

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

PETITION TO DENY OF THE GREENLINING INSTITUTE

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The Greenlining Institute (“Greenlining”) hereby files this Petition to Deny the Application, as proposed, in the above-captioned matter pursuant to Section 309(d)(I) of the Communications Act of 1934,¹ and the FCC's Public Notice of September 11, 2015.² The proposed transaction would seriously harm communities of color and low-income consumers; these public interest harms outweigh any potential public interest benefits. The public interest therefore requires that the Commission reject the Application in its entirety, as proposed, or, at a minimum, impose significant conditions to ameliorate the threatened harms to communities of color and low-income consumers and protect the public interest.

SUMMARY

Applicants have not met their burden of proof because the Application fails to identify and define the relevant markets at issue in the proposed transaction, and fails to demonstrate that the proposed transaction would not result in higher prices and lower quality of service for residential and small- to medium-sized businesses. The proposed transaction could harm low-

¹ 47 U.S.C. § 309(d)(I) (2011).

² FCC Public Notice, DA 15-1010, Docket No. 11-65 (September 11, 2015) (Establishing Pleading Cycle).

income consumers by reducing affordability and eliminating the availability of services to low-income consumers. Applicants fail to make meaningful commitments regarding diversity, customer-friendly contracting practices, or jobs. Many of the purported benefits of the proposed transaction are unverifiable or not merger-specific. The potential public interest harms to low-income consumers and communities of color outweigh any purported public interest benefits to Applicants' subscribers and to consumers at large. Accordingly, the transaction is not in the public interest, and the Commission should deny the Application. If the Commission approves the proposed transaction, it should impose conditions to protect the public interest.

ARGUMENT

I. GREENLINING HAS STANDING TO FILE THIS PETITION.

Any "party in interest" may petition the Commission to deny the assignment or transfer of a license.³ A party in interest is any party whose interests are likely to be adversely affected.⁴ Greenlining is a non-profit organization dedicated to empowering communities of color, low-income communities, and other disadvantaged groups. Started in 1993 by the Greenlining Coalition, Greenlining seeks to protect consumer interests o better serve this country's multi-ethnic and underserved communities. Beyond ethnic diversity, the coalition represents diverse constituents that include faith-based organizations, minority business associations, community development corporations, health advocates, traditional civil rights organizations, and minority media outlets.

Members of the Greenlining Coalition subscribe to services provided by Applicants. Moreover, members of the communities served by Greenlining Institute and employees of the Greenlining Institute are subscribers to other providers who will be impacted by the proposed

³ 47 U.S.C. §309(d) (2011).

⁴ Camden Radio, Inc., v. Federal Communications Commission, 220 F.2d 191, 194 (D.C. 1954).

merger. As this petition will demonstrate, the proposed merger would directly and adversely impact the communities the Greenlining Institute represents. Therefore, Greenlining has standing to oppose the Application.

II. THE PROPOSED TRANSACTION IS NOT IN THE PUBLIC INTEREST.

A. Applicants Must Prove, By A Preponderance Of The Evidence That The Proposed Transaction Is In The Public Interest.

A party seeking the acquisition or transfer of a license bears the burden of proving to the Commission, by a preponderance of the evidence, that the proposed transaction will serve the public interest convenience, and necessity.⁵ In making this determination, the Commission first assesses “whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission’s rules.”⁶

When reviewing a transaction, the Commission considers the competitive effects of that transaction on the public interest; however, the Commission's public interest inquiry extends far beyond potential competitive effects.⁷ The Commission also considers “whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits.”⁸ The Commission’s public interest inquiry includes a consideration of, “among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.”⁹

⁵ Order In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).

⁶ *Id.*

⁷ *Id.* at 8717.

