that costs greater than $10,000. Stop the Cap! recommends this threshold be increased to $20,000, and that if a passing would cost more than that amount, require the Company to offer the affected customer up to $20,000 towards the cost of the project. While the Commission does not find reason to increase the threshold, to the extent that Charter identifies certain passings to be funded by the Incremental Buildout Commitment that would cost in excess of $10,000, the Commission encourages Charter to inform those customers of the amount Charter would be willing to invest towards the project to see if

those customers would provide the remainder of funds necessary to complete the project.[46]

With regard to the Comments on behalf of SLIC, the Commission agrees that wireline overbuild must be minimized. However, the practical reality is that the BPO Grantees are building in areas where Charter has franchises. In some cases, the same street may be utilized by two providers to reach separate neighborhoods. Charter objected to the Commission's disqualification of several of the BPO wireline overlap addresses arguing it had reached the address earlier and did not know it was an address that was awarded by the BPO. While the Commission disagrees with Charter's position, we acknowledge this is a settlement in lieu of continuing litigation, and a compromise allowing a limited amount of wireline overlap (most of which is already constructed) is reasonable in that context. Furthermore, other commenters (Stop the Cap!) argue that the Commission should not limit the overlap at all, as overlap provides consumers with choice. Lastly, Charter filed a Plan of Record that only identified 6,614 addresses that are in the BPO wireline overlap category (more than 4,300 of which are already constructed), significantly less than the 9,400 contemplated in the 2019 Settlement Agreement. Separately, SLIC's request for make ready recovery costs is not within the scope of this proceeding. Finally, as noted above, SLIC's request for the Plan of Record to be made public is premature because as indicated, the Plan of Record is made available to requesting municipalities, and individual members of the public can look up their own address in the Charter build out portal.

[46] Similarly, the Commission encourages Charter to work with the Long Lake Homeowner's Association, Inc. on its concerns over the timing of network expansion assuming those addresses are in the Plan of Record.

Turning to the comments filed by DPS retirees, those comments urge the Commission to approve the 2019 Settlement Agreement, and the Commission does so through this Order. Those comments also recommend that the Commission modify the 2019 Settlement Agreement to remove the $6 million allocation to the BPO and provide that money directly to Charter for the buildout fund. The Commission declines this proposal. The BPO process will ensure that these funds are used efficiently, and Charter will in fact have a chance to use those funds if it exercises its right of first refusal, or that another provider is able to access the funds to provide broadband to unserved or underserved consumers. With regard to the process issues raised in these comments, they are outside the scope of the 2019 Settlement Agreement, and, in any event, the underlying Orders over which the concerns were expressed were issued almost a year ago and are nevertheless rendered moot by the instant Order.

CONCLUSION

The revisions to Charter's build out schedule and plan and associated performance incentives are reasonable. They will require Charter to pass 145,000 addresses in Upstate New York and to support additional broadband expansion projects in Upstate New York beyond those 145,000 addresses. Further, the communications plan and web portal will provide those without access to broadband service the information they need to determine whether they will be eligible to receive service under Charter's commitment. Accordingly, the 2019 Settlement Agreement is adopted by the Commission and the related proceedings discussed in the body of this Order are either rendered moot, superseded, or closed.

The Commission orders:

1. The 2019 Settlement Agreement proposed for adoption by Department of Public Service Staff and Charter Communications, Inc. is adopted in full and all parties thereto shall abide by its terms.

2. The Commission's July 27, 2018 Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval is determined to be no longer in effect and compliance therewith is no longer required.

3. The Approval Order's conditions remain in effect except to the extent that the Network Expansion Condition is modified by the adoption of the 2019 Settlement Agreement in this Order.

4. The Commission's June 14, 2018 Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications; July 27, 2018 Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification; and June 14, 2018 Order on Compliance (with regard to the Network Expansion Condition only) are superseded and rendered moot by the 2019 Settlement Agreement.

5. Counsel to the Commission is directed to seek a stay of the Enforcement Proceeding (State of N.Y. Pub. Serv. Comm'n v. Charter Commc'ns, Inc., Index No. 4819–18) in tandem with Charter's actions to stay its Article 78 Proceeding (Charter Commc'ns, Inc. v. N.Y. Pub. Serv. Comm'n, Index No. 907147-18) consistent with the terms of the 2019 Settlement Agreement.

6. Case 18-M-0178, Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises, is closed consistent with the discussion in the body of this Order.

7. Case 15-M-0388 is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

APPENDIX A

SETTLEMENT AGREEMENT

This Settlement Agreement (this "**Agreement**") is made by and between Charter Communications, Inc. ("**Charter**"), on the one hand, and the New York State Department of Public Service (the "**Department**") and the New York State Public Service Commission (the "**Commission**"), on the other hand (Charter, the Department, and the Commission, collectively, the "**Parties**"). This Agreement shall be dated, and shall be fully effective as to Charter and the Department, as of the date on which it has been executed by Charter and the Department, that is, the 19th day of April, 2019 (the "**Effective Date**"); and this Agreement shall be effective as to the Commission on the Modification Date, as that term is defined in Paragraph 2 below. Certain portions of this Agreement shall be effective as to the Commission as of the Effective Date as set forth in Paragraph 22 below.

RECITALS

WHEREAS, by Joint Petition of Charter and Time Warner Cable Inc. ("**TWC**") for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements (the "**Joint Petition**") filed on July 2, 2015, TWC and Charter commenced Case 15-M-0388 before the Commission, in which TWC and Charter sought, among other things, Commission approval to transfer control over TWC's New York operations to Charter (the "**Merger Proceeding**");

WHEREAS, on January 8, 2016, the Commission issued the Order Granting Joint Petition Subject to Conditions (the "**Merger Approval Order**"), conditionally approving the Joint Petition;

WHEREAS, the Merger Approval Order included, among other things, a ("**Network Expansion Condition**");

WHEREAS, the Network Expansion Condition required Charter to "pass" 145,000 homes and businesses within four years (*i.e.* by May 18, 2020);

WHEREAS, thereafter, the Parties agreed to a modification of the Network Expansion Condition (the "**Modified Network Expansion Condition**"(in an agreement filed on June 19, 2017 (the "**2017 Settlement Agreement**"(, which agreement the Commission confirmed in the Merger Proceeding by Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement, issued on September 14, 2017 (the "**Network Expansion Settlement Order**");

WHEREAS, the Parties have disagreed regarding the interpretation and enforceability of, and Charter's compliance with, the requirements of the Network Expansion Condition and the Modified Network Expansion Condition (the "**Disputes**"), resulting in the Commission's issuance of certain additional orders and the Parties' initiation of litigation in the Supreme Court of the State of New York; and

WHEREAS, the Parties now wish to resolve the Disputes, without any admissions or findings of liability, on the terms and conditions specified herein;

NOW THEREFORE, in consideration of the agreements, promises, and representations set forth in this Agreement, the receipt and sufficiency of which are hereby agreed to and acknowledged, the Parties, intending to be bound, agree as follows:

TERMS

(1) **Further Modification of Network Expansion Condition.** Exhibit A hereto, which is incorporated by reference herein, sets forth the terms and conditions of a proposed further modification of the Network Expansion Condition and modification of the Modified Network Expansion Condition (collectively, the **"Proposed Modified Buildout Terms")**. Charter and the Department shall propose to the Commission that it confirm this Agreement through an order adopting this Agreement, including, without limitation, the Proposed Modified Buildout Terms as set out in Exhibit A (the "**Modified Buildout Order**").

(2) **Effectiveness of Modified Buildout Order or Alternative Modified Buildout Order.**

a. In the event that the Commission (i) responds to the proposal by Charter and the Department by issuing the Modified Buildout Order and (ii) takes action relating to the previous commission orders listed in Paragraph 4 (the "**Previous Commission Orders**"(, which action is to Charter's reasonable satisfaction, then the Modified Buildout Order, and all of its terms and conditions, shall become effective upon Charter's filing with the Commission, within seven (7) days of the issuance of the Modified Buildout Order, of written notification in which Charter confirms that it has no objection to the Commission action with regard to the Previous Commission Orders (the "**Modification Date**").

b. In the event that the Commission (i) responds to the proposal by Charter and the Department by issuing an order, in lieu of the Modified Buildout Order, or takes related actions that contain terms and conditions that differ from the terms and conditions contained in this Agreement, including without limitation the Proposed Modified Buildout Terms (an "**Alternative Modified Buildout Order**"(, or (ii) issues an order or takes related action relating to the Previous Commission Orders that is not to Charter's reasonable satisfaction, then Charter will have a period of seven (7) days from the issuance of the Alternative Modified Buildout Order within which Charter must file with the Commission, in writing, its decision unconditionally to accept or not to accept that Alternative Modified Buildout Order without further modification. If Charter unconditionally accepts the Alternative Modified Buildout Order, the date of Charter's acceptance shall be the Modification Date, and the Alternative Modified Buildout Order, and all of its terms and conditions, shall become effective on that date.

(3) **Termination.** The Parties acknowledge that the expected adoption of the Proposed Modified Buildout Terms through a Modified Buildout Order or (as the case may be)

an Alternative Modified Buildout Order (each, a "**2019 Settlement Order**"(is a material and integral part of this Agreement, absent which Charter would not have entered into this Agreement. Accordingly, if the Commission (a) declines unconditionally to issue a Modified Buildout Order, or (b) issues an Alternative Modified Buildout Order, and Charter rejects such Alternative Modified Buildout Order pursuant to Paragraph 2(b) hereof, then, on the date of such rejection (the "**Termination Date**"(, this Agreement shall terminate, no Modification Date shall occur, no provision of this Agreement tied to the Modification Date shall be triggered, this Agreement and all negotiations and proceedings related thereto will be without prejudice to the rights of any Party, the Department's and the Commission's rights to seek payments, penalties, fines, or any other relief from Charter shall be revived in full except as set forth in Paragraph 8(b), and all Parties will be restored to their respective positions as of the day before the Effective Date; *except that* the provisions of Paragraphs 8(b) and 10 of this Agreement shall survive the Termination Date. In addition, no Party shall offer the fact that a Party has executed this Agreement, or exercised any right under this Agreement, in any judicial proceeding that may resume or proceed following the Termination Date, as evidence of an admission of liability or waiver of any rights by that Party.

(4) **Previous Commission Orders.** In the event the Commission adopts the Proposed Modified Buildout Terms contained herein, or issues an Alternative Modified Buildout Order, the Department Staff will propose that the Commission take action to moot or otherwise reexamine:

a. The following Orders in the Merger Proceeding:

   i. Order Denying Charter Communications, Inc.'s Response to Order to Show Cause and Denying Good Cause Justifications (June 14, 2018);

   ii. Order on Compliance (June 14, 2018) (only with regard to the Network Expansion Condition);

   iii. Order Confirming Missed June 2018 Compliance Obligations and Denying Good Cause Justification (July 27, 2018); and

   iv. Order Denying Petitions for Rehearing and Reconsideration and Revoking Approval (July 27, 2018); and

b. Case 18-M-0178, Proceeding to Investigate Whether Charter Communications, Inc. and its Subsidiaries Providing Service Under the Trade Name "Spectrum" Have Materially Breached Their New York City Franchises, Order to Show Cause (Mar. 19, 2018).

(5) **Stay of Judicial Proceedings.**

a. Within three (3) business days of the Effective Date, the Parties jointly shall seek a stay or adjournment, which stay or adjournment shall continue until five (5) business days after the Modification Date or the Termination Date, of:

i. The enforcement proceeding by the Commission against Charter in the Supreme Court of the State of New York, Albany County, filed on July 27, 2018, under the caption *State of N.Y. Pub. Serv. Comm'n v. Charter Commc'ns, Inc.*, Index No. 4819–18 (the "**Enforcement Proceeding**"(; and

ii. The special proceeding initiated by Charter against the Commission and its commissioners in their official capacities in the Supreme Court of the State of New York, Albany County, on November 26, 2018, under the caption *Charter Commc'ns, Inc. v. N.Y. Pub. Serv. Comm'n*, Index No. 907147-18 (the "**Article 78 Proceeding**"(.

b. The joint requests to stay or to adjourn the Enforcement Proceeding and the Article 78 Proceeding pursuant to this Paragraph shall include stipulations extending the time for Charter to file an answer or to respond by motion in the Enforcement Proceeding, and the time for Charter to amend its Petition/Complaint in the Article 78 Proceeding. The Parties shall work together in good faith to enter into the stipulations necessary to effect such extensions. If the time for Charter to file any motion or pleading described in this subparagraph arises earlier than the date three (3) business days after the Effective Date, then subparagraph (a) of this Paragraph will be modified to require the Parties to work to seek an extension of such deadline(s) before the expiration of that three (3) day period; that is, either on the Effective Date or immediately thereafter.

(6) **Dismissal of Judicial Proceedings.** Within three (3) business days of the Modification Date, the Chair of the Commission, on behalf of the Commission, shall direct Counsel to the Commission to promptly discontinue the Enforcement Proceeding voluntarily with prejudice and without costs, and Charter shall discontinue the Article 78 Proceeding voluntarily with prejudice and without costs, both pursuant to NY CPLR Rule 3217(a)(1).

(7) **Release of Department, Commission and State.** Effective on the Modification Date, Charter shall release and forever discharge the Department, the Commission, and the State of New York, and each of their respective current and former officers, executives, directors, employees, commissioners, staff members, fiduciaries, agents, representatives, attorneys, and assigns, from any and all claims, obligations, liabilities, damages, contribution, losses, costs, expenses, attorneys' fees, injunctive, declaratory or equitable relief, actions, charges, suits, demands or other claims of any nature whatsoever)"**Claims**"(, whether known or unknown, based on any legal or equitable theory of recovery, direct or indirect, fixed or contingent, determined or

determinable, that Charter has as of the Effective Date, that arise out of (i) the Network Expansion Condition and the enforcement thereof, (ii) the Modified Network Expansion Condition and the enforcement thereof, (iii) the Enforcement Proceeding, (iv) the Article 78 Proceeding, and (v) public statements pertaining to Charter's network expansion in New York State; *except that* this release does not apply to any right, claim, defense, obligation or duty created by or arising out of, or any right to enforce the terms and conditions of, this Agreement and the 2019 Settlement Order.

(8) **Release of Charter.**

a. Effective on the Modification Date, the Department and the Commission shall release and forever discharge Charter and its parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and each of their respective current and former officers, executives, directors, shareholders, partners, members, employees, fiduciaries, agents, representatives, attorneys, insurers, and assigns, from any and all Claims, whether known or unknown, based on any legal or equitable theory of recovery, direct or indirect, fixed or contingent, determined or determinable, that the Department and the Commission have as of the Effective Date, that arise out of (i) the Network Expansion Condition, the enforcement thereof, and Charter's actions in connection therewith, (ii) the Modified Network Expansion Condition, the enforcement thereof, and Charter's actions in connection therewith, (iii) the Enforcement Proceeding, (iv) the Article 78 Proceeding, and (v) Charter's public statements and advertising pertaining to Charter's broadband network expansion in New York State; *except that* this release does not apply to any right, claim, defense, obligation or duty created by or arising out of, or any right to enforce the terms and conditions of, this Agreement and the 2019 Settlement Order. This release includes a release of the Department's and the Commission's rights to seek from Charter any payment, penalty, forfeiture, or fine that has accrued in connection with the Network Expansion Condition or the Modified Network Expansion Condition as of the Effective Date and that continued to accrue through the Modification Date.

b. Alternatively, in the event of termination of this Agreement pursuant to Paragraph 3 hereof, the Department and the Commission shall release all of their rights to seek from Charter any payment, penalty, forfeiture, or fine that has accrued in connection with the Network Expansion Condition or the Modified Network Expansion Condition during the period commencing on the Effective Date and concluding on the date seven (7) calendar days after the Termination Date.

(9) **No Admission of Liability; Public Statements.**

a. Nothing in this Agreement shall be construed or deemed to be an admission of liability or lack of liability by or of any of the Parties. Each of the Parties expressly denies any liability to any other Party. This Agreement is not, and should in no way be construed or represented as, a Commission finding or an

admission by Charter of a violation or breach of any law, regulation, franchise, or order. Any payments made by Charter pursuant to any 2019 Settlement Order are not and should not be construed or represented as a penalty or forfeiture as those terms are used in the Public Service Law.

b. Charter and the Department may prepare a joint cover letter to accompany the submission of this Agreement to the Commission. The Parties may refer to such joint cover letter and its contents in public statements.

c. The Department and the Commission agree that no notice (such as a notice seeking public comment) on a proposal to adopt the Proposed Modified Buildout Terms shall contain any statement that is inconsistent with subparagraph (a) of this Paragraph.

d. After the Effective Date and before the Commission has acted to adopt a 2019 Settlement Order, should any Party be asked, by any member of the press, the media, or the public, any question concerning the Disputes, the settlement of the Disputes, or this Agreement, and should that Party wish to respond in some way to the inquiry, that Party will answer, in words or in substance:

> "The New York Public Service Commission issued an Order conditionally approving the merger of Charter Communications, Inc. and Time Warner Cable, Inc. A dispute subsequently arose between Charter, and the Department of Public Service and the Public Service Commission, concerning the network expansion conditions imposed by the Commission on that approval. Through an agreement, Charter and the New York State Department of Public Service propose to resolve that dispute. The agreement is under review by the Commission."

e. After the Modification Date, neither Charter nor the Department shall make any public statement regarding the Disputes, the settlement of the Disputes, or this Agreement; *provided, however, that* Charter and the Department may make such public statements if they (i) limit those statements to descriptions of the chronology of the events relating to and the procedural history of the Merger Proceeding, and/or the terms of this Agreement, and (ii) make no statement that is inconsistent with subparagraph (a) of this Paragraph.

f. Nothing in this Paragraph 9 shall prohibit any Party from making those disclosures that are permitted under Paragraph 10 hereof.

g. Notwithstanding the other provisions of this Paragraph 9, but only if and to the extent that Charter reasonably believes necessary in connection with its compliance with securities law and regulations and applicable accounting principles, Charter may disclose the impact on, and any risk to, Charter arising from the terms of this Agreement and of the 2019 Settlement Order.

(10) **Non-Disclosure/Confidentiality.** All settlement negotiations leading to this Agreement and subject to a written non-disclosure agreement, and each non-final draft of this Agreement and the exhibits thereto (collectively, the "**Settlement Matters**"(, are and remain confidential. Each of the Parties agrees that, from and after the Effective Date, neither it, nor its attorneys or agents, shall divulge the Settlement Matters to any person or entity, except as set forth in this Paragraph. Each of the Parties further agrees that the Settlement Matters shall not be admissible as evidence in any proceeding, including, but not limited to, uses as evidence prohibited by Fed. R. Evid. 408 and CPLR 4547, except as set forth in this Paragraph.

a. Notwithstanding the foregoing, nothing herein shall prohibit any Party from making disclosures of Settlement Matters (i) to that Party's attorneys, auditors, accountants, lenders or putative lenders (and their respective advisors), tax advisors, or insurers, or such other persons as are mutually agreed, provided such persons agree to keep said information confidential and not to disclose it to others except as required by law or regulatory inquiry; (ii) as may be necessary for purposes of tax, securities or other disclosure required by law, regulation or stock exchange rule, or regulatory disclosures to any government agency; (iii) in response to a court order, administrative order, subpoena or other formal legal process (subject to the provisions of subparagraph (b) of this Paragraph); (iv) in connection with any dispute concerning, or any action or proceeding to enforce, this Agreement or the 2019 Settlement Order; and/or (v) with the written permission of Charter (for the Department and the Commission) or of the Department and the Commission (for Charter).

b. In the event that a Party concludes that it must disclose Settlement Matters pursuant to subparagraph (a)(iii) of this Paragraph, then, except as prohibited by law, that Party shall, as soon as reasonably practicable after reaching that conclusion, and with sufficient time to allow the other Parties to seek judicial or administrative measures to prevent such disclosure, provide written notification to the other Parties that such disclosure will be made. In the event a Party seeks relief from such disclosure, whether from a Court, administrative agency, or otherwise, each Party shall cooperate promptly to assist such request.

c. Charter has submitted or will be submitting to the Department and the Commission certain information related to its past and future network expansion efforts in the State of New York, which information Charter deems to be trade secret and/or otherwise confidential, to be included in the Exhibits to be annexed to this Agreement. Charter may seek confidential treatment of such information pursuant to the Public Officers Law.

(11) **Authorization.** The execution, delivery and performance of this Agreement by each Party is within its corporate or statutory powers, as applicable, has been duly authorized by all necessary corporate or statutory action, and does not and will not (a) require any additional consent or approval except the entry and effectiveness of the

2019 Settlement Order, (b) contravene its organizational documents or enabling legislation, or (c) violate applicable law.

(12) **Entire Agreement and Amendment to this Agreement.** This Agreement and its exhibits (including such exhibits as are to be finalized after the Effective Date) constitute the entire understanding of the Parties with respect to the resolution of all outstanding issues relating to the Network Expansion Condition, the Modified Network Expansion Condition, and the Disputes. This Agreement may be amended only by a written amendment that refers to this Agreement and is executed by all of the Parties, *except that* the Commission may issue an order modifying the terms of this Agreement and the Proposed Modified Buildout Terms pursuant and subject to the terms and conditions in Paragraph 2(b) of this Agreement.

(13) **Disputes Arising Under this Agreement.** The Parties agree to work cooperatively to resolve any future dispute arising under or in connection with this Agreement, the Proposed Modified Buildout Terms, and the 2019 Settlement Order, including, without limitation, any dispute concerning any missed "Interim Milestone," any "Interim Milestone Payment," and any "extreme weather event," as those terms are used and defined in the Proposed Modified Buildout Terms and 2019 Settlement Order, or any equivalent terms, *provided, however, that* nothing in this Paragraph shall supersede or in any way limit or create any exception to the remedy enforcement provisions described in Paragraph 12 of Exhibit A hereto. During such time as the Parties work under this Paragraph to resolve any dispute, any Party statement regarding the dispute shall be considered non-final and any statute of limitations for bringing such dispute to a court for resolution pursuant to Article 78 of the CPLR or otherwise shall not accrue, provided, however, that any Party may notify the other Parties in writing that it has elected to terminate the tolling of such statute of limitations regarding such dispute for any reason as of a date specified in such writing, which shall not be earlier than two (2) business days following the delivery of such writing.

