

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA

|   |                                    |
|---|------------------------------------|
| <p>Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CC0, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C), to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C).</p> | <p>Application No. A.15-07-009</p> |
|---|------------------------------------|

**CENTER FOR ACCESSIBLE TECHNOLOGY'S OPENING COMMENTS ON  
PROPOSED DECISION GRANTING APPLICATION TO TRANSFER  
CONTROL SUBJECT TO CONDITIONS**

CENTER FOR ACCESSIBLE TECHNOLOGY  
MELISSA W. KASNITZ  
3075 ADELIN STREET, SUITE 220  
BERKELEY, CA 94703  
510/841-3224

May 2, 2016

service@cforat.org

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**

|      |  |    |
|------|--|----|
| I.   | Introduction .....   | 1  |
| II.  | The PD Errs by Failing to Substantively Address (Or Even Identify) the Arguments Made By Protestors .....  | 1  |
| III. | The PD Errs by Finding that the Merger is in the Public Interest Without Mitigation Measures that Focus on the Needs of People with Disabilities ..... | 2  |
|      | A.    The PD Errs by Failing to Address the Need for Accessible Communication with People with Disabilities.....                                       | 2  |
|      | B.    The PD Errs by Failing to Ensure That Any Low-Income Broadband Program Is Effective and Inclusive of People with Disabilities .....              | 5  |
|      | 1.    Eligibility Standards Are Not Adequate.....  | 6  |
|      | 2.    Equipment Issues Are Not Addressed.....  | 7  |
|      | 3.    Enforcement for the Commitments in the MOUs is Not Adequate, Including Commitments for Enrollment Goals and Timing.....                          | 8  |
|      | C.    The PD Fails to Adequately Address Public Safety Concerns.....   | 9  |
| IV.  | Additional Issues .....  | 11 |
|      | A.    CforAT Supports Various Provisions of the PD, and Recommends Modest Adjustment of Others to Ensure they Serve the Intended Purpose.....          | 11 |
|      | 1.    Analysis.....  | 11 |
|      | 2.    Lifeline .....   | 11 |
|      | 3.    Service Quality.....   | 12 |
|      | B.    The Commission Must Consider How to Best Ensure That It Can Enforce Any Mitigation Measures It Adopts.....                                       | 12 |
| V.   | Conclusion.....  | 14 |

## **I. INTRODUCTION**

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Center for Accessible Technology (CforAT) submits these Opening Comments on the proposed Decision Granting Application to Transfer Control Subject to Conditions (PD). The PD commits legal and factual error by failing to meaningfully (or at all) address multiple issues raised by CforAT in testimony and briefing. Overall, CforAT contends that the Applicants have not demonstrated that the proposed merger would benefit the public interest, and specifically that it will not benefit the vulnerable customer class of people with disabilities. Because Applicants failed to carry their burden, the transaction should not be approved. If the Commission intends to approve the transaction over CforAT’s objections and those of other parties, additional mitigation measures, consistent with CforAT’s previous input in this proceeding, are needed to reduce the harm the transaction will cause to customers in general and customer with disabilities in particular.

## **II. THE PD ERRS BY FAILING TO SUBSTANTIVELY ADDRESS (OR EVEN IDENTIFY) THE ARGUMENTS MADE BY PROTESTORS**

The PD addresses the arguments made by Applicants in support of the proposed merger at length and in detail; it fails to provide the same discussion, or even recitation, of the position of parties opposing the merger. In the most direct example, the PD allocates four pages to discussion of the Applicants’ position on “compliance with applicable provisions of the Public Utilities Code;”<sup>1</sup> it then provides a heading for “Protestors’ Positions,” which is followed by a single sentence, then a subheading for ORA, which contains no content whatsoever.<sup>2</sup> No other protestor is even identified.

In other portions of the PD, ORA’s testimony and analysis is given reasonable attention, but the PD fails throughout to address the positions of other parties, and provides only minimal and incomplete recognition of CforAT’s concerns and input. The only issue for which substantial attention is given to CforAT’s analysis is public safety

---

<sup>1</sup> PD at pp. 21-25.

<sup>2</sup> PD at p. 25.