⁸ *Id.*

⁹ *Id.*

The Commission then considers whether the acquisition “could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.”¹⁰ If there is a risk of harm, the Commission employs “a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”¹¹ If the potential public interest harms outweigh the potential public interest benefits, the transaction is not in the public interest.¹²

B. The Application Fails to Demonstrate that the Proposed Transaction Would Benefit Affected Markets.

1. *Applicants have not met their burden of proof because the Application fails to identify and define the relevant markets at issue in the proposed transaction.*

The Commission’s competitive analysis of a proposed transaction begins with determining appropriate market definitions for the transaction.¹³ Market definition requires defining both the product market and the geographic market.¹⁴ The relevant market consists of all goods which are "reasonably interchangeable" with a product.¹⁵ Products are "reasonably interchangeable" if consumers (1) view those products as substitutes for each other and (2) would switch among those products in response to a change in price.¹⁶ In determining whether goods are reasonably interchangeable, courts consider the price, the use, and the qualities of the respective products.¹⁷

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, p. 7 (August 19, 2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf> (hereafter, Horizontal Merger Guidelines).

¹⁵ *United States v. E. I. Du Pont de Nemours & Co.*, 351 U.S. 377, 395 (U.S. 1956).

¹⁶ *Apple v. Psystar*, 586 F. Supp. 2d 1190 at 1196 (N.D. Cal. 2008).

¹⁷ *Id.*

In addition to determining the product market, the Commission also determines the relevant geographic market.¹⁸ In evaluating the geographic market, courts and agencies try to "find the area or areas to which a potential buyer may rationally look for the goods or services he seeks."¹⁹

Applicants refer to many different markets throughout the Application, including markets for residential broadband²⁰ (including broadband offerings for low-income customers),²¹ mobile data,²² residential video,²³ voice service,²⁴ enterprise and other multi-location products,²⁵ advertising (for both purchasers and sellers),²⁶ innovative products,²⁷ online video distribution,²⁸ regional programming networks,²⁹ "programming acquisition, network management, and maintenance services,"³⁰ and home security systems.³¹ However, while the Application discusses the purported effects of the proposed transaction on a few of these markets (particularly broadband, video, and OVD markets), it fails to define those markets. This lack of market definition makes Applicants' vague claims of transaction benefits difficult to verify.

As noted above, Greenlining advocates on behalf of communities of color. The proposed transaction promises to significantly impact communities of color, particularly given that the proposed transaction involves Los Angeles markets. For example, 71.4% of residents of Los

¹⁸ Merger Guidelines at 13.

¹⁹ U.S. v. Grinnell Corp., 384 U.S. 563, 588 (1966).

²⁰ Public Interest Statement at 2-3.

²¹ *Id.* at 20.

²² *Id.* at 18.

²³ *Id.* at 3-4.

²⁴ *Id.* at 8.

²⁵ *Id.* at 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 5-6.

²⁹ *Id.* at 11.

³⁰ *Id.* at 12.

³¹ *Id.* at 12.

Angeles are from communities of color.³² 60.2% of residents of Los Angeles speak a language other than English, and 29.2% of residents of Los Angeles speak English less than “very well.”³³ Applicants have failed to address the particular impacts of the proposed transaction on communities of color. Additionally, Applicant’s failure to identify or define relevant markets makes it difficult to determine the proposed transaction’s effects on communities of color.

For example, Applicants’ economic expert makes a number of conclusions regarding the transaction’s effects on marginal cost decreases.³⁴ These conclusions are based, at least in part, on New Charter’s number of subscribers in several major cities.³⁵ Accordingly, these conclusions appear based on the assumption that the relevant geographic market is, for example, all of Los Angeles, rather than the specific parts of Los Angeles that New Charter would serve. Similarly, the Application concludes that there is increased competition in some of the service areas Applicants serve because Google is offering or considering offering service in parts of those service areas.³⁶

It is unsafe to rely on these conclusions, because Applicants have failed to first define the relevant product and geographic markets for the markets at issue. This is not the first time that Greenlining has seen merger applicants make vague references to merger benefits, requiring the Commission to do the “heavy lifting” of determining the appropriate markets, defining those markets, and then calculating the merger effects on those markets. Greenlining believes that

³² U.S. Census Bureau, American Fact Finder, SELECTED CHARACTERISTICS OF THE NATIVE AND FOREIGN-BORN POPULATIONS 2009-2013: American Community Survey 5-Year Estimates (2013), available at <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF> (last accessed October 13, 2015).

