

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
)	
Applications of Charter Communications, Inc.,)	MB Docket No. 15-149
Time Warner Cable Inc., and Advance/Newhouse)	
Partnership for Consent to Transfer Control of)	
Licenses and Authorizations.)	
)	

**OPPOSITION OF CHARTER COMMUNICATIONS, INC.
TO ZOOM TELEPHONICS, INC.'S PETITION FOR
RECONSIDERATION**

June 20, 2016

INTRODUCTION

On May 10, 2016, the Commission released its order¹ (“Decision”) approving the merger of Charter Communications, Inc., Time Warner Cable Inc., and Bright House Networks, LLC (“Transaction”). After reviewing the Decision, and obtaining the additional approvals of scores of state public utility commissions and local franchise authorities across the country, Charter closed the Transaction on May 18, 2016.² The relevant licenses and authorizations are now controlled by a new, publicly traded company, which has selected its new Chairman and Board of Directors and is doing business as Charter.³

Nearly a month after the closing, without having sought any stay of the Commission’s Decision or delay of the closing date, Zoom Telephonics, Inc. (“Zoom”) filed a Petition for Reconsideration of the Decision.⁴ Zoom argues that (1) the Commission “failed to determine whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission’s rules”; and (2) the Decision “fails to assess whether Charter’s billing practices are otherwise contrary to the public interest even if they do not violate specific statutes or rules.”⁵ These contentions fail to satisfy the standard for reconsideration.⁶

¹ *In re Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, MB Docket No. 15-149, FCC 16-59 (rel. May 10, 2016).

² Press Release, Time Warner Cable, *Charter Communications, Time Warner Cable and Bright House Networks Complete Transactions* (May 18, 2016), <http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2016/Charter-Communications-Time-Warner-Cable-and-Bright-House-Networks-Complete-Transactions/default.aspx>.

³ *Id.*

⁴ See Zoom Telephonics, Inc. Petition for Reconsideration (June 8, 2016) (“Petition” or “Petition for Reconsideration”).

⁵ Petition for Reconsideration, at 3 (internal quotations omitted).

⁶ Additional petitions for reconsideration arguing that the Commission should eliminate the buildout and certain other conditions were filed by the American Cable Association, NTCA, the

I. ZOOM’S PETITION IS INELIGIBLE FOR RECONSIDERATION BECAUSE IT REARGUES POINTS PREVIOUSLY REJECTED BY THE COMMISSION.

The Petition should be denied because it seeks to re-argue claims that Zoom already made—and the Commission already rejected—in its prior briefing to the Commission. The FCC’s rules make clear that “[r]econsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.”⁷ It is well settled that “[r]econsideration will not be granted to debate matters upon which the Commission has already deliberated and spoken.”⁸ In fact, petitions that “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding” do not even require Commission action and “may be dismissed or denied by the relevant bureau(s) or office(s).”⁹

This is a textbook case of such a petition. Zoom acknowledges that each of its claims about Charter’s modem-billing policies were already raised in Zoom’s prior briefing.¹⁰ And the

Competitive Enterprise Institute, and UniTel. To the extent the FCC eliminates or relaxes any of the conditions based on those petitions, it should make clear that the Transaction remains in the public interest.

⁷ *In re Petition for Reconsideration by National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24,414, 24,415 ¶ 4(2003); *see also*, 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 F.C.C. 685, 686 (1964) (“*WWIZ, Inc.*”).

⁸ *In re Applications of William L. Carroll, et al. a General Partnership, d/b/a McMurray Communications, for Construction Permit for a New FM Station on Channel 247A, Lebanon, Ohio*, Order, 8 FCC Rcd 6279, 6279 ¶ 2 (1993); *see also WWIZ, Inc.*, 37 F.C.C. at 686.

⁹ 47 C.F.R. § 1.106(p)(3); *accord In re AT&T Corp., Complainant v. Alpine Communications, LLC, et al., Defendants*, Order on Reconsideration, 27 FCC Rcd 16,606, 16,611 ¶ 9 (2012) (noting that it is “settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.” (quotation marks omitted) (citing, *inter alia*, 47 C.F.R. § 1.106(p)(3))).