(14) **Assistance of Counsel.** The Parties acknowledge that each of them is represented by competent counsel in connection with the negotiation of this Agreement, and that they enter into this Agreement with knowledge of its contents and of their own free will. The Parties acknowledge that they have had ample opportunity to confer with counsel prior to the execution hereof and sufficient time to review this Agreement. Each Party acknowledges, represents, and warrants to the others that no promises, commitments, or agreements except as expressly set forth in this Agreement have been made to induce such Party to sign this Agreement.

(15) **Rights and Duties of the Commission and the Department.** Neither any provision contained herein, nor the Commission's adoption of this Agreement, shall be deemed in any way to abrogate or to limit the Commission's statutory authority under the New York Public Service Law. With the exception of the resolution of the Disputes via this Agreement (and any rights, responsibilities, and/or obligations created hereunder), the Parties recognize that any Commission adoption of the terms of this

Agreement does not waive the Commission's ongoing rights and responsibilities to enforce its orders and to effectuate the goals expressed therein, nor the rights and responsibilities of the Department to conduct investigations or to take other actions in furtherance of its duties and responsibilities.

(16) **Scope of Charter's Agreement Hereunder.** Neither Charter's entry into this Agreement, nor its confirmation pursuant to Paragraph 2(a) of this Agreement or its acceptance pursuant to Paragraph 2(b) of this Agreement, is intended to, does, or shall be deemed, in any manner, to waive, limit, impair, or restrict its ability to protect and preserve its rights, remedies, defenses, and interests, so long as such actions are not inconsistent with its obligations set forth in this Agreement including without limitation the obligations to dismiss the Article 78 proceeding and to release Claims as set forth in, respectively, Paragraphs 6 and 7 of this Agreement. No Party shall use (expressly, by inference, or otherwise) Charter's acknowledgment of the enforceability of the terms of this Agreement to affect Charter's other rights or any previous reservation of rights by Charter in this proceeding regarding matters not covered by the terms of this Agreement.

(17) **Construction of Agreement.** The Parties acknowledge that this Agreement is the product of negotiation by their respective counsel and that the language of this Agreement shall not be presumptively construed either in favor of or against any of the Parties.

(18) **Headings.** The headings contained in this Agreement are for convenience of reference only and do not form a part of this Agreement and/or limit or affect the meaning hereof.

(19) **Governing Law and Jurisdiction.** This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws thereof.

(20) **Illegality or Unenforceability of Provisions.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held in whole or in part to be invalid, illegal, or unenforceable in any respect, (a) the Parties shall negotiate in good faith to replace such invalid, illegal, or unenforceable term with a valid, legal and/or enforceable term reflecting to the maximum extent achievable the mutual intentions of the Parties, and, (b) if no such agreement is reached, the Parties agree that a court in any action to enforce this Agreement may substitute a term reflecting to the maximum extent achievable the mutual intentions of the Parties at the time of this Agreement.

(21) **Notices.** Unless a Party provides otherwise in writing, all notices required or desired to be given pursuant to this Agreement shall be given by Federal Express (or other similar overnight delivery service) and also by electronic mail, addressed as follows:

a. To Charter:
Attn: Adam E. Falk
Senior Vice President, State Government Affairs
Charter Communications, Inc.
601 Massachusetts Ave, N.W.
Suite 400W
Washington, DC 20001-4412
Email: adam.falk@charter.com

Copy to:
Luke C. Platzer
Jenner & Block LLP
1099 New York Avenue, N.W.
Suite 900, Washington, DC 20001-4412
Email: LPlatzer@jenner.com

b. To the Commission:
Attn: John Sipos
Acting General Counsel
Office of General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: john.sipos@dps.ny.gov

Copy to:
D. Scott Bassinson
Solicitor
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: scott.bassinson@dps.ny.gov

c. To the Department:
Attn: John Sipos
Office of General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: john.sipos@dps.ny.gov

Copy to:
D. Scott Bassinson
Solicitor
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: scott.bassinson@dps.ny.gov

(22) **Approval of the Commission.** This Agreement is subject to approval by the Commission as set forth in Paragraph 2 of this Agreement, and the Parties recognize that provisions of this Agreement pertaining to the Proposed Modified Buildout Terms contained in Exhibit A hereto will not become effective as to or binding upon the Commission until the occurrence of the Modification Date *provided, however, that* notwithstanding anything else in this Paragraph or in Paragraph 2 of this Agreement, the Chair of the Commission, on behalf of the Commission, will be bound by the terms and conditions of Paragraphs 3, 5, 8(b), and 10 of this Agreement as of the Effective Date.

(23) **Agreement Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. This Agreement may be executed by original or electronic signature, each of which shall be equally binding.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

By: Debra LaBelle
Name: Debra LaBelle
Title: Director, Office of Telecommunications
Date: April 19, 2019

NEW YORK STATE PUBLIC SERVICE COMMISSION

By: John Sipos
Name: John J. Sipos
Title: Acting General Counsel
Date: April 19, 2019

CHARTER COMMUNICATIONS, INC.

By: Thomas E. Adams

Name: Thomas E. Adams

Title: EVP of Field Operations

Date: April 19, 2019

Exhibit A
Proposed Modified Buildout Terms

(1) **Total Passings.** The buildout requirements set forth in Ordering Clause 5 of the Network Expansion Settlement Order[1] are modified to commit Charter to extend its network to pass **145,000** eligible "unserved" (download speeds of 0-24.9 Mbps) or "underserved" (download speeds of 25-99.9 Mbps) residential housing units and/or businesses within its statewide territory (the "**Total Passings**"(between January 8, 2016 and September 30, 2021 (the "**Completion Deadline**"(, subject to the terms and conditions set forth in this Exhibit.

(2) **Exclusion of All New York City Addresses.** No passing by Charter of any address within the boundaries of the City of New York (i) qualifies as a passing under, complies with, or may be applied toward fulfilling Charter's obligations under, the requirements of the Settlement Agreement, the Proposed Modified Buildout Terms, or a 2019 Settlement Order; (ii) may be applied toward fulfilling Charter's obligation to complete the Total Passings; or (iii) may be included among the "Eligible Completed Passings" as that term is defined in Paragraph 4 of this Exhibit.

(3) **Passings Eligible to Count toward Total Passings.**

a. **Eligible Passings**. A residential housing unit or business is eligible to count as one of the required Total Passings if it is located outside of the boundaries of the City of New York and is not passed, served, or capable of being served (by either a standard or non-standard installation), by pre-existing network from Charter or any other provider capable of delivering broadband speeds of 100 Mbps or higher. Cable upgrades or network modifications made at any address already passed by a pre-existing Charter network are not eligible to count among the Total Passings. If a residential housing unit or business falls within one of the identified categories of addresses set forth in subparagraphs (b) through (d) of this Paragraph, it must further satisfy the additional criteria set forth in the applicable subparagraph in order to be eligible to count among the Total Passings. Except as expressly permitted and specified in this Exhibit (including in Paragraphs 3(c), 3(d), 4(b), and 11(e) hereof), no address required to be passed (or eligible for a wireless or satellite service) pursuant to a grant awarded by the Broadband Program Office)"**BPO**"(to any provider other than Charter shall be eligible to be counted by Charter toward the Total Passings.

b. **Passings in Upstate Cities.** In counting the Total Passings, Charter may include up to, but no more than, 9,500 addresses located within the boundaries of Charter's municipal cable franchises in Albany, Buffalo, Mt. Vernon, Rochester, Schenectady, and Syracuse (collectively, the "**Upstate Cities**"(, which number

[1] Defined terms used, but not defined, in this Exhibit A shall have the same meanings ascribed to them in the Settlement Agreement to which this Exhibit is annexed (herein, the "**Settlement Agreement**"(.

shall include the Upstate Cities passings already completed and defined as "Eligible Completed Passings" as set forth in Paragraph 4 of this Exhibit.

c. **Passings in BPO Wireline Grant Areas.** In counting the Total Passings, Charter may include up to, but no more than, 9,400 addresses required to be passed pursuant to a grant awarded through the New NY Broadband Program to a wireline service provider other than Charter (each, a "**BPO Wireline Overlap Passing**"(prior to the Commission issuing a 2019 Settlement Order. The 9,400 BPO Wireline Overlap Passings shall be identified in the Plan of Record, as defined in Paragraph 5 of this Exhibit, and shall include the BPO Wireline Overlap Passings already completed and defined as "Eligible Completed Passings" in Paragraph 4 of this Exhibit.

d. **Passings in BPO Wireless/Satellite Grant Areas.** In counting the Total Passings, Charter shall include up to, but no more than, 30,000 addresses in upstate New York that are both (A) identified in the Plan of Record, as defined in Paragraph 5 of this Exhibit, and (B) awarded by the Broadband Program Office through the New NY Broadband Program by a grant to a wireless/satellite service provider other than Charter. Any passing of an address so awarded by the New NY Broadband Program is a "**BPO Wireless Overlap Passing.**" Charter's eligible 30,000 BPO Wireless Overlap Passings shall include those BPO Wireless Overlap Passings it already has completed and which are defined as "Eligible Completed Passings" in Paragraph 4 of this Exhibit. Notwithstanding anything in this Paragraph, Charter shall not be precluded from counting additional BPO Wireless Overlap Passings towards the Total Passings beyond the 30,000 permitted by this Paragraph 3(d) if such additional passings are BPO Wireless Overlap Passings to (i) new construction within Charter's franchise areas, which construction commenced after the award of the pertinent BPO grant; or (ii) residential housing units or businesses to which Charter extends its network upon request by the consumer ("**Additional BPO Wireless Overlap Passings**").

i. Charter shall be deemed to have complied substantially with its BPO Wireless Overlap Passing requirement upon completion of 28,500 – *i.e.*, 95% of the 30,000 – BPO Wireless Overlap Passings identified in the Plan of Record.

ii. In the event of such substantial compliance, Charter's failure to complete the remaining BPO Wireless Overlap Passings identified in its Plan of Record shall not be deemed to be a breach of the Settlement Agreement or the 2019 Settlement Order and shall not trigger any of the Commission's and/or the Department's rights under the Settlement Agreement or under the 2019 Settlement Order; *provided, however, that* (A) Charter shall not be excused from its obligation, and shall remain required, to complete the Total Passings; and (B) in counting the Total Passings, Charter may not include more than 30,000 BPO Wireless Overlap Passings in total, excluding any Additional BPO

Wireless Overlap Passings. For clarity, in the event of substantial compliance pursuant to subparagraph (d)(i) of this Paragraph, Charter may count toward the Total Passings BPO Wireless Overlap Passings that are not identified in its initial Plan of Record filed under this Agreement, so long as the total of all BPO Wireless Overlap Passings counted toward the Total Passings, exclusive of any Additional BPO Wireless Overlap Passings, does not exceed 30,000.

(4) **Eligible Completed Passings.** Upon the Modification Date, Charter shall be deemed successfully to have completed 64,827 passings qualifying towards the Total Passings requirements of the Settlement Agreement and the 2019 Settlement Order, as of December 16, 2018 (the "**Eligible Completed Passings**"(. The Eligible Completed Passings are a subset of the addresses contained in Exhibit B to the network expansion update report filed confidentially by Charter on January 7, 2019 (the "**January 2019 Buildout Report**"(, a modified version of which may be filed by Charter confidentially with the Commission within thirty (30) days of the Effective Date of the Settlement Agreement, and may be annexed confidentially to, and incorporated by reference as Exhibit C into, the Settlement Agreement upon such confidential filing.

a. The Eligible Completed Passings shall be deemed to count toward the Total Passings and will not be subject to further challenge or audit by the Department or the Commission.

b. The Eligible Completed Passings shall include, from Exhibit C: (i) 5,993 passings located within the Upstate Cities; (ii) 4,388 BPO Wireline Overlap Passings; and (iii) 9,397 BPO Wireless Overlap Passings.

c. The Eligible Completed Passings also shall include certain additional passings reported by Charter in its January 2019 Buildout Report, which (i) are included among the passings listed in Exhibit D annexed to and incorporated by reference into the Settlement Agreement, and (ii) had been audited or were subject to an audit by the Department as of the Effective Date (the "**Audited Passings**"), to wit, the 1,350 passings that are identified by Charter on Exhibit D as having been audited by the Department and completed prior to Charter receiving complete audit findings from the Department (the "**Allowed Passings**"). The remaining 1,364 Audited Passings listed in Exhibit D (the "**Removed Passings**") are hereby removed from Charter's reports, and do not qualify as Eligible Completed Passings, shall not be counted toward the Total Passings, and shall not be reported by Charter in the future as qualifying or potentially qualifying passings. For the avoidance of ambiguity, the Allowed Passings listed on Exhibit D also will be included among the Eligible Completed Passings identified in Exhibit C, and the Removed Passings listed on Exhibit D will be excluded from the Eligible Completed Passings identified in Exhibit C.

(5) **Plan of Record.** Charter shall file a revised buildout plan confidentially with the Commission within thirty (30) days of the Effective Date, a copy of which shall be annexed confidentially to, and incorporated by reference as Exhibit B into, the Settlement Agreement upon such confidential filing (the "**Plan of Record**"(. The Plan of Record shall set forth the following categories of passings: Eligible Completed Passings; the passings in permitted categories (as defined in Paragraph 3 of this Exhibit) that Charter has completed subsequent to December 16, 2018; and the remaining passings Charter plans to complete (in permitted categories as defined in Paragraph 3 of this Exhibit) to reach the Total Passings. All Plan of Record passings must be clearly identified by their respective categories as listed in this Paragraph. A BPO Wireline Overlap Passing or BPO Wireless Overlap Passing may be counted towards the Total Passings only to the extent that such passing is listed on, and identified as falling within one of these categories (*i.e.*, BPO Wireline Overlap Passings or BPO Wireless Overlap Passings) in the Plan of Record. Charter shall file with the Commission an updated Plan of Record once every four months at the time it submits its Interim Milestone Reports pursuant to and as defined in Paragraph 8 of this Exhibit, and each update shall be consistent with the terms, conditions and requirements of this Exhibit. Charter's updates to the Plan of Record may not change the number of Total Passings required, and may not, collectively, change the addresses proposed to be passed in achieving the Total Passings by more than 10% from the Plan of Record submitted by Charter thirty (30) days from the Effective Date, *provided, however, that* no change shall be counted toward the 10% if it relates to an address:

a. subject to technical corrections that modify the reference to a residential unit or business without removing it;

b. in the Upstate Cities that was designated by means of a placeholder in the initial Plan of Record filed under this Agreement;

c. removed as mistaken, duplicative, or otherwise non-verifiable;

d. removed based on a Department audit; or

e. determined by Charter already to be passed by a competing provider.

(6) **Monthly Reporting.** By the 15th of every month, starting with the first full month following the Modification Date, Charter shall submit to the Department a report of progress toward the Total Passings for the relevant monthly period (that is, the month preceding the date of the progress report), setting forth (a) the number and addresses of passings completed and (b) the number and addresses of passings remaining to be completed, if any, for the pertinent four-month "Interim Milestone Reporting Period," as defined in Paragraph 8 of this Exhibit.

(7) **Verification of Further Reports.** The Department may in its discretion make efforts to verify passings reported by Charter in its monthly or other reporting during the period covered by the 2019 Settlement Order and commencing on the Modification

Date, beginning on the date of Charter's first "Interim Milestone Report" as defined in Paragraph 8 of this Exhibit. In the event the Department questions the eligibility to count toward the Total Passings of an address reported as passed by Charter, the passing of an address by a competitor at the time of the Department's review shall not in and of itself be dispositive evidence that such competitor already had passed the address at the time Charter completed the passing. The Department shall complete any verification of Charter's reports within one (1) year from the date on which Charter reports completion of the Total Passings.

(8) **Four-Month Requirements.** Charter shall meet the following four-month progress milestones (the "**Interim Milestones**"(, each of which represents a number of passings eligible to count toward the Total Passings that must be completed by Charter by the specified deadline. Charter shall file with the Commission, within thirty (30) days of the each of the Interim Milestone dates, a report setting forth Charter's compliance with the preceding Interim Milestone (an "**Interim Milestone Report**"(, which Interim Milestone Report shall include, but need not be limited to, a complete list of eligible addresses that Charter claims to have passed during the preceding four-month Interim Milestone period (an "**Interim Milestone Reporting Period**"(, and verification that each of those addresses complies with the requirements of Paragraph 3 of this Exhibit.

Date	Interim Milestones
September 30, 2019	76,521
January 31, 2020	87,934
May 31, 2020	99,347
September 30, 2020	110,760
January 31, 2021	122,173
May 31, 2021	133,586
September 30, 2021 (the Completion Deadline)	145,000

(9) **Interim Milestone Payments.** If Charter's progress as reported in any Interim Milestone Report falls short of the Interim Milestone for that Interim Milestone Reporting Period, Charter shall, within seven (7) days of submitting such Interim Milestone Report, or within seven (7) days of receipt of a Department verification pursuant to Paragraph 7 that causes Charter to fall short of the Interim Milestone for that Interim Milestone Reporting Period, make a payment to an escrow fund to be identified by the Department or the Commission (an "**Interim Milestone Payment**"(in the amount of $2,800.00 for each individual missed eligible passing below the applicable Interim Milestone. The Interim Milestone Payments shall be held in escrow pending the Completion Date, the resolution of any objection pursuant to Paragraph 9(c) of this Exhibit, and the Commission's agreement that Charter has completed the Total Passings.

a. In the event Charter does not remit payment, the Department or the Commission will provide written notice to Charter that an Interim Milestone Payment is due. Charter shall have 30 days after receipt of such written notice from the Department or the Commission to remit the Interim Milestone Payment.

b. Charter may file with the Commission, with an Interim Milestone Payment, an objection to the notice that the Interim Milestone Payment is required, in whole or in part, on the ground of the particular circumstances prevailing during the applicable Interim Milestone Reporting Period, as specified below. No objection will excuse Charter's obligation to make any Interim Milestone Payment, timely and in full. Any objection must be accompanied by supporting documentation demonstrating the material impact on Charter's staffing levels or construction process and/or the number of days that construction was impacted by the circumstances involved, and must be based on (and only on) the following grounds:

   i. Extreme weather events (*i.e.*, unusual and severe storms occurring within New York State that directly or indirectly limited Charter's ability to proceed with construction, which limitation was substantially in excess of the limitations that normally would be expected within New York State based upon normal seasonal conditions for the specific Interim Milestone Reporting Period in question); or

   ii. Delays caused by the actions or omissions of third parties outside of Charter's control, including delays in obtaining necessary pole licenses as set forth in Appendix A to the 2017 Settlement Agreement adopted by the Commission in its Network Expansion Settlement Order; or

   iii. If the objection relates to an Interim Milestone deemed missed due to the Department's verification of Charter's Interim Milestone Report pursuant to Paragraph 7 of this Exhibit, Charter shall submit documentation to support the objection for the Commission's consideration.

c. The Commission shall rule on any objection that was timely filed by Charter pursuant to subparagraph (b) of this Paragraph no later than the later of 90 days after the Completion Date or the date of filing of Charter's last objection. The Commission, in its discretion, may rule on any such objection at any time before that date, but it is not obligated to do so. No such early ruling will obligate the Commission to make further early rulings. To the extent the Commission rules in Charter's favor on any objection(s), the Commission shall authorize the refund of the corresponding $2,800.00 (plus any interest earned while in escrow) per applicable address to Charter, to be paid within 30 days of such ruling. To the extent the Commission does not rule in Charter's favor on any objection(s), Charter must make up the missed passings and achieve the Total Passings in accordance with Paragraph 12(d) of this Exhibit.

d. Any funds remaining in the escrow fund after Charter completes the Total Passings and following the resolution of any objections pursuant to Paragraph 9(c) of this Exhibit shall be added to the Incremental Build Commitment as defined in and pursuant to Paragraph 10 of this Exhibit.