³³ *Id.*

³⁴ Declaration of Fiona Scott Morton (hereafter, Morton Declaration) at 8-9.

³⁵ *Id.* at 9.

³⁶ Public Interest Statement at 59-60.

Applicants are engaging in this strategy in the hopes of overwhelming the Commission's limited resources, resulting in a less thorough review of the proposed transaction.³⁷

If the Applicants wish to meet their burden of proof, they, not the Commission, should be performing the economic and legal analysis to demonstrate that the proposed transaction is in the public interest. Based on the information in the Application, Applicants have failed to do so. Accordingly, Applicants have failed to meet their burden of proof, and the Commission should deny the proposed transaction.

2. *Applicants have not met their burden of proof because the Application fails to demonstrate that residential prices will not increase as a result of the proposed transaction.*

Applicants claim that as a result of the proposed transaction, New Charter will increase broadband speed to at least 99 percent of its service footprint, and will increase speeds to a minimum of 60 MBps.³⁸ Applicants additionally note that New Charter's pricing will be "based on Charter's current model, which is less expensive for consumers than Time Warner Cable and Bright House Networks' current offerings."³⁹ However, Applicants' statement that New Charter's pricing will be "based on" Charter's current pricing in no way guarantees that New Charter's prices would ultimately be lower than Time Warner Cable or Bright House's prices. Additionally, Time Warner Cable currently offers a number of Internet offerings that, while substantially slower than Charter's, are also less expensive than Charter's unbundled price of \$39.95 per month.⁴⁰ Greenlining is concerned that Charter's increasing broadband speeds, while

³⁷ The fact that the Commission issued voluminous initial data requests in this proceeding is further evidence that Applicants have not provided sufficient data an analysis in the Application.

³⁸ Public Interest Statement at 3. It should be noted that Applicants do not commit to increasing availability of those services; there may well be customers within that footprint that will not be able to receive broadband services from New Charter.

³⁹ Public Interest Statement at 2-3.

⁴⁰ Time Warner Cable, Select and Compare Services, available at <http://www.timewarnercable.com/en/plans-packages/cable-internet.html?cic721> (last accessed October 12, 2015); Charter Communications, This Much Power Could Go To Your Head, available at

laudable, could result in prices that some consumers could not afford. The elimination of affordable broadband services for those consumers would harm the public interest.

3. *Applicants have not met their burden of proof because the Application fails to demonstrate that business prices will not increase as a result of the proposed transaction.*

The Application argues that the proposed transaction will allow New Charter to “compete more effectively with large phone companies for large enterprise and other multi-location customers who need connectivity in disparate locations or to a more complete regional footprint.”⁴¹ However, the Application appears to be silent regarding the effects of the proposed transaction on smaller business customers. If Applicants do not show that the proposed transaction will not harm the market for services for small- and medium-sized businesses, the Commission should deny the proposed transaction.

4. The Application lacks sufficient detail to allow the Commission to determine the market effects of the proposed transaction.

Applicants have not sufficiently identified and defined the relevant markets at issue in the proposed transaction. Additionally, Applicants have failed to demonstrate that residential and business prices will not increase as a result of the proposed transaction. Accordingly, the Application lacks sufficient detail to allow the Commission to determine the market effects of the proposed transaction.

https://www.charter.com/mediacontent/pdfs/Internet_Features_Ultra_Chart_English.pdf (last accessed October 12, 2015).

⁴¹ Public Interest Statement at 4.

C. The Proposed Transaction Is Not In the Public Interest Because It Would Harm Low-Income Consumers.

1. There is a Substantial Risk that the Proposed Transaction Will Result in Increased Prices for Low-Income Consumers.

Low-income subscribers are significantly less able to afford rate increases, overage fees, early termination fees, or unreasonable or excessive non-recurring charges than other subscribers. As discussed above, Charter's network upgrades could result in the elimination of broadband services that are affordable to low-income customers. If Applicants do not show that the proposed transaction will not harm the low-income customers, the Commission should deny the proposed transaction.