(primarily the need for adequate battery backup power for voice service in emergencies), but even there, the discussion is incomplete.<sup>3</sup> Beyond that, CforAT’s input is mentioned only with regard to mitigation, and the list of proposed mitigation measures is incomplete and improperly cited, with no indication of where in the record it could be found in greater detail.<sup>4</sup> CforAT’s substantive discussion of mitigation measures needed on those issues affecting the disability community is provided in detail below; the PD’s failure to include CforAT’s substantial concerns and input is error that must be remedied even if our substantive recommendations are not included. In particular, the PD fails to mention CforAT’s detailed contributions regarding the need for accessible communications with customers with disabilities. Failure to recognize the concerns of a sizable vulnerable population, notwithstanding detailed information in the record of this proceeding regarding their needs, is error which must be remedied.

**III. THE PD ERRS BY FINDING THAT THE MERGER IS IN THE PUBLIC INTEREST WITHOUT MITIGATION MEASURES THAT FOCUS ON THE NEEDS OF PEOPLE WITH DISABILITIES**

**A. The PD Errs by Failing to Address the Need for Accessible Communication with People with Disabilities**

As noted, above, CforAT provided detailed testimony and discussion of the need to ensure that a post-merger company can effectively communicate with its customers with disabilities. Specific recommendations regarding the necessary requirements for effective communication were provided in testimony<sup>5</sup> and supported in briefing.<sup>6</sup>

---

<sup>3</sup> PD at pp. 63-64; CforAT’s discussion of the need for further effort to adequately protect public safety is set out in detail below.

<sup>4</sup> PD at pp. 61-62. While the PD contains a subheading titled “Center for Accessible Technology” in its discussion of mitigation, the citations in this section fail to properly reference CforAT’s testimony or briefing, and instead all cite to “*Ibid.*” or “*Id.*,” effectively referencing comments from Stop the Cap!

<sup>5</sup> Testimony of Dmitri Belser on behalf of the Center for Accessible Technology (Belser Testimony), submitted into the record as CforAT-1, at pp. 11-13.

<sup>6</sup> Opening Brief of the Center for Accessible Technology (CforAT Opening Brief) at pp. 13-15 and Reply Brief of the Center for Accessible Technology (CforAT Reply) at pp. 7-10.

Applicants initially neglected to address CforAT's concerns about effective communication, but eventually offered some concessions on this issue in their Reply Brief.<sup>7</sup> As set forth below, these steps are welcome, but not sufficient. At the same time, the PD errs by failing to discuss this issue at all.

As set forth in CforAT's testimony and briefing, the following measures should be adopted to ensure effective communication with customers with disabilities:

- All printed communications between the service provider and its customers must be available in alternative format, including electronic format, Braille, audio and large print (minimum 14 point, sans serif font). It is not sufficient to provide only the billing statement. Additionally, all standard print material must include key information in large print.
- For customers who have identified themselves as having a disability, all written material should be provided in the customer's preferred format. Any customer should be able to obtain copies of printed material in any format upon request.
- For customers with hearing impairments, all contacts with customer service should be available through the traditional relay service, video relay service, or via TTY. Customer service representatives should be fully trained to work with customers using relay or TTY, and their performance evaluations should not be negatively impacted by the fact that such calls typically take longer than standard voice calls.
- All aspects of the carrier's web presence (traditional and mobile sites) must be designed in accordance with web accessibility standards, namely WCAG 2.0 AA, which is the accepted standard for accessibility. Any mobile applications (apps) must also be accessible.

Charter has noted that its billing statements are available electronically and in Braille or large print (without describing whether its large print bills conform to accepted standards). It also

---

<sup>7</sup> Applicants' Reply Brief at pp. 127-130.

makes its user guides available online.<sup>8</sup> This falls far short of its obligations to ensure that all of its communications are available to customers who cannot access standard print documents due to disability. In their Reply Brief, Applicants also mistakenly assert that CforAT has “no complaints” about its web accessibility compliance. In fact, CforAT noted that “ongoing work is required” to improve Charter’s compliance with web access standards, and that additional efforts are “needed to ensure that any mobile apps are also accessible.”<sup>9</sup>

In its Reply Brief, Charter also proposes to adopt some additional measures to improve communication with its customers with disabilities, including work with a consultant to address web access compliance and some improvements in availability of alternative formats.<sup>10</sup> CforAT appreciates the web access proposal, but notes that it requires a timeline for bringing existing web content into compliance with standards and that it needs to expressly include accessibility for sites optimized for mobile devices and for apps. Applicants’ proposal regarding accessible formats only proposes further consultation with CforAT “regarding existing service communications sent to California residential customers to assess whether and how to include Large Print and these other billing formats described herein [only Braille and Large Print, not electronic format or audio], to enhance important service information communications.”<sup>11</sup> Consultation is not a commitment, and this offer, made literally at the last possible opportunity before the record of this proceeding was submitted, is not sufficient.