(10) **Incremental Build Commitment.** Within sixty (60) days of the Modification Date, Charter shall make a one-time deposit of six million dollars ($6,000,000) into an escrow fund to be identified by the Department or the Commission, and dedicated to the construction of additional broadband passings as set forth below (together with any funds added pursuant to Paragraphs 9(d) and 11(b)(iii) of this Exhibit, the "**Incremental Build Commitment**"(, which deposit shall be held in escrow pending fulfillment by Charter of all of its obligations under this Exhibit.

a. Charter, having fulfilled its obligations under this Exhibit, including, but not limited to, its obligation to complete the Total Passings, shall then become eligible to use the Incremental Build Commitment funds to finance all costs relating to materials, construction, labor, licenses, and permitting to complete additional (*i.e.*, in addition to the Total Passings) incremental broadband expansion projects in Charter's franchise areas within New York State, as directed by the Department in accordance with the procedure set forth in this Paragraph.

b. Following Charter's completion of the Total Passings, the Department may from time to time direct Charter to complete additional passings within Charter's franchise areas within New York State, at locations to be identified by the Department at the time of such direction (each such passing, an "**Incremental Build Commitment Passing**"(.

i. The Department shall confer with the BPO and with Charter prior to the selection of any Incremental Build Commitment Passing, and Charter shall share with the Department such information in its possession as is reasonably necessary to allow the Department to assess the technical and legal feasibility, and cost, of that Incremental Build Commitment Passing.

ii. Charter shall not be required to construct any Incremental Build Commitment Passing as to which it has demonstrated, to the reasonable satisfaction of the Department, that extension of its network to complete that Incremental Build Commitment Passing is not technically or legally feasible.

iii. If the Department concludes that an Incremental Build Commitment Passing must be completed, then Charter shall construct the Incremental Build Commitment Passing as directed by the Department, subject only to the limitations set forth in subparagraphs (b)(iv) and (d) of this Paragraph.

iv. If Charter has demonstrated, to the reasonable satisfaction of the Department, that the estimated aggregate cost of completion of any

Incremental Build Commitment Passing would exceed $10,000, then Charter may elect not to construct such Incremental Build Commitment Passing and, in such event, Charter shall notify the Department of such election within 30 days of receiving a Department direction to complete that Incremental Build Commitment Passing; *provided, however, that* if the Department reasonably concludes that no Incremental Build Commitment project remains for which completion of the Incremental Build Commitment Passing would cost $10,000 or less, the Department shall so inform Charter, and Charter then shall continue to complete all Incremental Build Commitment Passings as directed by the Department, subject only to the limitation set forth in subparagraph (d) of this Paragraph.

c. Charter shall maintain records of its expenditures incurred in furtherance of the Incremental Build Commitment Passings (including expenditures for materials, labor, construction, licensing, and permitting). Charter shall provide the Department with quarterly reports identifying these expenditures, and may, at the time of each such report, request disbursement of Incremental Build Commitment funds to reimburse, or to pay, such expenditures. Charter shall provide its expenditure records to the Department in connection with, and at the time of, each such request by Charter for disbursement. Within forty-five (45) business days of a properly documented request by Charter for such payment, the Department shall approve the release of Incremental Build Commitment funds from the Incremental Build Commitment escrow account (whether to Charter directly or for the payment of invoices to third parties working for or on behalf of Charter), consistent with this Paragraph. Reimbursement is to be based upon Charter's actual expenses and is not to be limited or capped per Incremental Build Commitment Passing, provided such expenses are properly documented.

d. Charter shall continue to complete the Incremental Build Commitment Passings at the direction of the Department until the funds set aside via the Incremental Build Commitment have been exhausted.

(11) **Incremental Broadband Fund.** Within sixty (60) days of the Modification Date, Charter shall make a one-time deposit of six million dollars ($6,000,000) into a fund, to be identified by the Department or the Commission, and dedicated to the construction of additional broadband passings as set forth below (the "**Incremental Broadband Fund**"(.

a. The Incremental Broadband Fund shall be dedicated to financing incremental broadband expansion projects selected by the BPO through the solicitation of public bids from broadband providers capable of delivering broadband speeds of 100 Mbps or higher including, but not limited to, Charter, subject to the terms and conditions set forth in this Paragraph (the "**Incremental BPO Projects**"(. The BPO will not initiate the bidding for the Incremental BPO Projects on or before September 30, 2021, unless it is in areas identified by subparagraph 11(a)(ii) of

this Exhibit. The addresses to be serviced through the Incremental Broadband Fund shall be in (i) municipalities of New York State in which Charter holds a cable franchise, or (ii) areas for which Charter does not hold a franchise that are mutually agreed to by Charter and the Department in consultation with the BPO. In the event that the BPO has determined that no wireline provider has submitted a cost effective bid (which determination may include an analysis of the total cost per passing) for a particular Incremental BPO Project, wireless providers capable of delivering speeds of at least 25 Mbps shall be eligible for awards for that Incremental BPO Project. For purposes of this Paragraph, a cost effective bid shall be any bid that provides for at least 20% of private funds to be invested toward the total cost per passing. The Incremental Broadband Fund is to be administered by the BPO in accordance with the requirements of this Paragraph and in consultation with the Department, with a preference for wireline expansion projects.

b. To the extent that the BPO engages in the selection of bidders in its administration of the Incremental Broadband Fund:

   i. The BPO may use its auction procedures in effect as of Phase 2 of the New NY Broadband Program (or any subset of such procedures) in connection with such selection of bidders, or an alternative competitive bidding mechanism, but only insofar as such procedures are consistent with the terms of this Paragraph and are no more stringent or restrictive than the procedures in effect as of Phase 2 of the New NY Broadband Program.

   ii. Charter will not be ineligible pursuant to, treated less favorably due to, or otherwise be disadvantaged by, requirements that: (A) are unnecessary by virtue of Charter being a publicly-traded company (*i.e.*, demonstration of fiscal standing, security agreements, pro forma statements, and background checks); (B) allow bidders to utilize federal funds for which Charter does not apply; (C) require bids to serve entire census blocks; (D) allow the BPO to modify awards; or (E) establish pricing restrictions that are inconsistent with Charter's uniform national pricing policy.

   iii. If any requirement arising under statute, regulation, or executive order regarding, or restricting, eligible bidders for BPO-administered projects or recipients of state funds is enacted or implemented subsequent to the Effective Date, the effect of which requirement or restriction would be to render Charter ineligible to bid for Incremental BPO Projects or to receive state funds, or is otherwise not consistent with the terms of this Paragraph (a "**Change in Law**"(, that Change in Law shall have no force in connection with the Incremental BPO Projects. In the event that a Change in Law occurs that would render Charter ineligible to bid for or to receive funds disbursed by the Incremental Broadband Fund notwithstanding the provisions of this subparagraph, the BPO shall remit any remaining funds

in the Incremental Broadband Fund to the Department-administered escrow account used to fund the Incremental Build Commitment, and such remaining funds shall instead be disbursed consistent with Paragraph 10 of this Exhibit.

c. Prior to soliciting bids to construct any Incremental BPO Project, the BPO shall provide Charter with 30 days' notice of that Incremental BPO Project. During this 30 day period, Charter may elect to construct the Incremental BPO Project itself (the "**Right of First Refusal**"(by submitting a bid to the Incremental Broadband Fund. Such bid shall be accepted without regard to any BPO auction procedures, provided that the bid complies with subparagraph (c)(i) of this Paragraph.

   i. In the event Charter exercises its Right of First Refusal, Charter's bid for funds from the Incremental Broadband Fund may not exceed $2,500 per passing.

   ii. In the event Charter does not exercise its Right of First Refusal, Charter may participate in any subsequent public bidding process without regard to the $2,500 per passing limitation identified in subparagraph (c)(i) of this Paragraph, and its bid shall not be evaluated less favorably on account of Charter's decision not to exercise its Right of First Refusal.

d. If Charter constructs any passings in connection with an Incremental BPO Project, such passings shall not be counted towards the Total Passings except as set forth in subparagraph (e) of this Paragraph.

e. If (i) the BPO includes any address within an Incremental BPO Project that also is included on Charter's Plan of Record in effect as of the date that the BPO provides notice to Charter of the Incremental BPO Project including that address, and (ii) Charter has completed or subsequently completes a passing for that address, then Charter shall not be precluded from counting that address towards the Total Passings provided that it does not use monies from the BPO, including the Incremental Broadband Fund, to complete the passing to that address.

(12) **Enforcement.**

a. Subject to the provisions of subparagraph (d) of this Paragraph, the network buildout volume and timing requirements set forth in this Exhibit and in the 2019 Settlement Order shall be enforced solely through the Interim Milestone Payments described in Paragraph 9 of this Exhibit, and the Interim Milestone Payments shall be the exclusive remedy for any failure by Charter to satisfy any Interim Milestone, including, but not limited to, the Completion Deadline, except as set forth in Paragraphs 12(b) and 12(c) of this Exhibit below.

b. In the event that Charter falls short of the Interim Milestones by more than 15% in each of two successive four-month Interim Milestone Reporting Periods, then the Interim Milestone Payments shall not be a sole or exclusive remedy for any Interim Milestone shortfalls, and the Department and the Commission shall have the absolute right to pursue and to utilize all of the rights and remedies available to them as redress for any Interim Milestone shortfall, including, but not limited to, the right to seek judicial remedies in connection with any provision of the 2019 Settlement Order.

c. In the event that Charter falls short, to any extent, of the final, September 30, 2021, Interim Milestone, then, in addition to the Interim Milestone Payments described in Paragraph 9 of this Exhibit, the Department and the Commission shall have the right to seek judicial remedies in connection with any provision of the 2019 Settlement Order.

d. After the Commission has ruled, pursuant to Paragraph 9(c) of this Agreement, on all objections made by Charter, then, for each address as to which the Commission has not ruled in Charter's favor, Charter must complete a passing of a replacement address in consultation with the Department within a time established pursuant to such consultation.

e. Nothing in this Paragraph relieves Charter at any time from any obligation set forth in the 2019 Settlement Order, including without limitation its obligations to submit on a timely basis all required reporting and to pay, timely and in full, all Interim Milestone Payments, the Incremental Build Commitment payment, and the Incremental Broadband Fund payment.

f. The exclusive remedy set forth in subparagraph (a) of this Paragraph applies only to the network buildout volume and timing requirements set forth in this Exhibit and in the 2019 Settlement Order; that is, nothing in this Paragraph in any way limits or restricts the enforcement rights and remedies of the Department and the Commission in connection with requirements under the 2019 Settlement Order, the Merger Approval Order or otherwise that do not relate to network build out volume and timing.

(13) **Modification of Prior Buildout Conditions**.

Effective on the Modification Date, the Network Expansion Condition and the Modified Network Expansion Condition (except Paragraphs 17, 18(b), (c), (d), (f), (g), and (h) of the 2017 Settlement Agreement updated to reflect the Completion Deadline as stated herein) shall be deemed to have been modified consistent with, and to the extent expressly set forth in, this Exhibit.

EXHIBIT C

REDACTED FOR PUBLIC INSPECTION

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-M-0388 - Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements.

ORDER GRANTING JOINT PETITION SUBJECT TO CONDITIONS

Issued and Effective: January 8, 2016

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on January 8, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Gregg C. Sayre
Diane X. Burman

CASE 15-M-0388 - Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements.

ORDER GRANTING JOINT PETITION SUBJECT TO CONDITIONS

(Issued and Effective January 8, 2016)

BY THE COMMISSION:

INTRODUCTION

By Joint Petition filed July 2, 2015 (Joint Petition), Time Warner Cable Inc. (Time Warner or TWC) and Charter Communications, Inc. (Charter) (collectively, the Petitioners) request Commission authorization for a holding company-level transaction that would result in the transfer of control of Time Warner's New York subsidiaries to "New Charter."[1] A third entity, Bright House Networks, LLC (Bright House or BHN), a subsidiary of Advance/Newhouse Partnership, that is not a party to the Joint Petition and does not operate in New York, would also become part of New Charter following the proposed transaction. As structured, the proposed transaction involves

[1] The parent entity resulting from the merger will ultimately assume the name "Charter Communications, Inc."

all of Time Warner's New York broadband Internet, telephone, and cable television systems, franchises and assets.

Approval was initially requested under Public Service Law (PSL) §§100, 101 and 222.[2] On July 10, 2015, the Petitioners filed a supplement seeking Commission approval under PSL §99(2), as well. Under these applicable and, in the case of Section 222 recently-amended, provisions of the PSL, the Commission must determine whether the benefits of the proposed transaction outweigh the detriments, such that consummation of the merger would produce an overall net benefit for all current TWC and Charter New York customers. In the course of this proceeding, Staff of the Department of Public Service (Staff) and other commenters identified several measures that, in their view, could be undertaken by the Petitioners to bring the proposed merger into alignment with the public interest.

For the reasons elaborated below, the Commission agrees that in order for the proposed merger to be in the public interest, the Petitioners must agree to make concrete and enforceable commitments to modernize their cable system and services, expand access, address the digital divide and improve customer service. To this end, we find that with the acceptance by the Petitioners of the enforceable conditions, as discussed in the body of this Order and Appendix A, the proposed merger is in the public interest. These conditions are designed to help ensure a near ubiquitous world-class communications network that meets the needs of all New Yorkers. Absent acceptance of these conditions, the public interest standard cannot be met, and the petition for transaction approval is denied.

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[2] Simultaneously with, but separate from the proposed transaction, as part of its reorganization into New Charter, Charter will internally reassign 16 of its 27 franchises held by its New York operating subsidiaries into a single entity, Charter Communications Entertainment I, LLC (CCE-I).

Every day, close to 20 million New Yorkers rely on some form of communication as part of their personal, professional or public lives. Whether communicating by voice, e-mail or text message, or receiving content over the Internet, access to terrestrial, wireless or satellite communications are, without question, an essential component of our society. The needs of New York residents and institutions, such as our businesses, universities, and hospitals, are supplemented by the millions of visitors to our State who also rely on our communication networks to remain in contact with family, friends and businesses. Additionally, numerous New York businesses in the areas of advertising, media and data production rely on an open communications network to reach consumers nationally and internationally.

Consequently, there is a substantial public interest in ensuring that the policies and practices that the Commission establishes for overseeing communication service providers are designed to enable and support markets that meet national and international standards for speed, quality, access, and innovation.[3] The conditions set forth in this Order are consistent with, and help to achieve, Governor Andrew Cuomo's commitment to broadband investment and infrastructure expansion in the State.[4]

Access - Too many regions of the State continue to suffer from out-dated or non-existent cable service. By

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[3] See, Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State (a comprehensive review of the State's communications landscape).

[4] Governor Andrew Cuomo has established a $500 million infrastructure fund to promote deployment of broadband infrastructure capable of providing speeds of 100 Mbps. See, 2015 Opportunity Agenda: Restoring Economic Opportunity, Re: Statewide Broadband Access for Every New Yorker (issued January 16, 2015).

requiring the Petitioners (and by extension New Charter) to build-out their network to pass an additional 145,000 "unserved" (download speeds of 0-24.9 Megabits per second (Mbps)) and "underserved" (download speeds of 25-99.9 Mbps) residential housing units and/or businesses within four years of the closing of the transaction - with annual milestones and exclusive of any available State grant monies from the Broadband 4 All Program - we will be well on our way to ensuring that all New Yorkers, regardless of location, have access to essential broadband offerings. The Petitioners also must convert their existing New York footprint to an all-digital network (including upgrading the Columbia County Charter cable systems to enable broadband communications) capable of delivering faster broadband speeds. The Petitioners will be required to offer all customers broadband speeds of up to 100 Mbps by the end of 2018 and 300 Mbps by the end of 2019.[5] With the conversion to an all-digital network, New Charter will introduce its 60 Mbps broadband service, enabling many Time Warner subscribers to obtain faster speeds at lower prices.[6] For customers currently subscribed to Time Warner's Standard service (15 Mbps) the price benefit would be modest, while Upstate customers subscribed to faster Time Warner offerings (e.g., 30 and 50 Mbps) will experience additional savings.

Digital Divide – In order to promote broadband affordability and universal service, we will require the Petitioners to offer a discounted broadband service to certain low-income customers. The program must be offered to homes eligible for the National School Lunch Program (NSLP) and senior

[5] With respect to the Columbia County systems, we recognize that the timing of accomplishing this upgrade is dependent on New Charter's ability to get local approvals.

[6] This service provides speeds of 60 Mbps down and 4 Mbps up.

citizens receiving benefits from the Supplemental Security Income Assistance (SSI) program. In addition to a low-income program, the Petitioners will be required to offer to new subscribers Time Warner's standalone $14.99 Everyday Low Price service for two years following the close of the merger, at existing speeds and current price. The Petitioners will also be required to allow customers to retain that service for three years from the close of the transaction, which will run concurrently with the two-year period discussed above. They will also be required to allow existing customers to retain, without material changes that have the intent to discourage, all other existing Time Warner standalone and bundled broadband services for three years following the close of the merger. Finally, Petitioners will be required to provide free broadband service to 50 community anchor institutions not already receiving such service from Time Warner or Charter, in low-income or underserved areas within the Petitioners' service footprint, inclusive of free line extensions, if necessary.

Customer Service – To ensure no reduction in customer service standards, the Petitioners will be precluded from reducing customer-facing jobs in New York for four years following the issuance of this Order. In addition, the Petitioners must focus on improving service quality and satisfying the needs of their New York customers and are required to invest $50 million in service quality improvements in New York over two years following the close of the merger and achieve a 35% reduction in Time Warner's 2014 cable PSC Complaint Rate by the end of 2020, with half achieved by the end of 2018. If the improvement targets are not achieved, the Petitioners will be required to invest additional monies in customer service.

The Commission estimates that if the Petitioners accept the conditions, New York consumers will realize approximately $435 million in net incremental benefits over the ten years from the close of the transaction and approximately $655 million in associated investments.

At the time of the issuance of this Order, the Petitioners have not made any specific commitments regarding network expansion, broadband speed, or affordability in other state jurisdictions.[7] If, subsequent to this Order, such commitments are made that exceed the requirements the Commission imposes here, we will require the Petitioners to also provide those same benefits in New York.

These conditions will be enforced through a combination of incentive payments, self-effectuating commitments (including reporting requirements and collaboration with various stakeholders), and penalty actions pursuant to PSL §25, and, if necessary, enforcement proceedings pursuant to PSL §26. These conditions are essential to ensure achievement of net benefits for the Petitioners' New Yorker customers.

BACKGROUND

On May 23, 2015, Charter, along with CCH I, LLC, the current Charter subsidiary that will become New Charter, entered into agreements (the Agreements) with Time Warner, Liberty Broadband Corporation (Liberty Broadband), Liberty Interactive

[7] The Hawaii Department of Commerce and Consumer Affairs' (DCCA) Cable Television Division, recently approved the proposed transaction and among other things requires New Charter to offer within three years of the close of the transaction a low-income broadband service with speeds of 30 Mbps for $14.99/mo. This program is part of a national commitment made by Charter, which, as discussed in detail below, this Commission also requires in New York within 15 months of the close of the transaction.

Corporation (collectively Liberty), and Advance/Newhouse, a parent company of BHN. Under the terms of the Agreements, Time Warner will ultimately merge into a subsidiary of New Charter through a series of mergers. Those mergers will result in Time Warner stockholders, other than Liberty, receiving a combination of cash and shares of New Charter Class A common stock that values TWC at approximately $78.7 billion in exchange for their shares of Time Warner stock, and Liberty receiving shares of New Charter Class A common stock in exchange for its shares of Time Warner stock. In addition, subject to separate conditions set forth in Charter's agreement with Advance/Newhouse, New Charter will acquire BHN for approximately $10.4 billion, comprised of cash and equity of New Charter and an indirect subsidiary of New Charter. Liberty will invest a total of $5 billion in connection with the proposed transaction in exchange for additional shares of New Charter Class A common stock.

Following the close of the proposed transaction, New Charter will be the third-largest cable provider behind AT&T/DirecTV and Comcast Corporation (Comcast). New Charter will own and/or manage systems serving approximately 19.4 million broadband customers, 17.3 million video customers, and 9.4 million voice customers across 41 states. In New York, Charter currently provides cable television and other communication services to a relatively small number of customers through its Cable Franchisee Subsidiaries, which operate two cable system clusters in and around Plattsburgh and Columbia County, New York. The Cable Franchisee Subsidiaries provide service to approximately 14,000 residential and business customers in the Plattsburgh service area, and approximately 2,500 residential and business customers in the Columbia County service area. The Plattsburgh area networks are fully interactive, two-way systems, capable of providing video, voice

and broadband services, while the Columbia County networks are one-way, video service-only systems.

According to the record in this case, Time Warner currently provides cable television, broadband, and telephone services to approximately 2.6 million subscribers in approximately 1,150 cities, towns, and villages throughout New York State. Time Warner is also a major presence in four out of the five New York City boroughs (Manhattan, Staten Island, Queens, and Brooklyn) and the major Upstate cities, including Buffalo, Rochester, Syracuse, and Albany. The Joint Petition does not seek authority for changes to New York customers' rates, terms or conditions of service, or for direct assignment of Time Warner's franchises, certificates, assets or customers; after the close of the proposed transaction, the Petitioners assert that if New Charter wishes to make changes that require regulatory approval, it will follow applicable New York filing and notice requirements.

The proposed transaction will include the pledge of assets and the issuance of substantial debt. According to the Joint Petition, certain operating subsidiaries of New Charter, including the Time Warner Subsidiaries and the Charter Fiberlink Subsidiary, will become guarantors of, and, with respect to any secured facilities, will pledge their assets to secure, (1) indebtedness being incurred to finance the transaction in part, and (2) legacy indebtedness of Time Warner and its subsidiaries that will become indirect subsidiaries of New Charter. The Joint Petition states that Charter expects to finance part of the consideration for the proposed transaction with additional indebtedness of approximately $24 billion. This additional indebtedness, according to the Petitioners, is expected to be in the form of new senior secured bank loans, senior secured notes, and unsecured indebtedness made available to two of Charter's

subsidiaries, CCO Holdings, LLC, and Charter Communications Operating, LLC (Charter Operating), the immediate holding company for all of Charter's operating subsidiaries. In connection with the completion of the proposed transaction the Joint Petition further states that Charter Operating and its subsidiaries, including the Time Warner Subsidiaries and the Charter Fiberlink Subsidiary, expect to guarantee approximately $23 billion in indebtedness of Time Warner and its subsidiaries that will become New Charter subsidiaries.

NOTICE INVITING COMMENTS

Following the filing of the Joint Petition, the Commission issued a Notice Inviting Comments (Notice) on July 22, 2015.[8] The times for submissions in response to the Notice expired on September 14, 2015 (for comments) and September 30, 2015 (for reply comments). In addition, pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on July 29, 2015.[9]

The Commission also held five Informational Forums and Public Statement Hearings in three cities concerning the Joint Petition and the proposed transaction: in Albany on September 17, 2015, New York City on September 21, 2015, and Buffalo on

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[8] Under §617 of the Federal Communications Act (47 U.S.C. §537), when the sale or transfer of a cable television franchise requires the approval of a franchising authority, the franchising authority must act within 120 days or the request will be deemed granted, unless the requesting party and the franchising authority agree to an extension of time. On July 17, 2015, the Petitioners sent a letter to the Secretary to the Commission agreeing to extend the time for action by the Commission through December 22, 2015; a subsequent letter was filed on December 17, 2015, agreeing to further extend the time for Commission action through February 11, 2016.

[9] SAPA No. 15-M-0388SP1.