2. Applicants have not Described New Charter's Proposed Low-Income Broadband Program with Sufficient Specificity.

Applicants state that New Charter will "significantly expand Bright House Networks' broadband program for low-income customers by making a broadband offering available with higher speeds and expanded eligibility while continuing to offer the service at a significant discount, and will make the offer available across the New Charter footprint."⁴² However, Applicants offer no significant details regarding the specific pricing, speeds, or eligibility requirements of the program. Applicants do make one statement regarding the availability of the program, namely that the low-cost program will not be available for at least six months (and in some parts of New Charter's footprint, up to three years) after the transaction closes.⁴³ The Application provides no meaningful information that would allow the Commission to conclude that New Charter's broadband program for low-income customers would benefit those customers, and accordingly benefit the public interest.

⁴² Public Interest Statement at 41.

3. *The Proposed Transaction Could Reduce the Availability of Services to Low-Income Consumers.*

The proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act. Specifically, the proposed transaction would impede the Commission's directive to "make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."⁴⁴ If the Commission approves the proposed transaction, it is likely that New Charter will not provide Lifeline service in California, reducing the availability of low-cost phone service to low-income customers.

Greenlining believes that the market for wireline Lifeline services is a relevant submarket in the state and local markets where Time Warner operates.⁴⁵ In recent years, Charter has apparently been eliminating its Lifeline offerings. For example, a Charter pricing guide from December 2014 announced that Lifeline service would no longer be available to new customers in California, Texas, and Wyoming.⁴⁶

⁴³ *Id.* at 20.

⁴⁴ 47 U.S.C. § 151.

⁴⁵ Submarkets can themselves "constitute product markets for antitrust purposes." *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962). The Department of Justice (DOJ) and the Federal Trade Commission (FTC) developed the "hypothetical monopolist" test to help determine whether submarkets are distinct product markets. *Merger Guidelines*, supra note 32, at 7; *see also*, *FTC v. Whole Foods Mkt.*, 548 F.3d 1028, 1038 (D.C. Cir. 2008). Under this test, the agencies assume the existence of a hypothetical firm that is the only seller of a relevant product, and ask whether that firm could profitably impose a small but significant and nontransitory increase (SSNIP) in price on that product.⁴⁵ If buyers would shift to available alternatives because of the SSNIP, the other products to which the buyers would switch are part of the "product market." *Id.* Applying the hypothetical monopolist test does not necessarily lead to a single relevant product market. *Id.* Given the financial restraints of low-income customers, a Lifeline customer that shifted to an available alternative in response to a SSNIP would only shift to those services that the customer could afford. These affordable services would likely be Lifeline services from another provider or a similarly priced equivalent.

⁴⁶ Charter, Charter Residential Voice Service Price Guide 4 (Dec. 15, 2014), available at <https://www.charter.com/browse/static/images/CharterResidentialServicesPriceGuide.pdf> (last accessed October 12, 2015).

Time Warner Cable, on the other hand, has shifted its business model to include serving low-income customers.⁴⁷ For example, Time Warner Cable recently applied for ETC status in order to begin offering Lifeline in California.⁴⁸ In its application for ETC status, Time Warner noted its commitment to serving low-income consumers, stating that “[d]esignating Time Warner Cable Information Services (CA) as an ETC will enable it to offer high-quality voice service at price points that meet the needs of California’s Lifeline-eligible consumers, and thus will serve the public interest.”⁴⁹ The CPUC subsequently granted that application.⁵⁰

While the Application addresses low-income broadband services, it does not address low-income telephone service. There is a substantial risk that Charter will relinquish Time Warner Cable’s Lifeline offerings once the transaction closes. The proposed transaction’s potential elimination of Lifeline in Time Warner Cable’s service areas could seriously harm low-income consumers and the public interest. Even if Charter does not intend to relinquish Time Warner Cable’s ETC status, Charter does not indicate any interest in applying for ETC status and providing California Lifeline service through any of its affiliates that offers telephone service, or any successor companies, regardless of the technology used to provide that telephone service. Although the new company would benefit from the merger by acquiring more market power, it will not leverage this benefit to provide affordable stand-alone telephone service to Lifeline-eligible customers.