Applicants are mistaken when they argue that nothing further is needed and that CforAT’s requests are not transaction-specific.<sup>12</sup> In fact, Charter’s existing efforts to communicate with its customers with disabilities, and even the modest concessions offered in the Reply Brief, fall short of legal requirements for effective communication. The Commission is fully justified in requiring Applicants to meet existing standards for effective communication as a condition of approving the merger, particularly given Applicants’ representations that New

---

<sup>8</sup> Applicants’ Reply Brief at pp. 127-128.

<sup>9</sup> CforAT Opening Brief at p. 13.

<sup>10</sup> Charter Reply Brief at p. 129.

<sup>11</sup> Charter Reply Brief at p. 129.

<sup>12</sup> Charter Reply Brief at p. 130.

Charter intends to comply with all applicable laws and serve as a model corporate citizen.<sup>13</sup> The Proposed Decision errs in failing to address this issue, and CforAT's mitigation measures should be adopted. Specific recommendations for mitigation measures addressing the communications needs of customers with disabilities are set forth in Appendix A to these comments.

**B. The PD Errs by Failing to Ensure That Any Low-Income Broadband Program Is Effective and Inclusive of People with Disabilities**

While multiple parties including CforAT invested substantial effort to address the need for a low-income broadband program as part of the record in this proceeding, the PD errs in failing to discuss this issue in detail. Instead of addressing the topic in a comprehensive manner, the PD relies on agreements between Applicants and two parties, the National Diversity Coalition and CETF, which each address some aspects of such a program.<sup>14</sup> These MOUs do not adequately address the concerns raised by the proposed transaction regarding the availability of affordable and useful broadband service for vulnerable households within the service territory of a merged provider. The program adopted by the MOUs is available only to a limited subset of low-income households, and the program design means that even in those qualifying households, it has limited utility. CforAT's concerns about the program, which were addressed at length in our testimony and briefing (and which include its failure to include people with disabilities despite their high rate of poverty and low rate of connectivity), are not addressed at all in the PD.

---

<sup>13</sup> See CforAT Reply Brief at p. 8. CforAT further notes that the Commission included comparable provisions to those requested here as potential mitigation measures in the proposed merger between Comcast and Time Warner Cable. See Proposed Decision Granting with Conditions Application to Transfer Control (Comcast PD), issued on February 13, 2015 in A. 14-04-013 *et al.*, at Appendix A, Conditions 5 and 6. While the Commission never took a final vote on the Proposed Decision that would incorporate these mitigation measures, the alternative was not to allow the merger to proceed without ensuring effective communication with customers with disabilities; rather, the alternative was to deny the merger as failing to serve the public interest. Eventually, the Applicants in that proceeding withdrew their merger application and no vote was taken on either the PD that would provide mitigation measures or the Alternate that would deny the merger. See D.15-07-037, allowing Applicants to withdraw the Application to Transfer Control.

<sup>14</sup> PD at p. 11 (discussing NDC MOU) and pp. 12-14 (discussing CETF MOU). Except for the requirement to comply with the terms of the MOUs, the conditions set forth in the PD's Ordering Paragraphs do not mention or reference the low-income broadband proposal.

## 1. Eligibility Standards Are Not Adequate

The proposed low-income broadband program would only be offered to households that include either a child enrolled in the National School Lunch Program or a senior citizen 65 years or older who receives Supplemental Security Income (SSI). In their proposal and briefing, Applicants justified these limitations by asserting that these standards focus on communities that are on the wrong side of the digital divide; CforAT highlighted the fact that our constituency is also “more removed from online life than the general population, and would benefit in exactly the same way from a low-income broadband program.”<sup>15</sup> CforAT encouraged adoption of a low-income broadband program with eligibility standards consistent with LifeLine, California’s low-income telephone support program.<sup>16</sup> To the extent that the Commission declines to adopt such a broad standard for eligibility, however, we offered a fallback eligibility standard for increasing access to the program for people with disabilities by including households in which a resident receives payment from Social Security Disability Insurance (SSDI).<sup>17</sup> While SSDI is only provided to a subset of households that include a person with a disability, it is an easily verifiable standard that would expand the proposed low-income program to a community that would likely be highly receptive, and that currently has among the lowest level of access to broadband of any customer segment.

Without expanded eligibility standards such as those proposed by CforAT, the proposed program would only reach a relatively small subset of low-income households within New Charter’s service territory. Even among those that would otherwise qualify, some will be excluded because they are already customers of one of the Applicants or they have outstanding debt. Such exclusionary factors make it extremely difficult for low-income households to

---

<sup>15</sup> CforAT Reply Brief at p. 11.