September 24, 2015, to allow for on-the-record public comments from interested consumers, non-profit organizations, local governments, business groups, and members of the general public. The Commission also received over 75 electronically-filed comments from the public at large. Generally, comments supporting the proposed transaction assert that, among other things, the merger will create jobs and provide better products at more affordable rates. Those opposing the transaction state that the merger will inevitably lead to higher rates and potential data caps on broadband services in the future. A summary of all the comments received from the above-referenced sources is provided in Appendix B. All comments have been taken into consideration in rendering a decision on the Joint Petition.

STATUTORY TEST FOR APPROVAL

There is no dispute over the statutes applicable to the Commission's review of the proposed transaction. Time Warner currently operates under duly authorized and approved Certificates of Public Convenience and Necessity (CPCNs) as a provider of telecommunications services in New York. PSL §99(2) requires the consent of the Commission to any proposed transfer

of its "works or system."[10] As we noted in another merger case, "[a]lthough PSL §99(2) does not specify a standard of review, all such utility transfers have been interpreted as requiring an affirmative public interest determination by the Commission."[11]

PSL §§100(1) and (3) require the Commission's consent to the acquisition of the stock of a telephone corporation.[12] Unlike §99(2), however, these provisions expressly bar the Commission from giving its consent unless the applicant has shown that the acquisition is in the public interest. PSL §101 requires the Commission's consent when telephone corporations issue debt.[13]

PSL §222(3) governs the transfer of the franchise, or of facilities constituting a significant part of the system, of

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[10] Although consent is presumed if the Commission takes no action within 90 days after being notified of the transaction, express written consent by the Commission must be provided where, as here, the Commission determines that the public interest so requires. On July 23, 2015, the Acting Director of the Office of Telecommunications and the Director of the Office of Accounting, Audit & Finance issued a letter to the Petitioners indicating that the public interest warranted further review under PSL §§99, 100 and 101, hence stopping the 90-day/45-day respective clocks for Commission review. See, July 23, 2015 Letter from Peter McGowan, Acting Director, Office of Telecommunications, and Doris Stout, Director, Office of Accounting, Audits & Finance to Charter and Time Warner.

[11] Case 05-C-0237, Joint Petition of Verizon Communications et al., Order Asserting Jurisdiction and Approving Merger Subject to Conditions (issued November 22, 2005), n. 46.

[12] Again, consent is presumed after 90 days unless the Commission determines, as we have here, that the public interest requires our review and written opinion. See n. 10, supra.

[13] PSL §101 states that an application is deemed approved after 45 days unless the Commission or its designee notifies the petitioner in writing, within the time period, that the public interest requires the Commission's review and its written opinion. Again, such written notification was provided. See, n. 10, supra.

any cable television provider. This statute was amended in 2014 to require an affirmative showing by the Petitioners that the proposed transaction is in the public interest.[14]

There is little dispute that these sections of the Public Service Law, individually and collectively, require us to conclude that the proposed transaction is in (or otherwise is consistent with) the public interest to obtain approval. In the matter before us, however, there is considerable disagreement among the parties over how the "public interest" standard set forth explicitly in PSL §§99, 100, 101 and 222(3) should be implemented.

The Petitioners assert that the several initiatives and commitments described in the Joint Petition are more than sufficient to provide "substantial net public interest benefits" (emphasis added) for New York.[15] However, while Petitioners' own words here refer to "net public interest benefits", the Joint Petition fails to adequately explain how the consummation of the

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[14] Prior to amendment, the statute required the Commission to approve an application unless it found that approval "would be in violation of law, any regulation or standard promulgated by the Commission or the public interest." Effective April 1, 2014, however, PSL §222(3) was amended. (L. 2014, Chap.57. Part R). The original language of the section was designated subsection (a) and was restricted to the renewal or amendment of franchises. A new subsection (b) was added to govern the transfer of franchises and facilities from one franchise holder to a succeeding franchise holder. PSL §222(3) now provides that the Commission "shall not approve" such an application "unless the applicant demonstrates that approval would not" violate any law, regulation, or Commission standard, "and that the transfer is otherwise in the public interest."

[15] Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Joint Petition (filed July 2, 2015), p. 35.

proposed transaction will ultimately provide concrete net benefits.

Initially, we note that the proposal may have detriments for some or all of the Petitioners' New York customers. If these detriments are significant, they cannot be disregarded or omitted from our public interest analysis. The Joint Petition implies that there are no such detriments.

Any assessment of the benefits should also be reduced to the extent the actions producing those benefits could or would have occurred even in the absence of the proposed transaction. In New York State, the merged entity will consist primarily of TWC assets, and the public record is clear that TWC has a number of on-going initiatives to improve the services provided to its New York customers. The Joint Petition, however, does not identify these improvements, estimate the schedule for implementation in the absence of a Charter/TWC merger, or compare them to the initiatives that the Petitioners assert will accompany the proposed transaction.

Staff asserts that our analysis of the public interest with respect to PSL §222(3), must be patterned on our implementation of PSL §70 analysis. We do not believe that our PSL §222(3) analysis is necessarily so limited. Section 70 provides for our review of certain transactions between electric corporations, gas corporations, or combined electric and gas corporations. There are many ways in which those transactions would or could be different from those encompassed by PSL §§99,

100, 101 and 222.[16] With these differences in mind, we believe Staff's argument does not go far enough in explaining how the Commission should evaluate the public interest.

Any similarities that may exist between our analysis under PSL §§99, 100, 101, and 222 here and an analysis under PSL §70 flow from the facts of each case and not from the statutes themselves. Our analysis will be tailored to the specific transaction under review to determine whether there are benefits related to the transaction and whether the benefits outweigh the harms depends on the specifics of the industry and facts of the case.

While we have broad discretion to choose the scope of review that best fits the transaction at hand, we are cognizant of Petitioners' arguments that, on the one hand, there are cable franchise transfers which have experienced a very limited review, and, on the other, there are Section 70 reviews which relied on only a "lightened" review of the proposed transactions. The cable television franchise transfers to which the Petitioners refer were decided in the wake of the amendment of PSL §222. It is asserted that these reviews did not materially differ from determinations on cable franchise transfer petitions prior to that date in relying on an abbreviated examination of the public interest. However, in the first decision, involving the transfer of two cable franchises

[16] For example, and in contrast to many Section 70 transactions, the PSL §§99, 100, 101, or 222 transactions may involve retail customers and are unlikely to involve wholesale customers only; may not involve regulated rates set according to cost-of-service analysis; may not involve entities that do not participate in an orderly, clearing price market such as the New York Independent System Operator (NYISO); may represent the New York portion of a significant national transaction; and could be regulated on the federal level by the Federal Communications Commission (FCC), rather than the Federal Energy Regulatory Commission (FERC).

from Haefele TV, Inc. to TWC, the Commission found that the proposed transaction met the public interest because TWC had committed to improving substantially the overall performance of the acquired system, would offer access to broader programming, and had a proven track record as "an experienced provider of advanced cable, Internet access and telecommunications services."[17] The same findings, modified to more accurately reflect the circumstances of the individual franchise, were made in the second franchise transfer cited by Petitioners.[18]

We cannot agree with Petitioners that these two cable television franchise transfer cases are examples of the Commission using a test other than a net positive benefit test to assess the public interest associated with the proposed transfers. Indeed, as the Commission explicitly stated in these cases:

> While every cable transfer is reviewed on a case-by-case basis to determine if it meets the public interest, here the benefits are adequate because the transaction poses very little risk to customers as Time Warner has a proven track record and plans to provide more service offerings in the Towns of Greene and Smithville. Additionally, unlike a merger or the acquisition of an entire cable company, the instant transaction involves the sale of only two small cable systems and the associated franchises. Haefele will continue to operate in other

[17] Case 14-V-0023, Application of Time Warner Cable Northeast LLC in Connection with the Acquisition of Certain Cable Television Facilities and Franchises in the Towns of Greene and Smithville from Haefele TV, Inc., Order Approving Transfers, (issued April 29, 2014), pp. 5-6.

[18] Case 15-V-0090, Joint Petition of Adams CATV, Inc. and Oquaga Lake Cable, Inc. for Approval of Transfer of Control of Cable Television System Franchise, Certificates and Facilities in Broome County, Order Approving Transfer (issued May 21, 2015), pp. 4-5.

> jurisdictions on a stand-alone basis following the proposed transaction.[19]

Thus, not only did the Commission's decisions in those cases emphasize, as we do here, that the scope of the public interest analysis necessarily depends on the specifics of the particular transaction at hand, those decisions clearly applied a net positive benefit test by finding that the benefits of cable franchise transfers outweighed the detriments because the transferees would bring better cable, Internet and telephone services to customers than were offered by the transferors.[20]

Assuming, arguendo, that §70 supplied the definitive description of the net positive benefits test to be used to gauge the public interest under PSL §§99, 100, 101 and 222, we note that Petitioners assert that the public interest analysis used here should be different and of a narrower scope than the analysis described by Staff. Specifically, the Petitioners argue that a significant number of transactions approved under §70 involving competitive electric generators and merchant transmission companies have been decided under a "lightened" public interest standard rather than the net benefits test

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[19] Case 14-V-0023, supra, Order Approving Transfers, n. 2. See also, Case 15-V-0090, supra, Order Approving Transfer, n. 1.

[20] Petitioners also suggest that the scope of the Commission's inquiry and, hence, the standard it is legally capable of applying, is limited by federal law. They contend that under the FCC's rules implementing §617 of the Cable Act, the scope of transfer review authority is confined to issues related to a transferee's financial, legal and technical ability to operate the cable systems proposed to be transferred (Reply Comments of Petitioners, filed September 30, 2015 (Petitioners' Reply Comments), p. 55). That suggestion however ignores the instructions accompanying Form 394 which state that the applicant must, "[i]n addition to the information requested on this form ... submit all information required by the cable franchise agreement or applicable local law or that the franchising authority deems necessary or appropriate in connection with the transfer determination."

applied to retail utilities under that section.[21] According to the Petitioners, if any analysis is required under the PSL §70 standard for transactions between "lightly" regulated entities, the evaluation is generally limited to issues regarding market power and impacts on captive ratepayers, and the Commission's decision is made without regard to the net public benefits standard that would be applied to fully regulated gas and electric utilities.[22]

However, the Commission's standard of review for mergers and sales of lightly regulated competitive electric generators and merchant transmission companies is inapposite, and the Petitioner's reliance on these cases to establish the standard here is unpersuasive. Petitioners argue that the presence of competitive providers in the telephone, cable, and broadband markets must be considered, and that such a presence mitigates any need to consider whether the net positive benefit test should be applied, or whether conditional approval - as previously applied by the Commission to monopoly providers - in New York is necessary.

The Petitioners' comparison is flawed because those lightly regulated entities are almost always individual market participants, do not directly serve retail customers, and operate in effectively competitive electric commodity markets that are administered by an independent entity responsible for assuring efficient operation. There is virtually nothing comparable to the circumstances presented here. The review

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[21] See e.g., Case 91-E-0350, Wallkill Generating Company L.P. – Petition For a Declaratory Ruling that the Public Service Law is Inapplicable, or That Further Regulation There under is Unnecessary, or in the Alternative, That Light-Handed Regulation be Applied, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (issued Aug. 21, 1991).

[22] Petitioners' Reply Comments, pp. 53-54.

afforded under PSL §70 to transfers in cases involving participants in those markets are specific to them and their characteristics. Moreover, the degree of PSL §70 regulation that will be applied to each such entity is determined at the time it enters the relevant market, subject, however, to subsequent modification if new facts concerning that market arise. No such determination has been made for cable companies. Moreover, lightly regulated providers awarded reduced scrutiny review under PSL §70 operate at their own risk in markets that involve multiple competitors operating on the same playing field, again distinguishing them from cable companies.

As distinct from lightly regulated providers, where fully regulated providers furnish retail electric service, the Commission does, in fact, conduct a broad net positive benefit analysis under PSL §70, which has historically resulted in a substantial portion of synergy savings accruing to ratepayers. We recognize that, in comparison to electric and gas utilities, which are monopoly providers, Charter and Time Warner operate in relatively competitive telephone and video markets. These markets, however, are not perfect and, in their operation, may not provide New York consumers with the full measure of benefits that would otherwise be expected in a truly competitive environment.[23] The Commission's regulatory response to a proposed merger should act as the next best substitute for competition when market forces may not ensure that consumers receive the full benefits that should be derived from

[23] Staff's proposed conditions, discussed infra, recognize that New Charter, which is created as a result of this merger, will be able to exert some market power in the retail markets, but will also be subject to competitive forces. We note here, and discuss below, Staff's recommendation that only 50% of synergy savings, rather than all or a majority of those savings, be shared with New York consumers.

transactions of this type.[24] While some of the services offered by the Petitioners may involve levels of competition similar to those of lightly regulated providers receiving reduced scrutiny under PSL §70, others, especially broadband, simply do not. Time Warner serves close to 50% of New York State and we have a legitimate interest in ensuring that, when a company of this size provides customers with a service so affected by the public interest, as is communications, that real benefits accrue to consumers as a result of a given transaction.

As established above, we are not compelled by statute to apply any of the analyses from any particular §70 proceeding to this case. Nevertheless, where we find those holdings helpful and appropriate, we can seek guidance from them. Thus, we find useful the following from a recent §70 proceeding involving a fully regulated retail electric provider,[25] where we stated that the public interest analysis:

> [S]tarts by requiring Petitioners to make a three-part showing that the transaction would provide customers positive net benefits, after considering (1) the expected benefits properly attributable to the transaction, offset by (2) any risks or detriments that would remain after applying (3) reasonable mitigation measures.
>
> Once we have gauged the net benefits by comparing the transaction's intrinsic benefits versus its detriments and risks, we can assess whether the

[24] The Petitioners have not presented any concrete proof that the synergy savings attributable to this transaction will indeed be shared with customers as we would expect in a truly competitive market. Furthermore, Petitioners state in their Reply Comments that New York consumers may not share in any synergy savings at all as these savings may already be experienced under the incumbent, Time Warner. See, Petitioners' Reply Comments, p. 57.

[25] Case 12-M-0192, Fortis Inc. Acquisition of CH Energy Group, Order Authorizing Acquisition Subject to Conditions (issued June 26, 2013) (Fortis Merger Order).

> achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized benefits (sometimes described as "positive benefit adjustments" or PBAs). Then, if necessary, we establish a quantified PBA requirement, "as an exercise of informed judgment because there is no mathematical formula on which to base such a decision."[26]

When applying this guidance we are also cognizant of the broad authority provided through the public interest test to determine what constitutes the public interest, and as defined below, the applicable definition is reasonably related to the Commission's general regulatory authority, the nature of the transaction, and its potential impact on New Yorkers.[27]

Thus, we disagree with the Petitioners that the amendment to Section 222 failed to alter the application of the public interest review by merely shifting the burden of proof from the Commission to the Petitioners.[28] The new PSL §222(3)(b) supports a more thorough review of the proposed transaction. Under Petitioners' interpretation of PSL §222(3)(b), the Commission would have to assume that the Legislature amended the statute with the expectation that the nature of the Commission's

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[26] Id., p. 59, quoting Case 07-M-0906, Iberdrola, S.A. et al. – Acquisition Petition, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009) (Iberdrola Order), p. 136.

[27] In New York Telephone Co. v. Pub. Serv. Comm'n of the State of New York, 72 N.Y.2d 419, 429-30 (1988), the Court of Appeals construed the provision of PSL §110(3) that a management contract be in the "public interest" and concluded the application of the term "public interest" was a matter of Commission discretion and expertise.

[28] Petitioners' Reply Comments, p. 49.

review of cable mergers or acquisitions would be no different than the public interest standard in PSL §§99, 100, and 101.[29]

Legislative intent and meaning is best determined from statutory language. Samiento v. World Yacht Inc., 10 N.Y.3d 70, 77-78 (2008); Riley v. County of Broome, 95 N.Y.2d 455, 463 (2000). In addition, a court must attempt to harmonize all legislative provisions and give meaning to all parts of a statute. People v. Finley, 10 N.Y.3d 647, 655 (2008). "The primary consideration of courts in interpreting a statute is to ascertain and give effect to the intention of the Legislature." Riley v. County of Broome, 95 N.Y.2d 455, 463 (2000) [internal quotation marks and citation omitted].

Applying these principles, it is virtually certain that the amendment to PSL §222(3) was intended to bring it more in line with our public interest review enumerated in the other sections of the PSL discussed above. Additionally, it is our belief that the Legislature intended that the scope of the public interest analysis in cable mergers and acquisitions necessarily depends on the specifics of the particular transaction at hand and whether that transaction will serve the public interest.[30]

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[29] Even when the public interest standard is prescribed by other sections of PSL (i.e., §§70, 83 and 89-h), the nature of the Commission review will be guided by the individual facts surrounding a particular transaction.

[30] This application is done as a pure matter of statutory principles without resort to the "realistic appraisal" ordinarily done in PSL construction. Matter of New York State Electric & Gas Corporation v. Pub. Serv. Comm'n of the State of New York, 308 A.D.2d 108, 111, 114 (3rd Dept 2003).

SCOPE OF THE PUBLIC INTEREST ANALYSIS

The Commission's public interest review is as broad as its statutory obligations and related policies concerning cable and telecommunication services. In this regard, the PSL provides general and broad oversight authority to the Commission over telecommunications and cable providers through PSL §91: adequate telephone service at just and reasonable rates; through PSL §94: general powers of the Commission over telecommunications providers to examine conditions of service and facilities; and PSL §211: general powers of the Commission to set State communications policy and ensure cable companies provide adequate, economical, and efficient service to subscribers. Under these and other statutory provisions of the PSL, discussed supra, the Commission must determine whether or not the transaction, as a whole, provides net public benefits to all New York consumers in the Time Warner footprint.

The determination and evaluation of public benefit must be undertaken in the context of existing public policy objectives and the realities of the telecommunications and cable television marketplaces. At the outset, we note the Commission's historical policy with regard to both telephone and cable television has been to promote the public welfare through reliance on market-based competition.[31]

In conducting our review of this proposed merger, we note that TWC companies in New York presently serve more than two million customers in 1,150 communities. While Charter currently has only a very limited presence in New York, the combined company, like TWC alone before the merger, will be the single largest supplier of communications-related services in

[31] See e.g., Case 05-C-0616, Transition to Intermodal Competition, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006).

the State. On a national scale, the combined company will have more than 19 million subscribers. The size of the resulting company will have both positive and negative implications to New York's interests in fostering a robust communications infrastructure and competitive market for communication services.

As Staff notes, based on the size and scope of the post-merger New Charter, the proposed transaction is expected to generate significant synergies, a portion of which should inure to the benefit of New York consumers.[32] One of the Commission's obligations is to ensure that the potential benefits of the proposed transaction translate into tangible benefits to New Charter's New York consumers. Further, these benefits should be consistent with the Commission's public policies favoring the actions of competitive markets over regulation, where warranted.

Our review of the proposed transaction also takes into account the changed, and changing, nature of the communications marketplace and of the laws that govern it. In March 2015, the FCC reconsidered its prior decisions that classified broadband Internet access service as an information service, and concluded that broadband Internet access service is a telecommunications service subject to regulation as a common carrier under Title II of the Telecommunications Act.[33] The FCC has observed that consumers today primarily use broadband Internet access service as a conduit.[34] As Petitioners, Staff, and other commenters to this proceeding observe, the rapid evolution of technology

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[32] Redacted Comments of the Department of Public Service Staff (Staff Comments), pp. 19-21.

[33] GN Docket No. 14-28, In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, ¶306 et seq. (issued March 12, 2015) (Open Internet Order).

[34] Id., ¶350.

spurred by the development of the Internet is profoundly changing the fundamental concept of communication services throughout the world. Thus, in reviewing the proposed transaction and its impact on the markets and consumer interests in New York, the Commission must consider the impact it will have on the ability of consumers to gain access to, and rely on, broadband networks to exercise effective communication choices.

Much as telephone was an essential service for consumers in the second half of the 20th Century, so too today is broadband. Broadband service, whether provided by wire, such as cable, digital subscriber line (DSL), and fiber optic technologies, or wirelessly through WiFi and LTE cellular technologies, represents not only a communications platform (in the form of voice, text, e-mail, video conferencing, and other social media services), but a platform for social relationships, health information, news, entertainment, education, medical diagnosis, the payment of bills, navigation, shopping, government business, document storage, and job applications. Growing from a nascent industry fewer than 20 years ago, broadband has become a core communications service relied upon by hundreds of millions of people across the country and the world. New York has experienced this evolution firsthand, as

its media production industry,[35] educational institutions,[36] hospitals and healthcare industries,[37] and financial institutions[38] rely heavily on broadband connectivity to deliver services and aid to millions of New Yorkers.

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[35] New York City's media industry employs more than 300,000 people or approximately 10 percent of the City's private sector, and accounts for $30 billion in annual revenue. See, Media & Emerging Tech, NYCEDC, http://www.nycedc.com/industry/media-emerging-tech.

[36] New York's wide ranging education institutions are at the forefront of utilizing the Internet as a means to educate students. See, The Advanced Communications Law & Policy Institute at New York Law School, The Impact of Broadband on Education (December 2010), available at https://www.uschamber.com/sites/default/files/legacy/about/USChamber_Paper_on_Broadband_and_Education.pdf; see also, EducationSuperHighway, State of the States Report on School Broadband Connectivity (November 19, 2015), available at http://stateofthestates.educationsuperhighway.org/.