⁴⁷ See *Time Warner’s Petition for Modification of Existing Eligible Telecommunications Carrier Designation, New York Public Service Commission*, 12-C-0510, Nov. 13, 2012; and *Petition of Time Warner Cable Information Services (Maine), LLC for Designation as a Lifeline-only Eligible Telecommunications Carrier in the State of Maine*, WC Docket No. 09-197, Federal Communications Commission, Jul. 22, 2013.

⁴⁸ *Application of Time Warner Cable Information Services (California), LLC (U-6874-C) for Designation as an Eligible Telecommunications Carrier, California Public Utilities Commission*, A.13-10-019, Oct. 25, 2013.

⁴⁹ *Id.* at 14-15.

⁵⁰ *Application of Time Warner Cable Information Services (California), LLC (U6874C) for Designation as an Eligible Telecommunications Carrier, Decision Granting Request For Eligible Telecommunications Carrier Status*, D.13-03-038, Apr. 3, 2014. (*hereafter*, Time Warner ETC Application).

California Lifeline eligible customers are disproportionately people of color. Only 22 percent of white households are Lifeline eligible, compared to 36 percent of African American households and 56 percent of Latino households.⁵¹ Accordingly, communities of color are more reliant on Lifeline. If the Commission approves the proposed transaction and New Charter decides not to offer Lifeline, communities of color will experience a disproportionate impact. The actual or potential elimination of Time Warner Cable as a Lifeline provider would seriously harm the public interest.

D. Applicants have not Described New Charter’s Proposed Diversity Policies with Sufficient Specificity.

Applicants argue that the proposed transaction will result in a new company that embraces “Time Warner Cable’s commitment to diversity and inclusion in governance, employment services, procurement, and community partnerships.”⁵² However, apart from this vague assertion, Applicants make no commitments regarding supplier diversity, board diversity, management diversity or diversity in philanthropy as part of the Application. Thus, there are absolutely no guarantees that the proposed transaction will have a beneficial impact in these areas.

Supplier, workforce, management, and ownership diversity are issues of public interest, particularly in a state as diverse as California. Applicants note Time Warner Cable’s previous diversity efforts,⁵³ but are strangely silent regarding Charter or Bright House’s past or current diversity efforts. Additionally, while Applicants refer to Time Warner Cable’s “best practices with respect to diversity,”⁵⁴ they provide no detail regarding those practices. In fact, Time

⁵¹ Cal. Pub. Util. Comm’n., Staff Report to the California Legislature, Affordability of Basic Telephone Service, Vol. 1 at 2.2 (Sept. 30, 2010).

⁵² Public Interest Statement at 20.

⁵³ *Id.* at 40-41.

⁵⁴ *Id.*

Warner Cable has historically not been forthcoming regarding its diversity efforts; for example, Time Warner Cable consistently declines to provide the California Public Utilities Commission with annual supplier diversity numbers.⁵⁵

While the Application claims that that “New Charter will recognize the vital importance of promoting diversity and inclusion strongly rooted in the communities it serves,”⁵⁶ Applicants do not appear to have made any greater commitment to substantially improve the new company’s efforts to diversify its suppliers or workforce, and overall economic development of California’s diverse communities beyond Time Warner Cable’s currently opaque and lackluster efforts. The Commission’s merger assessment should include an investigation of the new company’s commitment to diversity. Applicants’ current statements regarding the new company’s efforts are insufficient to ensure that New Charter will have a meaningful commitment to diversity. Accordingly, the Commission cannot conclude that New Charter’s diversity efforts will serve the public interest.