<sup>16</sup> Belser Testimony at p. 6. CforAT notes that the PD that would have authorized a merger between Comcast and TWC included a condition to make the low-income broadband proposal under discussion in that proceeding, Internet Essentials, available to all households with incomes at or below 150% of the federal poverty level, which is the same eligibility standard as Lifeline. See Comcast PD at Appendix A, Condition 12.

<sup>17</sup> Belser Testimony at pp. 5-6; CforAT Opening Brief at pp. 17-20.



actually obtain service. CforAT's testimony described how low-income households that are otherwise eligible and that have made other sacrifices to obtain broadband service do not want to give up their existing service for an extended interval in order to enroll in a low-income service. CforAT further noted that the New York Public Service Commission's Order that would approve the proposed merger, issued on January 8, 2016, would eliminate these eligibility limitations.<sup>18</sup>

The PD does not discuss any of CforAT's proposals for expanding eligibility for Applicants' proposed low-income broadband program. No reason is given for declining to adopt eligibility standards consistent with Lifeline, or to include households containing a person who receives SSDI. No discussion is provided about the impact of excluding households who have received service within the past 60 days or who have an existing arrearage. In conjunction with the additional concerns regarding equipment and roll-out, discussed below, CforAT submits that these limitations are such that the overall program fails to constitute a substantial public interest benefit. Specific recommendations to expand eligibility are included in Appendix A. CforAT's recommendations include a requirement to offer stand-alone broadband to households that are not eligible for the low-income broadband program, consistent with the requirements issued by the New York PSC.

## **2. Equipment Issues Are Not Addressed**

The low-income broadband program proposed in the MOUs does not appear to include any form of router as part of the service provided. For this reason, a participating household would be limited to internet access on a single computer that would need to be connected directly to the modem. Any access for additional devices or for wireless devices, including devices often used by school children who are supposed to be the beneficiaries of the program, would require the household to purchase a router or obtain household wi-fi, an expense that would be difficult for low-income households to cover.<sup>19</sup> In order to ensure that those households that are eligible for low-income broadband receive a service that is effective and useful, it must provide

---

<sup>18</sup> Belser Testimony at p. 6.

<sup>19</sup> See Belser Testimony at pp. 6-7.

connectivity for multiple computers and wireless devices in a household.<sup>20</sup> Specific recommendations to provide appropriate equipment are included in Appendix A.

**3. Enforcement for the Commitments in the MOUs is Not Adequate, Including Commitments for Enrollment Goals and Timing**

As noted above, the PD incorporates the MOUs as the only mechanism for providing any form of low-income broadband program in conjunction with the proposed transaction. Presumably, the MOUs are intended to address the concerns of many parties about the availability of such a service, despite the fact that they were negotiated privately without input from all interested stakeholders.<sup>21</sup> Even so, the Ordering Paragraph of the PD that purports to ensure the enforceability of the Applicants' commitments memorialized in the MOUs provides only that the parties to the MOUs or the Commission staff may pursue an order requiring compliance.<sup>22</sup> Parties such as CforAT, who have a strong interest in an effective low-income broadband program and whose interests were not addressed in the MOU, would also be excluded from enforcing even those requirements that are included in these private agreements.

To the extent that the MOUs form the basis for a low-income broadband program, enforcement of the MOUs must be available to all interested parties. In Appendix A, CforAT has proposed language modifying the relevant Ordering Paragraph to address this concern.

The MOUs also include "aspirational" enrollment goals for the proposed low-income broadband program; even if these aspirational goals are met, they do not go far enough to close the digital divide in New Charter's service territory. Given that households in this territory, including the greater Los Angeles metropolitan area, would have limited or no other options for high speed broadband, the targets are insufficient to provide a public interest benefit. CforAT

---

<sup>20</sup> Once again, the PD in the Comcast merger application would have required appropriate equipment as part of the low-income broadband program. *See* Comcast PD at Appendix A, Condition 13(c).

<sup>21</sup> In addition to our substantive concerns about the MOUs, CforAT is also concerned that the agreements, which are functioning as settlements, were not presented in accordance with Rule 12 of the Commission's Rules of Practice and Procedure. Rule 12 provides an opportunity for all parties to provide input on a proposed settlement, separate from the limited opportunity to comment on a proposed decision that would incorporate such an agreement.