[37] The New York State Legislature's Legislative Commission on Rural Resources and the Senate and Assembly Health and Insurance Committees released a report in 2012 detailing the emergence of telemedicine in New York, its reliance on broadband, and recommendations for its continued importance, including increased broadband deployment. See, Legislative Commission on Rural Resources, Telemedicine and Telehealth: Putting the Pieces Together (March 2012), available at http://www.nysenate.gov/sites/default/files/articles/attachments/Telemedicine%20and%20Telehealth%20Report.pdf. In recognition of this emergence, the New York State Legislature passed and Governor Cuomo signed Bill A2552A (L. 2015 Chapter 6), which requires cover services via telemedicine if provided by hospitals, home care and hospice agencies, licensed physicians, PAs, dentists, nursing, midwives, podiatrists, optometrists, ophthalmic dispensers, psychologists, social workers, or speech language pathology and audiologists. The bill became effective on January 1, 2016,

[38] Financial services companies, many of which are based, in and operate extensively, in New York State are interacting with their customers online, with 68% of consumers reporting the use of online banking. See, Consumers and Mobile Financial Services, Federal Reserve (March 2012), http://www.federalreserve.gov/econresdata/mobile-devices/2012-consumers-financial-institutions.htm.

Within this context of rapid and dramatic change, it is understandable that state commissions, including this Commission, are required by federal law to encourage the deployment of advanced telecommunications infrastructure, capable of delivering broadband services to all New Yorkers.[39] In applying the public interest standard in this case, our evaluation of the provision of telephone and cable services compels us to also consider broadband because all of these services compete against one another and are increasingly interchangeable. Given Time Warner's broadband presence in New York State, and the importance of broadband service for New Yorkers, this transaction presents an important opportunity for the Commission to assess the extent to which regulated services like cable and telephone interact with broadband, and how the Commission, as required by federal law, must encourage the deployment and adoption of higher speed broadband services.[40]

The Commission must also consider that, in today's market, many New Yorkers lack adequate access to communication choices and that the public interest is not well served if we approve this merger without addressing that deficit. In addition, it is crucial to consider whether the proposed transaction would harm or benefit New Yorkers who, because of

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[39] 47 U.S.C. §1302(a) states in relevant part that "each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."

[40] Time Warner's broadband service is currently the most widely available in New York and its cable service is available to approximately 61% of the State's 8.2 million households.

their level of income, have difficulties affording broadband Internet access.[41] The Commission also recognizes that many residential and business customers in rural areas of the State lack access to such services at speeds or levels that provide real value from the competitive communications market. Therefore, just as in the case of affordability, the public interest inquiry necessarily requires an assessment on how the transaction will harm or benefit the State's interest in rural and business customer broadband expansion.

Based upon the foregoing considerations, the Petitioners must show, among other things, that the transaction will facilitate a greater commitment to communication network modernization throughout their New York footprints than would otherwise occur with a standalone Time Warner organization. The Petitioners must also show how the transaction will facilitate increased access to their network for rural New Yorkers and business customers who today do not have the full value of a competitive market. As Staff and many commenters point out, the promise of telecommunications and cable competition is elusive if customers do not have access to the cable network or are not able to access advanced networks because standalone broadband services are not affordable. Accordingly, as part of their burden, we expect the Petitioners to demonstrate that the proposed transaction promotes New York's interest in a robust competitive broadband market through expanding and enhancing network access and assuring affordable standalone services.

Along with these considerations, as a whole, New York consumers are far too often dissatisfied with the service

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[41] See, Pew Research Center, Home Broadband 2015 (December 21, 2015), available at http://www.pewinternet.org/2015/12/21/2015/Home-Broadband-2015 (examining the relationship between income and broadband adoption).

quality of traditional cable companies.[42] As part of our public benefit analysis we will consider the impact of the proposed transaction on customer service.

Finally, as in all cases of this type, the Commission is concerned about the economic development effects of the merger, including how the proposed transaction will impact existing and new employment opportunities. Because Time Warner is a New York based company, there is particular interest in ensuring that synergies are not achieved through reductions in the customer-facing labor workforce in New York.

Staff offers that there may be conditions or requirements not described in the Joint Petition that could be imposed and that could mitigate one or more of these detriments, or otherwise increase the extent to which the transaction may be characterized as in the public interest. Recognizing, as we must, that monetized benefits, sometimes described as positive benefit adjustments or PBAs, are at best "an exercise of informed judgment because there is no mathematical formula on which to base such a decision,"[43] we address below additional specific proposals that we find necessary to assure that the Petitioners' proposed transaction meets the positive net benefits test and is in the public interest. In considering additional enforceable conditions that could be applied to our approval of the proposed transaction, we also consider Staff's assessment of the synergies likely to flow from the merger to New Charter's shareholders, and the share of these synergies that should be expected to provide benefits to Time Warner and Charter's New York consumers.

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[42] Staff Comments, pp. 39-40. See also, People Utilities Law Project (PULP) comments filed September 16, 2015 (PULP Comments), pp. 10-11.

[43] Iberdrola Order, p. 136.

At the outset, Staff asserts that the value of the synergies that may be realized from the proposed transaction is approximately $402 million.[44] In its methodology, Staff notes first that published reports "project that the merger of Time Warner and Charter will produce $800 million of synergy savings."[45] Staff then calculates that, post acquisition, TWC's and Charter's New York customers would represent approximately 10.879% of New Charter's total customer base (approximately 2,600,000 out of 23,900,000). Staff concludes, that a conservative presumption of a 50% customer/50% shareholder sharing of these synergies, applied to New Charter's expected New York customer percentage, establishes that the combined company's customers should receive approximately $43.5 million (10.879% x $400 million) in benefits annually from the proposed transaction.[46] The Joint Petitioners, however, take issue with Staff's calculation of the New York share of the projected synergy savings.[47] They argue that Staff overstates the amount

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[44] Staff Comments, p. 21

[45] Charter to Merge with Time Warner Cable and Acquire Bright House Networks Combinations Benefit Shareholders, Consumers and Cable Industry, May 26, 2015, available at http://ir.timewarnercable.com/investor-relations/events-and-presentations/upcoming-events/event-details/2015/Charter-Communications-to-Merge-with-Time-Warner-Cable-and-Acquire-Bright-House-Networks-Conference-Call/default.aspx.

[46] Staff calculates that over the first ten post-transaction years, New York customer synergy savings should total approximately $402 million, using a *pro forma* run rate where 50% of the synergies are achieved in the first year, 75% of the synergies are achieved in the second year, and 100% thereafter ($43.5 million X 50% + $43.5 million X 75% + $43.5 million X 8 = $402.375 million). See, Staff Comments, pp. 20-21. The net present value of the Staff calculated consumer share is approximately $280 million using a discount rate of 12%.

[47] Petitioners' Reply Comments, pp. 56-58.

of synergy savings that should be attributable to customers in several respects.

First, the Petitioners assert that Staff fails to compute the net present value of the $402 million in estimated synergy savings that should accrue to New York Time Warner and Charter customers over the first ten years following the proposed transaction. This failure, according to the Petitioners, overstates the quantitative amount of benefits to be delivered under the net benefits test. The Petitioners state that a net present value analysis would bring the overall number down to $241 million instead of $402 million.[48] Both the net present value and the total nominal value can be instructive. To the extent that net savings or benefits accrue over differing periods of time, the Commission should compare the synergy savings or benefit packages using a net present value approach, however, the nominal value is also informative as it represents the total value received over time.

Second, the Petitioners argue that, in capital intensive and technologically dynamic businesses such as cable, broadband and telephony, it is more reasonable to assume that a substantial portion of synergy savings will be re-invested in network infrastructure and new technologies rather than simply returned to customers or shareholders.[49] We agree that these are "capital intensive and technologically dynamic businesses."[50] This business environment is present whether the proposed merger goes forward or not. However, in order to guarantee that the proposed transaction is in the public interest for New York, concrete commitments are necessary here because, as

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[48] Id., p. 56.

[49] Id.

[50] Id.

indicated above, New Charter will be able to exert some market power in the retail markets.

Third, Petitioners state that Staff incorrectly assumes that synergy savings will be uniformly reaped in each geographic area served by the merging entities in proportion to that area's share of the combined company's total subscriber base. According to Petitioners, each synergy may not have the same effect across the merged entity's footprint.[51] These assertions, however, cut against Petitioners' previous argument that, in a competitive environment, customers will necessarily be receiving their share of synergy savings. Moreover, if New York customers are net contributors rather than net recipients of the synergy saving, then it confirms Staff's position that additional conditions are necessary to ensure an actual net benefit for New York customers.

In the absence of any persuasive argument to the contrary, we conclude that Staff's estimate of the synergy savings that should be available for the benefit of New York customers ($402 million in nominal value) is a useful estimate to measure the net benefits associated with the proposed transaction. At a minimum, this amount in synergy savings should be available to customers through the following conditions discussed below.

THE JOINT PETITION

According to the Petitioners, the proposed transaction will enhance competition and provide current Time Warner and Charter customers with faster Internet speeds and deliver other public interest benefits. The purported benefits put forward are as follows.

[51] Id., p. 57.

Network Investment

The Petitioners assert that, after the transaction is completed, they will make several investments in the combined systems. More specifically, the Petitioners describe four types of investments that New Charter will be making. First, the Petitioners will commit to the completion of one million line extensions nationally in the first four years after the merger is complete. Second, they will make a $2.5 billion investment within four years of the merger closing to build-out unserved or underserved commercial areas in the existing Charter-TWC-BHN service territories. Third, the Petitioners assert that they will create 300,000 additional Internet over wireless (WiFi) "hotspots" within four years of the merger closing.[52] Fourth, they assert that New Charter will convert its facilities to an all-digital system for 99% of its customers within 30 months of the implementation of the proposed merger, although Petitioners state that it is possible that systems serving less than 1% of homes in the existing footprint, including Columbia County systems, may not be transitioned to all-digital service due to the challenges of interconnecting certain remaining Charter networks.

Petitioners, however, decline to specify where in the national footprint of Charter, TWC and BHN these investments will be made or to identify the decisional factors to be used to channel these capital resources to specific areas or customers. There is no analysis to indicate that a reasonable proportion of these investments will be to systems in New York or for the benefit of New York customers. Similarly, there is no proposal by the Petitioners to describe the specific commitments that are

[52] A hotspot is a physical location situated with telecommunications equipment that allows users in the vicinity of the hotspot area, to access the WiFi connection to the user's Smart Phone, tablet or other mobile device.

being made or the specific enforcement mechanisms that would be used in the event the Petitioners' implementation fell short of their commitments. Further, in order for these investments to be characterized as part of a net public benefit, Staff concludes, and we agree, that Petitioners would have to establish that these investments would not have been made in the absence of the proposed merger.[53] In the absence of a demonstration that there is "a tangible commitment to make new investments or invest beyond Time Warner's current capital investment budgets,"[54] it is difficult to characterize these capital expenditures as a certain benefit to New York customers or a satisfaction of the public interest under the New York statutes.

Beyond this general observation, applicable to each of the investments listed above, it is possible to identify specific characteristics of each of these investments that also frustrate or obviate the conclusion that they would contribute to a net positive benefit for New Yorkers. For example, with respect to the line extension investments, we note that the Petitioners take issue with a proposal by one commenter who suggests that the Petitioners should commit to build-out the system to reach density levels as low as 10-12 residents per mile. In response, the Petitioners argue that "[t]he Commission should not circumvent municipal authority to negotiate build-out commitments in franchises, or its own rulemaking process, by adopting a build-out requirement that exceeds existing requirements in the State."[55] There is no indication, however, that this cautionary argument can be squared with the Petitioners' national commitment to make one million line

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[53] Staff Comments, p. 26.

[54] Id.

[55] Petitioners' Reply Comments, p. 29.

extensions. If the build-out opportunities in New York State are primarily building down to density levels already specified in franchise agreements, then it is the franchise terms, not the merger, that would require those line extensions. If there are no such opportunities, and the Petitioners resist building-out based on lower density levels, the opportunity to meet this one million line extension commitment must depend on line extensions that will be made in franchise territories other than those in New York. In this event, the line extension commitment cannot be characterized as a net benefit from the standpoint of the merger without specific commitments for New York.

Similarly, we note that the $2.5 billion investment commitment to build-out in commercial areas is unaccompanied by any commitment for New York. Further, and in contrast to other investment "commitments," the $2.5 billion build-out has no milestones at which progress toward the commercial build-out goal would be measured. With these characteristics, in addition to the general characteristics described above, it is difficult to recognize this $2.5 billion "commitment" as a benefit for New York resulting from the merger.

The third element of the Petitioners' capital investment commitment is the establishment of 300,000 new WiFi hotspots over the first three years after the merger's closing. The deployment of additional WiFi hotspots is, according to Staff, a benefit to consumers who use certain applications on certain mobile phones.[56] This value cannot be quantified in the absence of a plan that describes whether, or the extent to which, these hotspots will be deployed in New York. In addition, Staff understands that TWC has, up to now, pursued an aggressive plan to expand the number of hotspots available to customers in New York. As noted above, before additional post-

[56] Staff Comments, p. 30.

merger hotspots can be characterized as a benefit attributable to the merger, a demonstration would have to be made to explain why, in the absence of the proposed merger, TWC would not simply continue its hotspot development program and deploy approximately as many hotspots in New York as may be expected from the stated merger commitment.

The final element of the proposed capital investment program is the commitment to fully digitize the system within 30 months of the closing of the merger transaction. According to Staff, approximately 40% of TWC customers in New York are already served by a digital system, and TWC would be expected, in the absence of the merger transaction, to continue these conversions.[57] The only difference between the digitization proposed in the Joint Petition, and that which we would expect to see from TWC in the absence of a merger, is that Petitioners' proposal is to complete the digitization within 30 months while TWC has not formally announced such a timetable. Consequently, in this proposal, as in the other elements of the capital investment program, the benefits cannot be clearly identified.

The Petitioners' proposal to fully digitize the system also includes another troubling aspect. The Joint Petition indicates that they contemplate digitizing 99%, rather than 100% of the systems.[58] While this may benefit 99% of the TWC customers, it will leave the outlying 1% with inferior service. When, as now, significant efforts are being made to identify and bridge the "digital divide," this digitization is apparently from the outset expected to produce digital haves and have-nots.

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[57] Id., p. 27.

[58] Joint Petition, p. 28.

Network Modernization and Increased Speeds

The Petitioners assert that, as their systems are digitized, they will be able to offer higher speed broadband service at a more attractive price than TWC in the absence of the merger. This statement is based on the anticipated offer of 60 Mbps service for $59.99 per month.[59] This price and speed will be New Charter's entry level offering when the network has been digitalized. A large number of TWC customers, those subscribed to TWC's 15 Mbps service Upstate and 50 Mbps service in New York City, will experience a modest price benefit (if savings related to modem fees are factored in) along with an increase in service speed. Customers currently subscribed to higher speed Time Warner services Upstate will experience a more significant price benefit.

However, if a customer seeks service at a higher speed, Charter currently only offers a 100 Mbps service. The TWC Maxx offerings, on the other hand, currently available in New York City, are offered at speeds up to 100, 200 or 300 Mbps. We note, however, that Charter's retail price for 100 Mbps broadband service is higher than TWC's Maxx offerings in New York City.

As significant for the public interest, if a customer wishes to purchase a lower priced service, there is no corresponding Charter service to meet that need. TWC has an Everyday Low Price service (2 Mbps at $14.99 per month),[60] and a

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[59] Id., p. 6.

[60] As one commenter points out, the Everyday Low Price is available "without precondition, restricted qualifiers, contracts, or limits on what types of services can be bundled with it." Stop the Cap! Comments (filed September 29, 2015), p. 5. Such an offer enables the low-income customer to pair this broadband service with TWC telephone service to create a very attractive telephone plus broadband package for about $25 per month.

Basic service (6 Mbps at $29.99 per month).[61] Charter's 60 Mbps offering is priced well above TWC's lower tier offering and consequently maybe be beyond the price range for customers who desire a lower cost service. Under these circumstances, the Joint Petition and the Petitioners' Reply Comments do not establish that Charter's "faster speed, lower price" offer is a material benefit of the merger transaction.

Low-income Broadband Services

The Petitioners originally proposed to emulate a program now being implemented by Bright House that is designed to serve certain low-income customers. As discussed below, Staff and other parties describe several aspects of the program proposed by Petitioners that limit its reach and effectiveness.

The Petitioners state that they "will enhance the speed of and expand the eligibility for the broadband service" available through this new broadband offering and will offer the service at a "significantly reduced rate" throughout the Charter/TWC footprint within three years.[62] To this end, Charter announced in December that it would commit to offering a 30 Mbps down, 4 Mbps up low-income service for $14.99 per month inclusive of installation fees and a cable modem without a

[61] The prices cited for these broadband services may be for a standard or a promotional offer, and, therefore, a precise dollar-for-dollar comparison based on the cited prices may not be possible. Similarly, these prices do not reflect, in TWC's case, the $8 per month modem charge. The difference between the standard and promotional offer and the absence or presence of modem charges, however, do not appear to be large enough to change the relative ranking of prices for the identified services. TWC currently offers, and we would expect it to continue to offer, two lower priced and lower bandwidth broadband services, as well as two higher bandwidth broadband services, which have no comparable products in the New Charter menu of services.

[62] Petitioners' Reply Comments, p. 18.

credit check.[63] Eligibility for the program will include families eligible for the NSLP and seniors eligible for SSI.

The implementation of a program of this sort throughout the TWC/Charter footprint in New York will be critical to our policy goals that seek to address the needs of low-income customers and close the digital divide. The Petitioners and many of the commenters clearly recognize the importance of this goal and the importance of a low-income broadband offering as a major tool to meet that goal. The program described in the Petition and as updated through Charter's filing with the FCC has the potential to contribute an important net benefit as more fully discussed below.

Customer Service

The Petitioners assert that it will be New Charter's intention to bring hundreds of customer service jobs currently located outside the country back to the United States. They assert that customer service jobs located within the service territory are more likely to succeed in meeting customer needs and expectations.[64] There is no commitment, however, that Petitioners will locate any of the in-sourced workers in New York State. At the same time, it is also possible, as Staff asserts, that the inevitable disruptions that accompany the merger of two large companies, like Charter and TWC, will reduce the focus on New York, to the detriment of its New York consumers. Based on the foregoing, it appears that New

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[63] See, MB Docket No. 15-149, Applications of Charter Communication, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorization, Letter from John L. Flynn, Counsel for Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC Re: Low Income Broadband (filed December 22, 2015)

[64] Petitioners' Reply Comments, pp. 19-20.

Charter's customer care performance following the merger is unlikely to provide a net benefit to New York consumers.

Enhanced Video Programming

Charter identifies two technology products that it is introducing in its current service territory. One, called Worldbox, is customer premises equipment designed to receive and store video content. The second, Spectrum guide, is intended to improve the customer's ability to find programming. While each of these might provide, in Staff's view, "a minor incremental benefit,"[65] to associate this limited benefit with the proposed merger, the Petitioners would have to establish that TWC does not, and is not expected to, have a comparable product for introduction to its customers in the future.

Net Neutrality and Video Competition

The Petitioners emphasize in their filing that, notwithstanding actions at the federal level[66] already taken to favor net neutrality, they will agree to desist for three years from specific practices which would threaten net neutrality.[67] While these representations clearly place the Petitioners' conduct strongly in support of net neutrality, more than one commenter has pointed out that this issue has already been resolved at the federal level and that Petitioners' representations are "irrelevant, since the [net neutrality] rules are in effect. [And] any behavior to the contrary would be violation of the [FCC's 2015 Open Internet Order]."[68]

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[65] Staff Comments, p. 27.

[66] MB Docket No. 10-56, In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order (issued January 20, 2011).

[67] Petitioners' Reply Comments, pp. 32-33.

[68] Common Cause Comments, filed September 17, 2015, p. 4.

Accordingly, while appreciated, the Petitioners' representations in support of net neutrality cannot be a net positive benefit in our analysis of the proposed merger.

The Petitioners also state there will be no harm to competition with online video distributors (OVDs), video programmers, or multichannel video programming distributors (MVPDs). Upon the close of the proposed transaction, the Petitioners state that New Charter will have approximately 2.5 million fewer broadband subscribers than Comcast currently serves. Similarly, New Charter will serve about 17% of MPVD subscribers nationwide, making it the third largest video provider behind Comcast (22%) and AT&T/DirecTV (currently at 20%). Charter and BHN do not own any broadcast or cable television content outside of local news, sports, and public affairs programs, and Time Warner owns only local channels plus a few regional sports networks, reducing the risk of the use of market power to the detriment of consumers.[69] We acknowledge that the proposed transaction does not present significant vertical market power concerns, but this is in no way a net benefit, it simply alleviates one important concern when there is a major consolidation in the market being contemplated. Moreover, since the potential for direct competition no longer exists, this assertion is in no way a benefit of the proposed transaction, it simply maintains the status quo going forward albeit with one less major provider exiting the market.

Public Benefit Assessment

Staff and several commenters suggest that the proposed merger, as described in the Joint Petition and Petitioners' Reply Comments, does not have sufficient net benefits to warrant a finding that the transaction is in the public interest. We concur. Many of the asserted benefits from the proposed

[69] Joint Petition, pp. 30-31.

transaction are events triggered by actions taken independently from the merger, and others are likely to be undertaken by TWC in any event, should the merger not be approved. Further, many asserted benefits are only described on a national scale and there is no way to determine if the investments or expenditures will occur in New York. Similarly, many of the projected benefits are described in terms that are too indefinite to permit us to assume that the benefits will occur as described to make a meaningful contribution to the transaction's net benefits.

In summary based solely on the Joint Petition and the Reply Comments, we find that the Petitioners have not carried their burden to establish that the transaction will provide net positive benefits such that the proposed transaction can be characterized as in the public interest without additional enforceable and concrete conditions.

RECOMMENDED CONDITIONS AND REPLY COMMENTS

Noted in the discussion above, we find no discernible net benefits associated with the proposed transaction, and that the Petitioners failed to meet their burden to show a public benefit. In a typical proceeding before the Commission, the administrative schedule would allow for time to vet the mitigation and resolution of potential detriments as well as implement conditions designed to obtain net benefits. Here, given the federal deadline for Commission action under 47 U.S.C. §537, conditions are being imposed subject to acceptance by the Petitioners. There is no obligation on the Staff or any other commenters to suggest conditions to establish benefits or to minimize detriments. Nevertheless Staff and others do suggest several measures which, if adopted, would increase the positive benefits to TWC’s and Charter’s New York customers overall.