E. Applicants Have Failed To Demonstrate That The Proposed Transaction Will Result in Customer-Friendly Contracting Practices.

Applicants claim that if the Commission approves the proposed transactions, consumers will benefit from Charter’s “customer-friendly contracting practices.”⁵⁷ Post-transaction, New Charter would maintain Charter’s previous policies of no contracts with early termination fees and no data caps or usage-based billing.⁵⁸ However, the Application does not contain any specific commitment regarding maintaining these practices. New Charter could eliminate these practices shortly after it consummated the proposed transaction. This vague commitment and

⁵⁵ The Greenlining Institute, 2014 Supplier Diversity Report Card: Unexpected Achievements and Continuing Gaps 12 (2015).

⁵⁶ Public Interest Statement at p. 25; *see also, Id.* at p. 22.

⁵⁷ *Id.* at 25.

⁵⁸ *Id.*

others like it are insufficient to guarantee that the proposed transaction will not harm the public interest.

F. Applicants Have Failed To Demonstrate That The Proposed Transaction Will Result in Customer-Friendly Contracting Practices.

The Application makes the argument that “New Charter will continue to create thousands of U.S.-based jobs by hiring for customer services call centers and field technicians operations located throughout the country, and returning Time Warner Cable call center jobs to the U.S.”⁵⁹ However, this unsubstantiated claim does not acknowledge that the proposed transaction will most probably result in a loss of jobs as well. As a result, the proposed transaction could result in a net reduction of jobs.

Applicants do not refer to lost jobs specifically, but instead speak in terms of cost savings which Applicants expect to come from “[c]ombined purchasing, overhead, product development, engineering, and IT,” as well as the consolidation of operating practices.⁶⁰ Applicant’s cost savings will presumably include cost savings from the elimination of some jobs. Applicants’ assertions regarding job increases are too vague to ensure that those benefits would be sufficient to mitigate any harms caused by any elimination of jobs or reduction of employee pay or benefits. If the Commission approves the proposed transaction, there is a substantial risk of harms to employees.

G. The Commission Should Investigate the Effect of the Proposed Transaction on Customers with Unique Needs.

While the Application discusses the purported benefits of the proposed transaction on customers generally, it fails to discuss the effects of the proposed transaction on customers with

⁵⁹ Declaration of Christopher L. Winfrey (hereafter, Winfrey declaration) at 14.

⁶⁰ Public Interest Statement at 15.

unique telecommunications needs, including customers with limited English proficiency, customers with disabilities, and low-income customers.⁶¹ The Commission should determine whether New Charter will adequately serve the needs of these customers by providing, for example, in-language customer service, accessible communication (including web access), and affordable broadband service for low-income customers.

H. A Number of Applicant’s Claimed Public Interest Benefits are Not Verifiable, Transaction-Specific Public Interest Benefits.

In evaluating a proposed transaction, the Commission considers “whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits.”⁶² Applicants claim a number of public interest benefits which are not sufficiently verifiable. Additionally, Applicants claim a number of public interest benefits which are not merger-specific.

1. Many of Applicant’s Purported Public Interest Benefits are not Verifiable.

“Efficiency claims will not be considered if they are vague, speculative, or otherwise cannot be verified by reasonable means. Projections of efficiencies may be viewed with skepticism, particularly when generated outside of the usual business planning process. By contrast, efficiency claims substantiated by analogous past experience are those most likely to be credited.”⁶³ As discussed above, Applicants make a number of claims regarding benefits of the proposed transaction, but those claims are vague or supported by insufficient data. Accordingly, the Commission should disregard those claims when evaluating the proposed transaction.

⁶¹ The Application notes that New Charter will expand Bright House’s broadband program for low-income customers, but provides no meaningful detail regarding that program. Public Interest Statement at 26.

⁶² Horizontal Merger Guidelines at 30.