¹⁰ Petition for Reconsideration, at 2-3 (noting Zoom previously raised claims that Charter’s billing policies violated “Section 76.1206 of the Commission’s rules and Section 629 of the Communications Act,” as well as “Sections 201, 202 and 629 of the Communications Act, Section 706 of the Telecommunications Act of 1996, the public interest standard, and FCC Rules promulgated thereunder”); *id.* at 6-8.

Decision devoted a full six pages to analyzing Zoom’s contentions.¹¹ The Commission explained that Charter submitted evidence that its modem policies benefit the public because Charter’s modem rates “are less expensive than the corresponding Time Warner Cable BIAS rates even before adding Time Warner Cable’s monthly modem rental fees.”¹² It also noted that Charter “would allow current Time Warner Cable and Bright House subscribers to keep their current billing plans,” and the policy would “have no effect on customers within Charter’s current territory.”¹³ The Commission concluded that the transaction review proceeding was not the proper place to resolve contentions about modem billing policies because “they are more appropriately addressed in the pending industry-wide rulemaking proceeding on navigation devices.”¹⁴ In sum, Zoom’s petition is nothing more than an attempt to re-litigate issues the Commission has already addressed and, therefore, should be rejected as failing to satisfy the standard for reconsideration.¹⁵

Zoom’s specific contentions do not alter this conclusion. To begin with, Zoom is wrong that the Commission “failed to determine whether [the] proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission’s rules.”¹⁶ The Commission did just that—and it determined that “*the proposed transaction will not violate any statutory provision or Commission rule.*”¹⁷ In doing so, the Commission also noted that it would

¹¹ See Decision, at 116-121 ¶¶ 237-247.

¹² *Id.* at 120 ¶ 246.

¹³ *Id.* at 120-21 ¶ 246.

¹⁴ *Id.* at 120 ¶ 246.

¹⁵ See *In re Lpfm Mx Grp. 198 Ctr. for Emerging Media, Inc. Loyola Univ. Maryland the Benedictine Soc’y of Baltimore City the United Workers Ass’n Johns Hopkins Univ.*, Order on Reconsideration, 30 FCC Rcd 14,317, 14,320 ¶ 8 (2015) (citing 47 C.F.R. § 1.106(p)(3)).

¹⁶ Petition for Reconsideration, at 3.

¹⁷ Decision, at 13 ¶ 33.

address Zoom’s contentions in the portion of the Decision dedicated to the Zoom claims.¹⁸

Nowhere in that subsequent discussion does the Commission conclude that Charter’s modem policies violate the law.¹⁹

Zoom is similarly incorrect that the Decision “fails to assess whether Charter’s billing practices are otherwise contrary to the public interest even if they do not violate specific statutes or rules.”²⁰ In fact, the Commission stated clearly: “We find that the ongoing navigation devices rulemaking proceeding is sufficient to protect the public interest with respect to New Charter’s cable modem billing and marketing practices, and accordingly we decline to adopt the conditions that Zoom requests related to modem billing practices.”²¹ The Commission also noted numerous potential public interest benefits of Charter’s modem policy, as described above.²² In any event, Sections 214(a) and 310(d) require the Commission to assess whether a transaction serves the public interest “on balance,” not whether every individual aspect does so.²³

¹⁸ *Id.*

¹⁹ *Id.* at 116-21 ¶¶ 237-247.

²⁰ Petition for Reconsideration, at 3.

²¹ Decision, at 121 ¶ 247.

²² *Id.* at 120, ¶ 246.

²³ See 47 U.S.C. § 309(e); *In re Applications of AT&T Inc. and DirecTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40 ¶ 18 (2015); *In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corp., Assignors, to Time Warner Cable, Inc., Assignees; Adelphia Communications Corp., Assignors and Transferors, to Comcast Corp., Assignees and Transferees; Comcast Corp., Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corp., Transferee*, Memorandum Opinion & Order, 21 FCC Rcd 8203, 8217-18 ¶ 23 (2006); *In re Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20,559, 20,574 ¶ 25 (2002).

CONCLUSION

For these reasons, Charter respectfully requests that the Commission deny Zoom's Petition for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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