These proposals are discussed below; a full summary of comments is contained in Appendix B.

Customer Service

Staff and PULP point out that in certain national surveys, TWC, and to a lesser extent Charter, have scored poorly in customer satisfaction reports.[70] This concern is compounded by the likelihood that, as the merger is being implemented, New Charter may lose the focus that TWC currently has on New York. To address this potential shortcoming, Staff and PULP recommend the development of a customer service improvement plan.

Specifically, Staff recommends that New Charter achieve a PSC Complaint Rate in New York lower than the PSC Complaint Rate thresholds set by the Commission for telephone and cable service, that New Charter work with Staff to develop a plan to maintain its PSC Complaint Rates at acceptable levels, and that a negative performance incentive mechanism be established if New Charter's cable or telephone PSC Complaint Rates become unacceptable.[71] Moreover, Staff states that, any such conditions "[do] not create any incremental net positive benefit for New York, and thus should not be afforded any incremental value by the Commission."[72] The Petitioners acknowledge their obligation to meet the Commission's customer service metrics, but state that nothing in the record supports the establishment of stronger measures.[73]

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[70] Staff Comments, pp. 58; PULP Comments, pp. 10-11.

[71] Staff Comments, pp. 58-59. Staff also recommends that New Charter be required to complete a talking guide solution for the blind and visually impaired that Charter has been developing.

[72] Id.

[73] Petitioners' Reply Comments, p. 38.

Job Losses

Staff and New York City recognize that an important post-merger objective of New Charter will be to find operational or synergy savings that may be available as a result of the merger.[74] In both Staff and New York City's view, the impact of this effort, however, should not be disproportionately absorbed by New York. Staff proposes a condition to assure that there would be no net loss of customer-facing jobs in New York for two years. In addition, for non-headquartered personnel, Staff's condition would require that job reductions in New York be no greater than the New York share of New Charter jobs nationwide.[75] New York City suggests that employment at call centers in the metro area be maintained at current levels.[76] Staff also recognizes that, while the conditions mitigate job loss concerns, they "do not create any incremental net positive benefit and, therefore, produce no incremental value."[77] The Petitioners believe any such conditions are unnecessary.[78]

Network Investment

Staff and PULP observe that "absent a specific commitment regarding investment … above [TWC's] current levels, or the continuation or expansion of current [TWC] programs, like the successful rural residential network deployment plan, the public benefits asserted by Petitioners are speculative at best."[79] Staff recommends that New Charter be required to "develop a strategic implementation plan to build out its

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[74] Staff Comments, p. 44; City of New York, Mayor's Office (New York City) Comments, filed September 16, 2015, p. 5.

[75] Id., p. 60.

[76] New York City Comments, p. 5.

[77] Staff Comments, p. 60.

[78] Petitioners' Reply Comments, p. 40.

[79] Staff Comments, p. 49; PULP Comments, p. 9.

proposed all-digital network to the remaining unserved or underserved Charter and [TWC] franchise areas in New York."[80]

Staff further recommends that this plan address expanding service to rural communities and other unserved areas, to industrial parks and businesses, and to community anchor institutions.[81] Staff's focus is on unserved or underserved areas in existing Charter or TWC franchise areas. Independent of the proposal for the development of a strategic implementation plan, Staff would require New Charter to upgrade the Columbia County systems.[82] The Petitioners respond that a specific implementation plan would unnecessarily constrain New Charter's business judgment for future business investment.[83]

Low-income and Broadband Availability

Neither Charter nor TWC currently has a program that encourages the provision of broadband Internet service to low-income customers. The Petitioners put forward a low-income program in their petition. However this program has a number of significant design flaws, as pointed out by Staff and New York City, which inhibit participation in the program by certain low-

[80] Staff Comments, p. 49-50.

[81] Id.

[82] Id.

[83] Petitioners' Reply Comment, pp. 27-28.

income households.[84] Staff proposes conditions to address some,[85] but not all,[86] of these program shortcomings.

Staff's proposed conditions would also require New Charter to participate in the federal Lifeline Program, and to form a working group for outreach so as to reach a broad proportion of eligible customers.[87] Staff's conditions also reflect its concern that certain middle-income residential customers, who would not be expected to qualify for Petitioners' low-income program, may lose access to TWC's Everyday Low Price offering (currently at $14.99 per month) and end up paying up to four times as much for Charter's standard service, which would be provided at a speed that the customers have not in the past needed or wanted.[88] To address this problem, Staff recommends a condition that would require New Charter to continue to provide TWC's Everyday Low Price service for at least five years with

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[84] Staff Comments, pp. 51-54; New York City Comments, pp. 2-3.

[85] Staff's conditions would: permit enrollment in the low-income program even if the customer was taking service through some other broadband offering including Time Warner's $14.99 Every Day Low Price option, permit enrollment by a customer with an account in arrears, require an increase in speed from 5 to 10 Mbps, and require New Charter to establish a five year New York program enrollment target.

[86] Defects found by other commenters, but not addressed by Staff's conditions are that: the low-income program is only available to low-income families with at least one child that is eligible for the National School Lunch Program which effectively, and unnecessarily, shuts out senior citizens and childless households; customers who are taking broadband service at speeds higher than that available on the Everyday Low Price offer cannot participate; enrollment permitted only in August and September; and customers cannot enroll over the Internet.

[87] Staff Comments, pp 51-54.

[88] Id.; PULP believes a service offering should be made available to all customers at 25 Mbps at a cost of $10 or less per month. See PULP Comments, p. 6.

speed increases to 3 Mbps down/1Mbps up.[89] The Petitioners do not offer any specific program changes, but state that current offers will be enhanced following the merger.[90]

Network Modernization and Increased Speeds

While Petitioners promised upgrades will satisfy New York's current policy goal of 100 Mbps provided that an all-digital network is in place, in order to achieve a net benefit for New York, Staff and Stop the Cap! believe that New Charter must upgrade its network and services to provide even faster broadband speeds.[91] Specifically, Staff believes New Charter should provide broadband service up to 300 Mbps in the New York markets beyond New York City within 42 months of the close of the transaction.[92] Staff also notes that the expansion of this service to other areas of the State would have a significant and immediate impact on economic and social developments. Staff points out that communities across the State have been active in recent months in Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State, in calling for faster broadband speeds to be delivered to their respective communities. The Petitioners respond that conditions in this regard are unnecessary because they have already promised to increase broadband speeds to 100 Mbps and competitive market forces will compel them to continue investing in additional speed upgrades.[93] But, according to Staff, this should not prevent the Commission from encouraging even faster speeds over the longer-term in New Charter's New York footprint.

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[89] Id.

[90] Petitioners' Reply Comments, p. 33.

[91] Stop the Cap! Comments, pp. 11-12.

[92] Staff Comments, pp. 55-56.

[93] Petitioners' Reply Comments, pp. 29-30.

Issuance of Debt

According to Staff and others, the issuance of debt is a concern.[94] While Time Warner's debt is currently rated investment grade at BBB by Standard and Poor's (S&P) and Baa2 Moody's Investors Service (Moody's), Staff specifically states the ratings on the debt for the proposed transaction straddle the level between an investment and a non-investment grade. Moody's has assigned a non investment rating of Ba1 while S&P's has assigned its lowest rung investment grade rating of BBB- for this same debt. Debt that carries a non-investment grade is much more expensive than debt that carries an investment grade rating. According to Staff, the credit ratings on Time Warner, and any subsequent debt issuances, will likely reflect the ratings assigned to the debt issued to partially fund the merger. The major reason for the downgrade is the higher amount of debt leverage that will be present at Time Warner's parent, New Charter. In Staff's opinion, increased debt hurts credit metrics like debt/earnings before interest, taxes, depreciation, and amortization (EBITDA) that measures a company's ability to repay its debt obligations.[95] Staff submits that cable operators are typically large users of capital, and, as such, are dependent on a good credit quality to keep their borrowing rates reasonable. This transaction leaves the successor entity in a considerably worse credit position than is currently enjoyed by Time Warner. This is a risk, says Staff, not only to the company's bondholders, but its customers as well because if the operating environment declines for cable companies, then New Charter will have more difficulty maintaining the investments

[94] Stop the Cap! Comments, p. 8.

[95] Staff Comments, pp. 35-39.

necessary to bring expanded products and provide good service quality to its customers.[96]

The Petitioners state that New Charter's leverage is lower than, and within normal range for, other MVPDs. Further, post-transaction, New Charter expects to deleverage through EBITDA and cash flow growth, as the operating business is expected to be cash flow-positive at the day of close. Additionally, New Charter will have a $3 billion revolving credit facility and anticipates that it will be undrawn at closing to support day-to-day management of the business. Thus, there is no concern, according to the Petitioners, about New Charter's leverage having a negative impact on TWC's revolving line of credit or the Company's ability to operate going forward.[97]

Miscellaneous Issues

A number of commenters raised issues not directly addressed in Staff's comments. PULP states that the Commission should require that, following the transaction, New Charter not impose any modem rental fees.[98] The Petitioners state that they do not currently, and has no plans to, charge modem rental fees for its services.[99] Stop the Cap! argues that the Commission should require a commitment not to impose data caps on its broadband service because they are harmful to customers.[100] The Petitioners state in their FCC Public Interest Statement that they do not intend to impose data caps in the near-term. Finally, PULP states that the Commission should require New Charter to continue Time Warner's Lifeline and Eligible

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[96] Id.

[97] Petitioners' Reply Comments, p 36.

[98] PULP Comments, pp. 9-10.

[99] Petitioners' Reply Comments, p. 34.

[100] Stop the Cap! Comments, p. 8.

Telecommunication Carrier (ETC) obligations for its telephone services.[101] The Petitioners state that they are not proposing to change any existing TWC obligations as a result of this transaction, and would expect New Charter to seek Commission authorization for any such changes.[102] A number of comments urge compliance with underlying franchise obligations, and the Commission expects that New Charter will continue to comply with existing franchise agreements.

MERGER CONDITIONS AND ENFORCEABILITY

The Commission agrees with Staff and other commenters that concrete conditions to ensure that synergy savings inure to the benefit of New York customers are a prerequisite to merger approval. Such conditions and commitments also provide credibility to Petitioners' claims regarding the benefits of the transaction and are consistent with established Commission precedent in applying the public interest standard to merger and acquisition cases.

The Commission appreciates the efforts of Staff and other commenters to identify measures that, in their view, could be undertaken in the areas of network investment, Internet speed enhancements, access, affordability and service quality that the Petitioners could adopt to bring the proposed merger into alignment with the public interest. We conclude, however, that the measures that Staff and others put forward lack sufficient specificity and enforceability. The discussion that follows adds the necessary enforceable and concrete incremental benefits to those conditions. Finally, while we share Staff's concern regarding the increase in debt linked to the proposed transaction, we do not believe conditions are warranted in this

[101] PULP Comments, pp. 6-8.

[102] Petitioners' Reply Comments, p. 46.

regard given the assurances provided by the Petitioners that post-transaction New Charter should have sufficient cash flow to upgrade and operate its systems effectively and will be in line with other industry participants.[103]

The conditions discussed below will help ensure that access to advanced modern networks is available to all New Yorkers in the combined company's footprint. With the acceptance by the Petitioners (and by extension New Charter) of the conditions described in both this Order and in Appendix A, we find that the proposed transaction will meet the public interest and should be approved. Absent New Charter's unconditional acceptance of these conditions, we deny the Petitioners' request for the reasons articulated herein.

Network Modernization and Increased Speeds

The presence of high speed broadband throughout New Charter's footprint is a substantial interest for the State. The Commission agrees with Staff, and others, that capital investments to extend service to unpassed premises described by Petitioners have merit. However, the absence of any specific commitment regarding targets, funding, or scheduling means the public benefits asserted by Petitioners are speculative at best. To ensure fulfillment of Petitioners' promises, we will establish clear investment and build-out requirements as follows:

[103] With respect to ETC and Lifeline, we note that the Petitioners are not proposing any changes and will seek Commission approval in the future if changes are so desired. Thus, no conditions are necessary. Regarding modem fees, Charter does not currently charge modem fees and there is no indication of any intent to do so in the future.

1. Network Speed Enhancements

Following the transaction's close, New Charter will begin the necessary investment in system upgrades and enhancements (including the Charter Columbia County systems to enable two-way communications) to permit the transitioning to all-digital technology. This will enable greater network bandwidth availability to allow the deployment of more advanced services throughout the New Charter footprint. This work is to be completed within 30 months of the close of the transaction to ensure timely sharing of the synergies.[104] As a direct result of these upgrades, New Charter will be required to offer broadband Internet service with up to 100 Mbps broadband service to all customers on its New York State network by the end of 2018 and 300 Mbps service by the end of 2019.

To further ensure that these investments are made in a timely manner, the Commission will require New Charter to report, within 90 days of the transaction's close, the activities, expenditures and schedules related to the investment necessary to transition its network to all-digital and roll-out broadband speed enhancements described above. Thereafter, New Charter will be required to report its progress annually to the Commission on the anniversary of the close of the transaction. This annual reporting requirement may be more frequent if there is a demonstrable concern that the investments detailed above are not occurring in a timely manner. Finally, we take this opportunity to remind New Charter that it is obligated to timely report information regarding outages impacting telephone, broadband, and video services to Department Staff pursuant to

[104] With respect to the Columbia County systems, the Petitioners may obtain additional time for compliance due to circumstances beyond their control by submitting a request to the Director of the Office of Telecommunications.

applicable Commission regulations and outage reporting protocols.[105]

The Commission expects that New Charter will have to invest approximately $300 million to meet its modernization and speed commitments. This estimate is based on costs associated with previous Time Warner high-speed broadband build-outs. We further believe that while this investment may have otherwise been made by TWC in the absence of the merger, Time Warner has not made a firm commitment or presented any schedule to achieve these upgrades. In our informed judgment, however, this enforceable commitment nevertheless represents an incremental benefit of $5 million.

2. Network Expansion

The Commission also has a significant concern that there are areas of the State that have no network access even though they are located within current Time Warner/Charter franchise areas. Business and residential customers located in those areas often are not able to exercise the same level of communication choice as others absent an agreement to pay high connection fees through contributions-in-aid-of-construction (CIAC). Expanding the reach of the cable and telecommunication network services to unserved and underserved areas of the State is an important public interest. The Petitioners have made general, but not firm, commitments in this regard beyond stating that they will expand New Charter's network to one million additional customers nationwide.

[105] In New York cable companies are currently required to report outages affecting more than 1,000 customers pursuant to 16 NYCRR §890. Telephone companies, including Time Warner, are required to report telephone outages pursuant to 16 NYCRR §603. Since 2006, the Department's reporting guidelines have been expanded and major carriers have also committed to report outages affecting broadband and wireless services.

In order to ensure the expansion of service to customers in less densely populated and/or line extension areas within the combined company's footprint,[106] the Commission will require New Charter to extend its network to pass, within its statewide service territory, an additional 145,000 "unserved" (download speeds of 0-24.9 Mbps) and "underserved" (download speeds of 25-99.9 Mbps) residential housing units and/or businesses within four years of the close of the transaction.[107]

New Charter must not seek Broadband 4 All funding to accomplish these expansions. It is, however, required to seek such funding to achieve extensions to all unserved and underserved premises in their franchise areas beyond the aforementioned 145,000 newly passed premises, provided the requirements for the program are comparable to the Connect New York Program.

New Charter will be required to complete 25% of this network expansion within one year from the close of the transaction, and shall be able to credit towards this requirement any extensions not funded with State grant monies completed after the issuance of this Order and before the close of the transaction. Thereafter, New Charter is required to complete 25% of this expansion in each successive year for a total of four years. Any excess in a given year shall be allowed to be rolled into the next year.

If at any time during this four-year period, New Charter is able to demonstrate that there are fewer than 145,000 premises unserved and underserved as defined above, New Charter may petition the Commission for relief of any of the remaining

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[106] Under 16 NYCRR §895.5, a line extension area is defined, in part, as areas beyond the franchisees primary service area and may require a CIAC before service is provided.

[107] These 145,000 premises shall not include the upgrades to Charter's Columbia County systems.

obligation under this condition. Additionally, for good cause shown, New Charter may petition the Commission for an extension of the four-year time period outline above.

Further, New Charter will be required to provide free broadband service (and line extensions where necessary) to 50 community anchor institutions located in low-income or underserved areas of the State. This commitment is in addition to any other commitments required under existing or new cable television franchises. New Charter will be required to work with Staff and other appropriate State agencies to identify appropriate locations for these extensions.

To implement and enforce all of these network investment commitments, New Charter will be required to file a general implementation plan within 90 days of the close of the transaction and then annually, on the anniversary of the close of the transaction thereafter. We expect this plan to be finalized in consultation with Staff, the New York Broadband Program Office (BPO), and other interested stakeholders, with the objective of identifying areas where investments will provide the greatest value.

With respect specifically to the 145,000 premises, the Petitioners will be required to provide a geographic demarcation of the territories within New Charter's franchised areas that it intends to be the focus of this condition. New Charter (and Time Warner) will consult with Staff and the BPO to identify municipalities that will not be the focus of this expansion condition in order to facilitate coordination of this network expansion with the implementation of the Broadband 4 All. This consultation must occur within 45 days of the issuance of this Order.[108] Within 45 days of the close of the transaction, New

[108] New Charter can avail itself of any protections afforded under the Public Officers Law in filing this information.

Charter will be required to provide the Commission with a final demarcation proposal. The Commission expects that the balance of the unserved premises in New Charter's footprint will be eligible for the BPO's Broadband 4 All Program. New Charter shall file with the Secretary to the Commission an updated map and progress report on at least a quarterly basis. The general implementation plan may be modified by New Charter upon consultation with the Director of the Office of Telecommunications.

The Commission expects that New Charter will have to invest approximately $305 million to meet these conditions, made up of (1) $290 million to reach 145,000 premises not currently passed by any cable network and (2) $15 million dedicated to advanced network upgrades to Charter's Columbia County cable systems. These amounts are based on an estimate of $2,000 per premises passed and costs derived from past build-outs associated with the Connect New York grant program.[109] Because these investments will be depreciated over the long-term and will derive some level of subscriber revenues, the net benefit will be less than the investment. We believe the public will obtain a $50 million total incremental benefit based on a ten-year projection of expected recovery of investment for New Charter.

Low-income Broadband Services

Access to the Internet is essential to participation in a modern society. Yet, while one of the great potential benefits of the Internet is to facilitate the acquisition and dissemination of information to all individuals at low cost, physical ability to connect to the Internet using either the

[109] See, generally, State Funding, New York State Broadband Program Office, http://www.nysbroadband.ny.gov/state-funding.

current or modernized network does not provide any benefit to customers who cannot afford it. Staff and numerous commenters emphasize the importance of ensuring that the people of the State have access to affordable broadband service, which is essential for, among other things, education, job-seeking, access to government services, personal communications, and financial transactions. With respect to low-income families, Petitioners contend that by bringing a new low-income program to New York, the proposed transaction will have a specific, direct, and positive impact on many New York households. This program as initially proposed provides broadband service of 1 Mbps to qualified low-income families for $9.95 per month, with no installation fees or modem equipment costs or rental charges.

We agree that the low-income broadband program, as originally proposed, is a positive one, but note that a number of criticisms have been leveled against it concerning restrictions on eligibility and the level of service provided. Communications services have historically been, and continue to be, beyond the reach of many lower-income residents of New York State. While 97.9% of the State's residents are reported to have access to broadband with download speeds greater than 6 Mbps (100% in Urban Areas, 94.7% in Rural Areas),[110] adoption of all broadband services (including mobile) was only 67% as of

[110] National Broadband Map, Broadband Statistics Report – Broadband Availability in Urban vs. Rural Areas, p. 8 http://www.broadbandmap.gov/download/Broadband%20Availability%20in%20Rural%20vs%20Urban%20Areas.pdf.

2011.[111] Of particular concern to the Commission is that, according to the Broadband Service Adoption Study, it is low-income New Yorkers who are most likely to not have broadband service. Of those households with incomes under $20,000, only 36% have adopted broadband service as compared with 59% of those with incomes between $20,000 and $35,000, with cost being the most frequently cited barrier to adoption.[112] While solving this challenge does not fall on New Charter alone, it would undermine the public interest if a company with its size and reach did not assist in addressing this critical low-income market gap.[113] Thus, the conditions described below are specifically designed to encourage increased availability and adoption in those areas of the State and among those customer groups in which broadband adoption has lagged.

On December 17, 2015, Charter announced that it would commit to offering a 30 Mbps down, 4 Mbps up low-income service

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[111] Center for Technology in Government, Broadband Internet Service Adoption and Use in New York State Households, p. 1 (May 2011) (Broadband Service Adoption Study), http://broadbandmap.ny.gov/documents/adoption-study/NYS-Broadband-Adoption-Study-Color.pdf. We recognize that since the publication of this study, mobile (cellular) broadband subscription rates have more than doubled, with 5.455 million in 2010 growing to 12.725 million in 2013, based on FCC Form 477 data and thus, this 67% figure is likely understated today.

[112] Id., pp. 11, 18. The more recent Pew Research Center Home Broadband 2015 report, n. 41, supra, indicates that nationally, 67% of all households have adopted some form of broadband service, compared to only 41% of households with incomes less than $20,000, based on national surveys conducted in 2015.

[113] The Department is currently undertaking a comprehensive study, in Case 13-C-0370, of New York's communications landscape to develop a forward-looking regulatory approach by identifying, framing and prioritizing issues that need further development, including the universal availability of broadband networks in underserved areas.

for $14.99 per month inclusive of installation fees and a cable modem.[114] Charter indicated that eligibility for the program would include families eligible for the NSLP program as well as seniors eligible for SSI. Additionally, Charter said no credit check would be required for customers to sign up for this service. However, there is a 60-day waiting period for customers to sign up if they've previously subscribed to Time Warner or Charter broadband services and any customers in arrears will not be eligible until those debts have been cleared. Charter indicated it will roll out the program within six months of the close of the transaction.