⁶³ *Id.*

2. *Many of Applicant's Purported Public Interest Benefits are not Merger-Specific.*

“The Agencies credit only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects. These are termed merger-specific efficiencies.”⁶⁴ Applicants claim a number of benefits from the proposed transaction which are not merger-specific:

- Applicants claim that New Charter will “continue the rollout of Time Warner Cable’s ultra-high-speed 300 downstream Mbps package consistent with Time Warner Cable’s existing deployment plans.”⁶⁵ This is the continuation of an existing policy, and would apparently be accomplished in the absence of the proposed transaction.
- Applicants claim that as a result of the transaction, customers of New Charter that had been Time Warner Cable or Bright House customers would benefit from policies of no contracts with early termination fees and no data caps or usage-based billing.⁶⁶ However, there is no apparent reason that Time Warner Cable and/or Bright House could not institute these policies in the absence of the proposed transaction.
- Applicants state that as a result of the transaction, New Charter will expand and enhance Bright House’s low-income broadband offerings to cover New Charter’s entire service territory by three years after the transaction closes.⁶⁷ There is no apparent reason that Charter or Time Warner Cable could not offer low-cost broadband services in the absence of the proposed transaction.
- Applicants state that as a result of the transaction, New Charter will implement Time Warner Cable’s diversity policies.⁶⁸ However, there is no apparent reason that Charter and/or Bright House could not institute these policies in the absence of the proposed transaction.
- Applicants promised that as a result of the transaction, New Charter will repatriate jobs that Time Warner Cable previously sent out of the country.⁶⁹ Again, there is no apparent reason that Time Warner Cable could not repatriate these jobs in the absence of the transaction.

⁶⁴ Horizontal Merger Guidelines at 30.

⁶⁵ Public Interest Statement at 3.

⁶⁶ *Id.* at 47-48.

⁶⁷ *Id.* at 14-15.

⁶⁸ *Id.* at 14.

⁶⁹ *Id.* at 4.

Applicants claim that all of these benefits would occur as a result of the merger. However, Applicants provide no evidence that there are financial or other restrictions that prevent each of the Applicants from implementing these benefits independent of the proposed transaction. The above-listed benefits are not merger-specific, and the Commission should disregard Applicants' claims regarding those benefits when evaluating the proposed transaction.

I. The Proposed Transaction Is Not In The Public Interest.

Applicants have not met their burden of proof because the Application fails to identify and define the relevant markets at issue in the proposed transaction, and fails to demonstrate that the proposed transaction would not result in higher prices and lower quality of service for residential and small- to medium-sized businesses. The proposed transaction could harm low-income consumers by reducing affordability and eliminating the availability of services to low-income consumers. Applicants fail to make meaningful commitments regarding diversity, customer-friendly contracting practices, or jobs. Many of the purported benefits of the proposed transaction are unverifiable or not merger-specific. Accordingly, the transaction is not in the public interest, and the Commission should deny the Application.

III. IF THE COMMISSION APPROVES THE TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST.

The Commission can prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act.⁷⁰ The Commission can use its "...extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits."⁷¹ Should the Commission approve the applications, Greenlining asks that the Commission take measures to ensure that the public

⁷⁰ 47 U.S.C. § 303, subdivision (f); AT&T/Cellco Order at 8717-8718.

⁷¹ AT&T/Cellco Order at 8718.

interest is protected. The Commission should not consider the new company's compliance with existing requirements, such as Applicant's commitment that the New Charter will comply with the Federal Communication Commission's net neutrality rules,⁷² as public interest benefits. Additionally, the Commission should hold Charter to its commitments to pass the economic benefits of the transaction through to consumers, promote diversity, and bridge the digital divide. The Commission must take care to craft detailed conditions with measurable performance metrics and substantial penalties if the new company fails to meet those metrics.

CONCLUSION

For the above-stated reasons, Joint Consumers respectfully request that the Commission deny the Application or, in the alternative, further investigate the public interest impacts of the proposed transaction.

Respectfully submitted,

Dated: October 13, 2015

/s/ Paul Goodman
Paul Goodman
Senior Legal Counsel
The Greenlining Institute

⁷² Public Interest Statement at p. 25.