As a condition of the Commission's approval, we will require that New Charter provide this service in New York State. Within six months of the close of the transaction, New Charter will be required to roll out the program through pilot projects, training of staff, or engagement with stakeholders. The service must be available to all New Charter customers within 15 months of the close of the transaction. For each of the four years following the commencement of the low-income program, on the anniversary date of the close of the transaction, New Charter shall file with the Secretary to the Commission a report on the number of households enrolled in the low-income program. Finally, New Charter will be required to work with Staff and other relevant State agencies and community partners to implement these eligibility criteria.

Since neither TWC nor Charter provides any low-income program currently, we find incremental benefit associated with

[114] MB Docket No. 15-149, Applications of Charter Communication, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorization, Letter from John L. Flynn, Counsel for Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC Re: Low Income Broadband (filed December 22, 2015)

the program that Charter has committed to offer. Assuming a retail value of $50 per month over three years for a comparable Time Warner service and a product subsidy of $35 per month based on 120,000 average annual connections over five years (40,000 per year), New York customers would experience approximately $250 million in net benefits from this condition over five years.[115]

Broadband Availability

We share Staff's and others' concerns for households that would not qualify for New Charter's proposed low-income program, but today receive, and would like to continue to receive, TWC's Everyday Low Price and other standalone broadband services. With respect to Time Warner's $14.99 Everyday Low Price offering, this service provides affordable broadband to thousands of customers who may not meet the eligibility requirements for the low-income broadband program described herein, but cannot afford the cost of other products. Additionally, the Commission encourages competition in the telephone market,[116] and the ability to combine the Everyday Low Price package with over-the-top or Voice over Internet Protocol (VoIP) telephone services allows low- and fixed-income customers to have access to both telephone and Internet services for

[115] This assumption is based on current Time Warner rates for its 15 Mbps service Upstate (50 Mbps in New York City), $39.99 for the first year and $57.99 for the next two years.

[116] See e.g., Case 05-C-0616, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006).

approximately the cost of a standalone telephone service.[117] Charter currently offers no comparable product, and there is no evidence that competitive pressures are likely to compel it to do so.

Therefore, approval of the proposed transaction will be conditioned upon the continuation of Time Warner's Everyday Low Price offering for new subscribers in Time Warner's service areas at speeds at least as fast as those offered as of the date of this Order (or the date of the close of the transaction if faster) for a minimum of two years following the close of the transaction. Additionally, to ensure a smooth transition for all Time Warner broadband customers, the Commission will require that New Charter allow existing Time Warner customers to retain, without material changes that have the intent to discourage, the standalone and bundled broadband services they subscribe to at the close of the transaction for three years from the date of the closing. With respect to the Everyday Low Price service, this three year retention period will run concurrently with the two year period in which we require New Charter to continue to offer the service.

Given the retention conditions noted above, and assuming that the price for New Charter's 60 Mbps standalone and bundled services remains at current levels, Time Warner's existing broadband customers may realize as much as $125 million

[117] Verizon's current rate for a basic access line is $8.61 and the rate for its Unlimited Local Plan in Manhattan is $16.34. The combination of these two rates results in a rate of $24.95 for the functional equivalent of a flat-rate residential basic service in Manhattan. Combining $14.99 broadband service with a $9.99 VoIP offering such as MagicJack or a $12.99/mo Vonage plan, is roughly equal to the $24.95 Verizon residential basic service.

in annual net benefits.[118] These net benefits are the result of the savings that customers currently subscribed to Time Warner's higher priced broadband offerings and associated bundles will receive by subscribing to New Charter's 60 Mbps offering and associated bundles. We arrive at this net benefit based on an analysis of the standalone and bundled broadband prices currently available to Time Warner customers primarily in Upstate markets versus the standalone and bundled prices for Charter's 60 Mbps broadband service. We also note that through our conditions requiring the retention of existing Time Warner services, existing customers on lower priced services, especially the Everyday Low Price tier, may save considerable money over the retention period.

On March 12, 2015, the FCC issued a Report and Order on Remand, Declaratory Ruling, and Order in GN Docket No. 14-28, In the Matter of Protecting and Promoting the Open Internet (Open Internet Order), which established net neutrality rules applicable to both wireline and wireless broadband service providers. In the Open Internet Order, the FCC laid out its new net neutrality rules and classified broadband service as a telecommunications service subject to Title II under the Communications Act.[119] In regulating broadband as a Title II service, the FCC stated that it would forbear on, among other provisions, rate regulation, and prohibited state commissions from doing the same.[120]

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[118] The estimated net benefit figure is only projected for one year because there is no guarantee that prices will remain fixed.

[119] GN Docket No. 14-28, Protecting the Opening Internet, Report and Order on Remand, Declaratory Ruling, and Order, ¶14, 37 (issued March 12, 2015).

[120] Id., ¶433.

We recognize and appreciate the FCC's efforts at ensuring an open Internet. The standalone broadband conditions imposed in this Order are not intended as, nor do they constitute, rate regulation, but rather are designed to retain existing Time Warner offerings, mitigate potential harms associated with the possible loss of these services as a result of the proposed transaction and thereby enable the Commission to approve the transaction to ensure that public interest benefits associated with the transaction are realized under the Public Service Law.

Customer Service

Poor customer service from both Charter and Time Warner, and the prospect that it may worsen if the companies are combined, is one of the most frequently expressed concerns among commenters critical of the proposed transaction. Staff and other commenters, therefore, propose that the Commission condition its approval by requiring that the current Time Warner customer service metrics reported to the Commission be maintained. We do not believe that maintaining the status quo goes far enough.

The Commission recognizes that there is no inherent reason why the combination of these two companies should result in a worse customer service experience for the former customers of Time Warner. On the other hand, maintenance of the status quo, in which Time Warner's customer satisfaction rates are at or near the bottom among its peers, can hardly be considered a benefit of the proposed transaction. Competitive pressures should play a role in spurring service improvement, as the Commission has recognized in the past, but those pressures push all competitors to improve their performance, and thus far

Petitioners' peers have continued to rank higher in customer satisfaction.[121]

Therefore, we will require Charter to invest $50 million in service quality improvements, which may include customer-facing training and customer-facing diagnostic systems tools for the New York market within two years of the closing of the transaction. Second, New Charter must achieve a 35% reduction in Time Warner's video PSC Complaint Rate (as of 2014) within five years from the date of closing, with a 17.5% reduction by the end of 2018. If the metric is missed in either 2018 or 2020, New Charter will be subject to an additional $2.5 million investment over two years for each miss. New Charter will further be required to report annually on those investments made and the intended and achieved outcomes.

We are not requiring a reduction in Time Warner's telephone PSC Complaint Rate, however. There is no record basis that compels action regarding Time Warner's telephone service quality. Time Warner is a competitive telephone provider, not an incumbent. Most importantly, we are requiring that New Charter continue to report to the Commission regarding telephone service quality as ordered in Case 13-C-0193.

The Commission expects that the $50 million in service quality improvement investments should obviate the need for the $5 million service quality incentive mechanism, which in turn should produce a $5 million net benefit for TWC and Charter customers.

Protection Against Job Losses

As a general proposition, one of the many objectives that companies like Time Warner and Charter will look to achieve in a merger of this type is operational efficiencies, including work force reductions. Therefore, as in the case of mergers of

[121] See e.g., Staff Comments, p. 39.

this size, there is a potential for loss of jobs in New York which we believe requires conditions.

We are conditioning our approval upon commitments that will require significant new investments and other substantial service-related initiatives in New York. These commitments likely will require New Charter to grow its workforce in order to satisfy the conditions we are adopting. However, the Company's New York footprint post-merger will make up a much smaller percentage of its overall business than is currently the case for Time Warner. As of September 2015, Time Warner had five call centers employing approximately 1,996 staff, 61 retail/walk-in centers employing approximately 2,674 staff, nine corporate offices employing approximately 1,257 staff, 26 service/maintenance locations employing approximately 1,687 staff, two media offices employing approximately 435 staff, and 11 other service-related functions employing about 1,003 staff, with total employment in the State of approximately 9,052. New York currently represents about 17.3% of Time Warner's overall customer base.[122] New York would represent 10.879% of the combined entity's customer base following the proposed transaction.[123] The Petitioners have made no concrete commitments regarding the number of jobs that will be created or retained in New York following the close of the transaction. Rather, they state that no customer-facing jobs will be lost.[124]

In order to ensure that service quality and investment obligations are met, and to avoid possible negative economic results, the Commission will require that New York not experience any net losses in customer-facing jobs in the first

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[122] Staff Comments, p. 45.

[123] Id.

[124] Petitioners' Reply Comments, p. 54.

four years following the issuance of this Order.[125] In order to establish a baseline, New Charter will be required to report to the Secretary to the Commission, within 90 days of the close of the transaction, the number of customer-facing employees employed by Time Warner and Charter, respectively, in New York State as of the date of the issuance of this Order. For each of the four years following the issuance of this Order, on the anniversary date of the closing of the transaction, the Company will file with the Secretary to the Commission a report demonstrating its compliance with this condition.

Miscellaneous Conditions

1. Data Caps

As New Charter builds out its network and begins to offer the faster speeds required by this Order it may seek to impose data caps on its customers. We understand that the Company has committed to the FCC that it will not impose data caps for three years following the close of the transaction and we will require this same commitment.[126] Moreover, New Charter will be required to provide the Commission with timely advance notice if it plans to implement data caps at any point thereafter.

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[125] For purposes of this Order, "customer-facing jobs" is defined to mean those positions with direct interaction with customers; including, but not limited to call center and other walk-in center jobs, and service technicians.

[126] MB Docket No. 15-149, In the Matter of Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to the Transfer of Control of Licenses and Authorizations, Public Interest Statement (filed June 25, 2015), pp. 18-19.

2. Most Favored State Clause

For the reasons stated herein, it is our judgment that the conditions we are establishing are necessary to satisfy the public interest with regard to the issues of speed, access, and affordability of service. At the same time, however, the Commission is aware that the Petitioners continue to pursue approval in other state and federal jurisdictions, and that these jurisdictions may require commitments that would also be beneficial to New York.

In order to ensure that New York gains the benefits of these commitments, we will require New Charter to agree to a most favored state clause. If, in obtaining approval of the transaction in other jurisdictions, the Petitioners commit to more line extensions, faster broadband speeds, or standalone broadband pricing that is lower for the same or similar value than that offered in New York, or additional low-income eligibility, New Charter will within 30 days following such commitment, notify the Commission of its intent to provide those same speeds and/or services in New York at terms that are reasonably comparable to the other state or federal commitments.

If FCC conditions adversely impact those contained in this Order, the Petitioners shall notify the Commission of the impact that such conditions will have on its commitments in New York and will work with the Commission and Staff to ensure that New York also obtains its commensurate benefit. Notwithstanding the foregoing, the conditions here shall be provided in addition to any benefit that results from any federal action regarding this transaction.

Enforcement

The conditions adopted in this Order and listed in Appendix A shall be binding and enforceable by the Commission upon unconditional acceptance by New Charter within seven (7) business days of the issuance of this Order. If the Petitioners' unconditional acceptance is not received within seven (7) business days of the issuance of this Order, the Petitioners will have failed to satisfy their burden under the Public Service Law as described herein, and this Order shall constitute a denial of the Joint Petition.

Section 25 of the PSL requires that New Charter "comply with … every order … adopted"[127] pursuant to the PSL, and that any failure to comply with this Order may result in the Company being required to "forfeit to the people of the State of New York a sum not exceeding one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense."[128] In the event that the Company fails to comply with the conditions contained herein, pursuant to PSL §26, "the [C]ommission may direct counsel to the [C]ommission to commence an action or special proceeding in the supreme court in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented."[129]

Therefore, through this Order, New Charter will be required to fully and completely comply with the conditions detailed herein and in Appendix A, and any failure to comply with those conditions as described above may result in the commencement of a penalty and enforcement action under PSL §§25

[127] PSL §25(1).

[128] PSL §25(2).

[129] PSL §26.

and 26.[130] The customer service quality conditions, however, require performance subject to specified incentive mechanisms in lieu of statutory penalties.

CONCLUSION

In conducting our review of this transaction, the Commission has carefully considered the record developed in this case. Our examination has focused on the impacts of the merger on universal access to services (both in terms of geographic availability and affordability), network investment and modernization, service quality and economic development. Based on that review and the record before us, we conclude that with the conditions we are adopting (set forth here and in Appendix A), the merger will bring approximately $435 million in incremental net benefits (plus other unquantified benefits) to TWC and Charter customers and result in approximately $655 million in network modernization investment commitments. With the acceptance by the Petitioners of these enforceable and concrete incremental benefits, we conclude, as a whole, that the proposed transaction would meet the positive benefit test for New Yorkers and should be approved.

The Commission orders:

1. The Joint Petition of Time Warner Cable Inc. and Charter Communications, Inc. for approval of a holding company level transaction transferring control of Time Warner Cable Information Services (New York), LLC, Time Warner Cable Business LLC, Time Warner Cable Northeast LLC, and Time Warner Cable New

[130] The Commission's most recent exercise of its enforcement authority over telecommunications companies has involved the enforcement of service quality standards. See, e.g., Case 10-C-0202, Verizon Service Quality Improvement Plan, Order to Show Cause (issued November 28, 2012).

York City LLC to Charter Communications, Inc. is granted pursuant to Public Service Law §§99, 100, 101 and 222, subject to the conditions discussed in the body of this Order and Appendix A, and upon receipt by the Commission of certification by Charter Communications, Inc., that New Charter and its successors in interest unconditionally accept and agree to comply with the commitments set forth in the body of this Order and Appendix A. Such certification shall be submitted within seven (7) business days of the issuance of this Order. If the Petitioners do not unconditionally accept within seven (7) business days of the issuance of this Order, this Order shall constitute a denial of the Joint Petition.

2. In addition to complying with any requests made by the Commission pursuant to Sections 94 and 216 of the Public Service Law, New Charter shall timely provide to the Commission any information, data, or other resources that the Commission deems necessary or appropriate to administer New Charter's compliance with this Order.

3. In the Secretary’s sole discretion, the deadlines set forth in this Order, including Ordering Clause 1, may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

APPENDIX A - CONDITIONS OF APPROVAL

I. INFRASTRUCTURE INVESTMENT

A. Network Modernization and Speed Increases

1. New Charter's New York network shall be all-digital within 30 months following the close of the proposed transaction.

2. New Charter is required to make investments to:

(a) offer broadband Internet service with speeds up to 100 Mbps to all customers served by its New York networks (including its Columbia County systems) by the end of 2018; and

(b) offer broadband Internet service with speeds up to 300 Mbps to all customers served by its New York networks by the end of 2019.

B. Network Expansion Investments

1. New Charter is required to extend its network to pass, within their statewide service territory, an additional 145,000 "unserved" (download speeds of 0-24.9 Mbps) and "underserved" (download speeds of 25-99.9 Mbps) residential housing units and/or businesses within four years of the close of the transaction, exclusive of any available State grant monies pursuant to the Broadband 4 All Program or other applicable State grant programs. If at any time during this four-year period, New Charter is able to demonstrate that there are fewer than 145,000 premises unserved and underserved as defined above, New Charter may petition the Commission for relief of any of the remaining obligation under this condition.

a. New Charter and Time Warner are required to consult with Staff and the BPO to identify municipalities that will not be the focus of this expansion condition in order to facilitate coordination of this network expansion with the

implementation of the Broadband 4 All Program. This consultation is required to occur within 45 days of the issuance of this Order.

b. New Charter is required to notify the Secretary to the Commission where it will complete this network expansion (on a census block and street level basis) within 45 days of the close of the transaction, and updated as necessary on a quarterly basis thereafter.

c. New Charter is required to complete 25% of this expansion in the first year from the date of the close of the transaction and 25% in each year thereafter, for a total of four years. In any given year with actual extensions/passes exceeding 25%, company may apply the excess to any subsequent year. Any extensions/passes performed, without State grant money and after the date of this order and before the date of the close of the transaction, can be counted toward the four-year requirement.

d. New Charter shall not require the payment of a line extension fee to serve any of these 145,000 premises.

e. Subject to the final terms and conditions of the Broadband 4 All Program being comparable to the Connect New York Program, New Charter shall bid for Broadband 4 All Program funding to provide line extensions to any remaining unserved and underserved premises in its New York service territory, exclusive of the 145,000 premises that will be built out pursuant to this Order.

f. For good cause shown, New Charter may petition the Commission for an extension of the four-year time period.

2. New Charter is required to offer, and if accepted, provide free broadband service and line extensions, if necessary, to 50 community anchor institutions (e.g., schools, libraries, and community centers) located in low-income or

underserved areas of the State. New Charter is required to work with Staff, the BPO, and other interested stakeholders to identify these community anchor institutions.

a. This commitment is in addition to any other commitments required under, for example, existing or new cable television franchises.

II. UNIVERSAL ACCESS

A. Broadband Affordability

1. New Charter is required to maintain and advance its commitment to an affordable standalone Internet offering through the continuation of the Time Warner Everyday Low Price $14.99 service throughout the Time Warner New York territory at speeds no less than those being offered at the time of the Order or close of the transaction (whichever is faster) for up to two years from the date of the closing and allow customers to retain the service for a total of three years, which shall run concurrently with the two-year period in which New Charter must continue to offer the service.

2. New Charter is required to offer its 60 Mbps New Charter standalone broadband product throughout the New Charter New York territory at uniform national pricing.

3. New Charter is required to allow existing Time Warner customers to retain, without material changes that have the intent to discourage, the standalone and bundled broadband services they subscribe to at the close of the transaction for three years from the date of the closing.

B. Low-Income Broadband

New Charter is required to provide a low-income broadband offering to eligible customers throughout its New York footprint as defined in the Order. This condition includes several components:

1. New Charter is required to begin the rollout of the low-income broadband program within six months of the close of the transaction through pilot projects, training of staff, and/or engagement with stakeholders.

2. New Charter is required to offer the low-income program, providing a minimum speed of 30 Mbps for $14.99/month, within 15 months of the close of the proposed transaction throughout its New York service territory.

3. Eligibility for the program shall include households eligible for the National School Lunch Program and senior citizens 65 years and older eligible for the federal Supplemental Security Income program.

4. No credit check shall be required for customers to sign up for this service.

III. CUSTOMER SERVICE

A. Customer Service Investments

1. Within two years following the close of the proposed transaction, New Charter shall invest a minimum of $50 million in service improvement programs, which may include customer-facing training and customer-facing diagnostic systems and tools of the type suggested in the body of this Order for the benefit of its New York operations.

B. Customer Service Monitoring

1. New Charter is required to show a 35% reduction in Time Warner's 2014 cable PSC Complaint Rate by the end of 2020; with a 17.5% reduction by the end of 2018.

2. If New Charter fails to reach the 2018 or 2020 milestones, it will be required to invest an additional $2.5 million for each failure, with the investment to be made over a two-year period (i.e., 2019-2020 and 2021-2022, respectively).

3. Within 30 days after the end of each calendar year, New Charter is required to file its cable PSC Complaint Rate data with the Secretary to the Commission.

IV. ECONOMIC DEVELOPMENT

A. Job Protection

1. For four years from the issuance of this Order, New Charter shall not cause a net loss in customer facing jobs in New York State.

2. New Charter is required to report to the Secretary to the Commission, within 90 days of the close of the transaction, the number of customer facing employees employed by Time Warner and Charter on the date of the issuance of this Order.

V. OTHER COMMITMENTS

A. Most Favored State Clause

1. New Charter is required to agree to a most favored state clause. If, in obtaining approval of the transaction in other state or local jurisdictions, New Charter commits to more line extensions, faster broadband speeds, standalone broadband pricing that is lower for the same or similar value than what is offered in New York, or additional low-income eligibility, New Charter shall, within 30 days following such commitment, notify the Commission of its intent to provide those same speeds and services in New York at terms that are reasonably comparable to the other state or local commitments.

2. If FCC conditions related to the transaction materially adversely impact those contained in this Order or Appendix A, New Charter shall notify the Commission of the impact that such conditions will have on its commitments in New

York and will work with the Commission and Staff to ensure that New York obtains its commensurate benefits.

B. Miscellaneous

1. New Charter shall not implement any data caps on its broadband service for three years following the close of the transaction and shall provide timely advance notice to the Commission if it plans to do so at any point thereafter.

VI. REPORTING

1. Within 90 days of the close of the proposed transaction, and annually on the anniversary of the close of the transaction thereafter, New Charter is required to provide an implementation plan and report to the Secretary to the Commission detailing the activities, expenditures, and schedules related to the conditions imposed herein, to the extent necessary, to verify that these activities, outcomes, and investments are occurring in a timely manner.

2. New Charter is required to continue to report to the Commission regarding telephone service quality as required by the Commission of Time Warner in Case 13-C-0193 subject to further review and Commission action.

APPENDIX B - SUMMARY OF COMMENTS

Business Associations

A series of business and economic development groups, including the Rochester Business Alliance, Buffalo Niagara Partnership, Ulster County Regional Chamber of Commerce, Mohawk Valley Economic Devel. Growth Enterprises Corp., Retail Council of New York State, Adirondack Regional Chamber of Commerce, CenterState Corporation for Economic Opportunity, Niagara USA Chamber, Amherst Chamber of Commerce, Cheektowaga Chamber of Commerce, Greater New York Chamber of Commerce, Manhattan Chamber of Commerce, Brooklyn Chamber of Commerce, Tompkins County Chamber of Commerce, Genesee County Chamber of Commerce, Staten Island Chamber of Commerce, Greenpoint Chamber of Commerce, and the Capital Region Chamber urged the Commission to approve the proposed merger because of the investments and higher broadband speeds promised by New Charter.

Gail A. Brewer, Manhattan Borough President

The Manhattan Borough President welcomes the Petitioners' stated commitment to net neutrality and faster broadband speeds at a lower cost than is currently provided by TWC. She is also aware of the Bright House offering for low-income and anticipates that a program such as this can and will be used to make broadband service more accessible to low-income communities. While a program to bring Internet service to low-income households is commended, the Borough President also contends that these households also need a training to become confident users of this service. Finally, she recommends that this low-income broadband service should be available to all low-income-individuals and should be provided at a price no higher than $9.95 per month.

Beyond Internet service to the home, the Borough President advocates for wireline and WiFi connects for libraries, senior centers, NYCHA community centers, and similar not-for-profits to support their job training and community building efforts. In support of this initiative, the Borough President appears to recommend a significant expansion of the public WiFi hotspot program already begun by TWC.

The Borough President asserts in her comments that the most common complaints concerning telecom providers are related to repairs and customer service and that, if there is a merger, New Charter should be held to the highest standards for customer service and timely repairs, and that coercive up-selling of products and services should be prohibited, and that transparent information on service or repair call costs should be required.

Rochester Institute of Technology

The Rochester Institute of Technology (RIT) describes TWC as a very active partner in several programs which are conducted at RIT for the benefit of its students or of middle and high school students. The college predicts that the merged entity will continue TWC's participation in these activities and will be a "great community partner" for future projects that meet community interests and needs beyond their core business in the cable broadband industry.

Comptroller for the City of New York

The Comptroller contends that a net public benefit from the merger requires New Charter to support and protect net neutrality and to address and close the digital divide. In the Comptroller's view, the digital divide should be addressed by New Charter through the introduction of an enhanced version of Bright House’s low-income broadband program. These enhancements

would: allow low-income customers to enroll at any time in the year, eliminate the two-year time limit on the low-cost option, provide service at a minimum of 10 Mbps, more thoroughly publicize the availability of this program for existing customers, allow customers to join the program online, and report to the PSC on the progress and development of the program.

Leticia James, NYC Public Advocate

The New York City Public Advocate asks that the Commission require universal broadband as a necessary condition before the Charter and Time Warner Cable merger. Further, the Commission must preserve and expand affordable broadband programs. Lastly, it should obtain commitments from New Charter to invest in a robust infrastructure, create jobs, and improve pricing transparency and customer service.

NYC Public Advocate, Manhattan Borough President, NYC Council Members (Kallos and Wills), NYS Senator (Hoylman), NYS Assemblyman (Mosley)

They regard the merger as an opportunity to “guarantee universal broadband, consumer protections, and robust infrastructure commitments.” To expand access to affordable and quality broadband service, the commenters urge that the low-income broadband program offered by Bright House be made available to New Charter's customers in New York at an “affordable rate of $9.95” per month. They urge the program to be accompanied by free training and an offer of low cost computer equipment to participants. They also recommend that the eligibility extend beyond the school free and reduced lunch program. Finally, the commenters also state that Time Warner Cable's current Everyday Low

Price Internet tier should be upgraded to increase the download bandwidth to 5 Mbps with a reduced price of $9.95/month.

Further, they urge that New Charter should be required to provide free access, training and equipment for broadband uses at all public housing, all senior, youth and community centers, and to maintain and expand Wi-Fi service in NYC libraries and parks. They contend that New Charter should be required to improve on existing franchise commitments to NY1 and public access, implement infrastructure improvements to enable gig watt network speeds, hire more customer service staff in NYC, add service centers in NYC and create a call center in NYS, discontinue up-selling of products on service calls, comply with a service quality plan with objective metrics, increase transparency surrounding price and service changes, and reduce customer complaints. They also recommend that Time Warner's current status as an eligible telecommunications carrier is continued after the merger is implemented.

City of New York

The City of New York, speaking through the Mayor's Office contends that the proposed merger cannot meet the public interest test without satisfying several conditions. Specifically, the Mayor urges that New Charter be required to create a low cost program to provide high-speed services with broader eligibility than is specified, for example, in Comcast's Internet Essentials program. This would broaden eligibility, would encompass elderly low-income, immigrant and other persons with disabilities, and would extend the opportunity to participate to households not participating in the free and reduced lunch program. In connection with this initiative, New Charter should also guarantee significant upload and download speeds, build public awareness of this program, provided for high-speed internet service at community institutions to develop

high-quality programming and training. Finally, the Mayor contends that New Charter should track and publically report on the number and location of enrolling households.

These comments also call for New Charter to commit to increased rate transparency by which rate changes and the differences between advertized and actual charges are fully disclosed and readily available to customers. Similarly, these comments support a requirement that New Charter make concrete, measurable improvements in TWC's customer service and provide quarterly reports on the progress it is making in this area.

The Mayor's comments also emphasize the importance of maintaining or increasing the call center jobs located in NYC after the merger in implemented. It is also asserted that New Charter should develop substantial training goals and expand its MBWE contracting.

These comments also call on New Charter to make substantial investments in currently unserved or underserved areas in NYC. It urges that these commitments should be "specific, measureable, [and] time-bound". Specifically, that New Charter “must commit to upgrading 100% of its network to the last amplifier in every node from coaxial cable to fiber optic cable by July 2020.”

The Mayor's comments also focus on the need for New Charter to make commitments to enhance public access Wi-Fi for NYC. These commitments should greatly reduce or eliminate time limitations provided through the Public Access WiFi program, include WiFi access in lower tier service packages including, for example, the company's low cost offering, increase download and upload speeds, meet or exceed standards for security and privacy, and work cooperatively with other NYC providers of free WiFi.

The Mayor's comments also refer to recent Time Warner Cable's initiative to shift public, educational and governmental (PEG) channels away from channel locations that they have had for many years to higher channel numbers. These shifts have greatly reduced PEG provider’s ability to acquire and retain viewers. As described in the comment, the company's practices have also restricted PEG provider access to high quality recording and transmission technologies.

Finally these comments emphasize the importance of New Charter's commitments to net neutrality, and ask the Commission to clarify the commitments, permanently.

Common Cause

Common Cause opposes the proposed merger. It emphasizes that most of the "commitments" made by the merging companies were not specifically defined and, in other cases, not specific to New York State. The comments also emphasize that the commitments could be reasonably expected to occur, even if there were no merger. It views the proposed merger as a threat to media localism and diversity, and a threat to the competitive market for communications. It describes the proposed merger as “inimical” to the public interest.

The Common Cause comments recognize that New Charter will experience benefits of increase sale which should drive down customer costs. The comments, however, emphasize that there is no commitment by New Charter to share these cost savings with customers. This lack of commitment is particularly noteworthy to Common Cause because of recent trends showing communications costs rising at alarming rates.

Common Cause also asserts that New Charter' jobs commitments is not merger specific and, indeed, is not certain to distribute any of the benefits from this commitment to New

York. Similarly, according to Common Cause, the New Charter commitments to diversity are also not merger specific, as is the initiative to implement the broadband program for low-income households or the commitment to net neutrality. In each of these instances, it asserts that the initiative could, and likely would, have been implemented by the incumbent company even if no merger proposal were under consideration.

Finally, Common Cause observes that Charters practices in other jurisdictions with respect to PEG access channels has not been supportive of these programs and has often reduced the availability of this programming to elderly or low-income customers.

Advanced Communications Law & Policy Institute

The Advanced Communications Law & Policy Institute (Institute) supports the proposed merger. It contends that approval of the merger "will facilitate further investment, innovation and competition in broadband, video, and communications across New York." The Institute's support for the merger is based on the merged entity's "greater capacity to invest in advanced networks and services across New York State." The Institute also commends the transaction because of its potential to provide a "robust low-income broadband offering."

PULP

The Public Utility Law Project of New York, Inc. (PULP) states that it neither opposes nor supports the Petitioners' proposal. However, in the event the Commission elects to approve the transaction, PULP makes several recommendations for commitments which the companies should be required to make to "directly advance the public interest." In general, these commitments fall in four general areas.

First, the PULP comments address the specific needs of some customers for a low-cost broadband service and of some low-income customers for a Lifeline broadband. PULP also observes that some representations have been made to suggest that New Charter will offer service at a significant discount to an expanded group of low-income customers. PULP asserts, however, that the Petitioners have not demonstrated how or if the proposed merger will provide fast and reliable broadband service, within the six month time table described in the petition. To resolve this ambiguity, PULP recommends that, if the Commission approves the transaction, it should require New Charter to offer to all customers a "low-cost high-speed broadband Internet service of approximately 25 Mbps downstream and 1-3 Mbps upstream at a cost of $10 or less per month without undue delay upon the closure of the merger."

With respect to telephone service, PULP observes that TWC is currently classified as an ETC and, therefore, the recipient of support for offering a telephone Lifeline rate to low-income customers. PULP's comments recommend that the Commission seek a commitment from the Petitioners that it will maintain ETC status for those portions of the combined service territory that are currently served by a telephone Lifeline program and that it will seek ETC status in the remainder of the combined service territory so that the telephone Lifeline program can be extended to those areas as well.

Second, PULP voices several concerns with the Petitioners' commitments to the build-out for broadband service throughout the combined service territory. PULP acknowledges that the Petitioners have indicated their intent to invest $2.5 billion for infrastructure in commercial areas, to build one million line extensions, and to deploy over 300,000 out-of-home WiFi access points. PULP suggests that the Commission require

that a significant portion of the commercial build-out commitment will be directed toward distressed census tracts, that more than 50% of the New York State portion of the 1 million new lines should be directed to rural and distressed census tracts outside of New York City, and that the proposed WiFi deployment should include areas where cellular broadband and voice have incomplete coverage.

PULP's concerns with respect to broadband deployment in general also highlight the fact that Charter currently offers service without a separate modem fee, while TWC's offers its services with a separate modem fee. Under these circumstances, PULP asserts that, while the cost of Charter broadband service is today lower than that of TWC, if Charter follows the TWC practice and imposes a separate modem fee post-merger, this price advantage may disappear. PULP recommends that the Commission require New Charter to offer service without imposing a separate modem fee.

The third of PULP's concerns focuses on service quality and the low levels of customer satisfaction that TWC has achieved. To address this concern, PULP urges the Commission to condition any approval of the proposed transaction on a requirement to develop a “service quality improvement plan with a negative revenue adjustment similar to those applicable over time to the other dominant New York telephone corporations such as Verizon and Frontier” and with one element of this plan requiring the issuance of a “publically available service quality report.”

PULP's final concern is for the development of a new “social contract” fashioned on an agreement identified by that name and reached over 20 years ago in an FCC proceeding that resolved disputed rate increases and committed TWC to a five year program to invest more than $4 billion to improve its cable

systems. Given the scope of the investments described in the Petition, PULP does not propose the specific elements of its proposed social contract. However, it emphasizes that such a program would "aid in the economic development of New York's lowest-income, rural and most economically-challenged census tracts." It should also "make available high-speed low-cost broadband service(s) as universally available on a retail basis."

Stop the Cap

Stop the Cap! (S/C) is largely supportive on the views expressed by Staff in its comments. As a bottom line, S/C emphasizes that it is the petitioners' burden to establish that the proposed transaction is in the public interest and that, since the petitioners have not met this burden, the petition should be denied.

S/C observes that most of upstate NY is not well positioned to obtain high speed broadband service. Currently and unless a customer could also be served by Verizon FiOS, TWC is the only provider of broadband service at or above 25 Mbps. While the comments recognize that the Petitioners describe service improvements which will accompany the merger and which will increase the standard offer in the Charter/TWC footprint to 60 Mbps with an option to take 100 Mbps service, neither the petitioners nor any other telecommunications service provider has offered gigabit speed service. S/C notes, however, that in other jurisdictions Google or AT&T have such service offerings.

The S/C comments next ask the Commission to determine whether Charter or TWC is better positioned to deliver services. They urge that TWC is the better choice for this purpose because it has made significant investments in its infrastructure, and, apparently, intends to do so in the future, without assuming "an

irresponsible amount of debt." These investments include the introduction of TW Maxx service which will accommodate broadband speeds up to 300 Mbps. S/C argues that TWC's introduction of the Maxx service will be completed for all service territories within the next 24-36 months - approximately the same time frame as New Charter would complete the upgrades to its system.

S/C recognizes that, while TWC expects its most popular plan to offer service at 50/5 Mbps, the target offering for New Charter is 60/5 Mpbs service and that the S/C offering, therefore, is incrementally better, it also compares the service offerings available at higher speeds and at more economical lower speeds. As reported above, the service options provided by TWC will include much higher speeds (up to 300 Mbps) than the petitioners contend will be available from New Charter.

Regarding more economical services, S/C asserts that they anticipate that New Charter will not continue TWC's $14.99 Everyday Low Price Internet service and S/C characterizes this service as "a very important offer for low-income residents and senior citizens who are unable to afford the nearly $60 regular price both companies charge for their 50 or 60Mbps tiers." S/C notes that TWC "offers this tier without preconditions, restricted qualifiers, contracts, or limits on what types of services can be bundled with it. Any consumer qualifies for the service and can bundle it with Time Warner Cable telephone service for an additional $10 a month."

In response to criticism of its low-price offerings and of the absence of any low-income program at Charter, petitioners indicate that they will use an existing program at another merger participant as a model for a new program for the merged Charter and TWC systems. S/C has examined this existing program and found that: the program is only available to households with a child enrolled in the National School Lunch

Program; the program would be unavailable to existing New Charter customers; that the program is unavailable to customers with arrears older than 12 months; enrollment is only permitted from mid-August to mid-September; and enrollment cannot be completed over the Internet. Based on its research, S/C recommends that:

> Charter Communications be compelled to continue Time Warner's $14.99 Internet plan, but at speeds no less than 25Mbps, the minimum definition of entry-level "broadband" by the FCC. We also recommend Charter be required to further discount this plan to $9.95 a month for qualified customers who meet a simple income test the Commission can define and establish. These discount programs should not just be available to families with school-age children. Everyone needs affordable Internet access, whether you are single and looking for your first job or a fixed income senior citizen. All restrictions for existing customers or those with an outstanding balance must be prohibited and sign-ups must be accepted 365 days a year with re-qualification occurring not more than once annually.

S/C, which opposes to application of charges based on data caps or similar mechanisms, criticizes the Petitioners' proposal for its commitment to provide customers with unlimited data usage for only the initial post-merger three year period. S/C urges that this commitment, as well as commitments not to charge modem fees and to support the basic principles of net neutrality should be extended well beyond that period.

In S/C's view, the commitment by TWC to forego usage caps or usage billing is more firm and not in any way time bound. S/C concludes its discussion of usage caps or usage charges by noting that the Internet can provide the customer with television programming and movies which competes with the content that is supplied over the cable television system. Usage caps or usage charges make the Internet supplied content

more expensive and, therefore, tilt that competitive market in favor of the cable television provider.

S/C's also comments on the levels of debt that will be incurred by New Charter in connection with the proposed transaction. It observes that:

> [d]ebt servicing costs and more expensive credit are both deterrents to investment and are likely to limit the scope of Charter's ongoing system upgrades and maintenance. Charter is a much smaller cable operator than Time Warner Cable, and is itself still in the process of repairing and upgrading its own cable systems and those it acquired in earlier acquisition deals. Time Warner Cable, in contrast, is in a much stronger financial position to carry out its commitments associated with the Maxx upgrade program....But the Commission must look carefully at Charter's financial capacity to meet these obligations after assuming control of a company much larger than itself. No commitment is worth much if a company ultimately fails to deliver on it.

S/C's comments include its assertion that, by merging with TWC, Charter will be able to obtain video programming at less cost. As New Charter's costs for video programming go down, it will have a greater and greater competitive advantage over potential new entrants in the cable television markets. This advantage will insulate New Charter, to some extent, from competition.

S/C also strongly recommends that New Charter should be required as a condition of this merger to continue the TWC Maxx upgrade initiative so that all service territories, including the upstate service territories, can obtain this service. It further recommends that this upgrade should be completed within 30 months and that the upgrade facilities should support gigabit broadband service.

Finally, the S/C comments recommend that any approval of the proposed transaction be accompanied by effective enforcement tools to increase the incentive for New Charter to give consumers a better deal or better service.

In conclusion, S/C states:

> Our group strongly believes New York should not take a risk on Charter's less-than-compelling offer when Time Warner Cable has demonstrated it is in a better financial position and has a proven track record of delivering on its commitments to improve service with its Maxx upgrade project. Time Warner Cable has superior options for low-income New Yorkers, has a large number of New York-based call centers providing valuable employment for our residents, offers more broadband options and faster speeds for entrepreneurs remaking themselves in the digital/information economy, and has committed to providing unlimited Internet access – a critical prerequisite for consumers choosing to drop cable television's one-size-fits-all bloated video package and watch only the shows they want to see and pay for online.

MFRConsulting

MFRConsulting states that the debt associated with the transaction creates inherent risks. These risks, including potential underinvestment, or even bankruptcy, in the event that the debt associated with the transaction is burdensome to service. Specifically, the comments state that New Charter may not have enough free cash flow to satisfy its debt obligations. MFRConsulting notes that Charter declared bankruptcy in 2009 and that the risk of a similar future situation could result in harm to broadband customers, suppliers, and franchise obligations as well as risk progress in closing the digital divide.

Other Commenters

Many individual commenters, primarily customers of Time Warner Cable, urge the Commission to deny the merger because they state their bills are already too high and that the merger will only increase these prices. They also argue that Time Warner's poor service quality will only get worse as a result of the merger. Other commenters, including a number of non-profits, schools, municipalities, and community groups state that the Commission should only approve the merger on the condition that New Charter offer faster broadband speeds following the transaction. These same organizations generally expressed support for a low-income broadband program. Other issues raised by these commenters include requiring that New Charter continue and expand PEG obligations, provide a la carte programming choices, and fairly renegotiate local franchise agreements.

EXHIBIT D

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CONTAINS CONFIDENTIAL INFORMATION - DO NOT DISCLOSE

Report Activity Through	1/31/2020
Milestone Date	1/31/2020
Milestone Volume	[BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

Status of Completed Activity

	# Addresses	H/(L) vs Milestone
Exhibit C	[BEGIN CONFIDENTIAL] [redacted]	[END CONFIDENTIAL]
Not Exhibit C		
Total Completed	[BEGIN CONFIDENTIAL] [redacted]	[redacted] [END CONFIDENTIAL]

BPO Overlap and Upstate City Address Counts

	Completed	Limit	Variance to Limit
BPO Wireline	[BEGIN CONFIDENTIAL] [redacted]	[redacted]	[redacted] [END CONFIDENTIAL]
BPO Wireless			
Upstate Cities*			

Removed Addresses**

	Count	Limit	Variance to Limit
1. Upstate city placeholder address (does not count against change limit)	[BEGIN CONFIDENTIAL] [redacted]	[END CONFIDENTIAL]	
2. Removed as mistaken, duplicative, or otherwise not verifiable (does not count against change limit)	[BEGIN CONFIDENTIAL] [redacted]	[END CONFIDENTIAL]	
3. Removed based on a Department audit (does not count against change limit)	[BEGIN CONFIDENTIAL] [redacted]	[END CONFIDENTIAL]	
4. Determined by Charter already to be passed by a competing provider (does not count against change limit)	[BEGIN CONFIDENTIAL] [redacted]	[END CONFIDENTIAL]	
5. Other (counts against change limit)	[redacted]		

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CONTAINS CONFIDENTIAL INFORMATION - DO NOT DISCLOSE

CHARTER DIVISION	COUNTY	STREET NUMBER	STREET NAME	UNIT TYPE	UNIT NUMBER, LETTER, ETC.	CITY	STATE	ZIP CODE	LATITUDE	LONGITUDE	CENSUS BLOCK	COMMUNITY UNIT IDENTIFIER (CUID)	ADDRESS WITHIN A FRANCHISE OR ROW AREA? (Y/N/P)	FRANCHISE NAME	FRANCHISE TYPE	PASSING COMPLETED? (Y/N)	PASSING COMPLETION DATE	CONSTRUCTION SYSTEM PROJECT IDENTIFIER (DID)	REFERENCE IDENTIFIER	NYS BULK ADDRESS LIST IDENTIFIER	IDENTIFICATION OF BPO WIRELINE AND BPO WIRELESS OVERLAP PASSINGS	UPSTATE CITY? (Y/N)	IDENTIFICATION OF EXHIBIT D ALLOWED PASSINGS	IDENTIFICATION OF PSC UNDETERMINED STATUS	EX C PASSING? (Y/N)	TARGET COMPLETE DATE
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CHARTER DIVISION	COUNTY	STREET NUMBER	STREET NAME	UNIT TYPE	UNIT NUMBER, LETTER, ETC.	CITY	STATE	ZIP CODE	LATITUDE	LONGITUDE	CENSUS BLOCK	COMMUNITY UNIT IDENTIFIER (CUID)	ADDRESS WITHIN A FRANCHISE OR ROW AREA? (Y/N/P)	FRANCHISE NAME	FRANCHISE TYPE	PASSING COMPLETED? (Y/N)	PASSING COMPLETION DATE	CONSTRUCTION SYSTEM PROJECT IDENTIFIER (DID)	REFERENCE IDENTIFIER	NYS BULK ADDRESS LIST IDENTIFIER	IDENTIFICATION OF BPO WIRELINE AND BPO WIRELESS OVERLAP PASSINGS	UPSTATE CITY? (Y/N)	IDENTIFICATION OF EXHIBIT D ALLOWED PASSINGS	IDENTIFICATION OF PSC UNDETERMINED STATUS	EX C PASSING? (Y/N)	TARGET COMPLETE DATE	REASON CODE FOR REMOVAL (A-G)	DATE REPORTED REMOVED
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NYS BULK ADDRESS LIST IDENTIFIER	EX C PASSING? (Y/N)	STREET NUMBER	STREET NAME	UNIT TYPE	UNIT NUMBER, LETTER, ETC.	CITY	STATE	ZIP CODE	STREET NUMBER	STREET NAME	UNIT TYPE	UNIT NUMBER, LETTER, ETC.	CITY	STATE	ZIP CODE	DATE UPDATE REPORTED
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