<sup>22</sup> PD at p. 68, Ordering Paragraph 2.c.

previously noted that the New York PSC set enrollment goals, including both an extended goal over four years and annual goals for each year, to bring households into the low-income program; it also set reporting requirements to review Applicants success in meeting these goals.<sup>23</sup> The PD should be modified to include annual and overall goals consistent with those set in New York (adjusted based on population served). Specific recommendations are set out in Appendix A.

**C. The PD Fails to Adequately Address Public Safety Concerns**

CforAT appreciates the discussion and mitigation measures set out in the PD concerning battery back-up power for VoIP phone systems and other safety issues, including the recognition of our contributions on this issue through testimony.<sup>24</sup> Unfortunately, the PD fails to note all of the mitigation measures proposed by CforAT to adequately protect public safety and the safety of customers with disabilities. In particular, the PD fails to note CforAT's recommendations that would ensure that backup batteries are available to all customers, including low-income and vulnerable customers who might struggle to pay extra for a battery unit, as well as recommendations to ensure that customers understand the need for battery backup power (including appropriate maintenance) and to ensure that battery backup power units include effective maintenance indicators and are placed so that they can be maintained.<sup>25</sup> The PD then states in its discussion (which consists of only two sentences) that it adopts "certain of the recommendations of protesters for enhancement to our existing requirements," without any specification of which recommendations are to be adopted.<sup>26</sup>

In the PD's Ordering Paragraphs, the only mitigation measures set out to address battery backup and other safety issues are a requirement for New Charter to comply with the previous Commission decision on backup power, D.10-01-026, and a requirement for New Charter to provide new and existing VoIP customers with a separate document on the need for backup

---

<sup>23</sup> CforAT Opening Brief at p. 20.

<sup>24</sup> PD at pp. 63-64.

<sup>25</sup> See CforAT Opening Brief at pp. 9-11.

<sup>26</sup> PD at p. 64.

power at the time of sale, with this information available in alternative formats.<sup>27</sup> These measures fall short even of the Applicants' own proposals, as set out in their Reply Brief.<sup>28</sup>

CforAT appreciates the requirement to improve the presentation and timing of disclosures, as well as the restated commitment to the education requirements of the Commission's prior decision. At the same time, as discussed in greater detail below regarding enforcement, it is unclear how a restated requirement for compliance with a prior Commission decision will be sufficient given Applicants' failure to meet these obligations to date. Similarly, it is unclear how the disclosure requirement will be enforced. Additionally, the PD errs in failing to address CforAT's other recommendations regarding backup power including routine installment of backup power units, prominent information on the price of battery backup power, financial support for backup power for low-income households, and adequate information on the importance of backup power, particularly for vulnerable customers.<sup>29</sup> Of particular importance, CforAT recommended that the Commission should require backup power units to be provided at a discount to low-income and vulnerable customers, with installment payments available.<sup>30</sup> Specific recommendations for mitigation regarding backup power are provided in Appendix A.

---

<sup>27</sup> PD at p. 69, Ordering Paragraphs 2.1 and 2.m.

<sup>28</sup> In its Reply Brief, Applicants commit to complying with D.10-01-026 (with no timeline or reporting requirements), and several additional measures, including a commitment to provide backup batteries at cost for any new installation in the home of a customer with "sight or physical disabilities). Applicants do not disclose how they will identify such customers, how they will promote this proposal, or the actual cost of the batteries, and they only commit to this proposal for three years. Applicants also reference including visible indicator lights showing when maintenance is required (but no audible indicator), and inquiries to customers on whether they need assistance with installation, without indicating whether they will provide assistance if the customer requires, and what charge (if any) will be included. Reply Brief at pp. 123-125.

<sup>29</sup> See CforAT Opening Brief at pp. 3-11.

<sup>30</sup> At the time D.10-01-026 was adopted, all carriers routinely provided battery backup to customers, so the decision did not discuss whether such equipment was required. Since then, the FCC has determined that carriers must offer backup power, but customers could be charged for backup power units and could decline to install them. CforAT believes that additional mitigation measures can be required as a condition of the proposed merger, but also that it would be appropriate for the Commission to open a broader proceeding to address backup power needs in California more broadly.

#### IV. ADDITIONAL ISSUES

##### A. CforAT Supports Various Provisions of the PD, and Recommends Modest Adjustment of Others to Ensure they Serve the Intended Purpose

###### 1. Analysis

CforAT supports the legal framework provided for analysis of the Application, which includes the impact on broadband as a matter of substantial public interest. While CforAT continues to hold the position (as characterized in the PD) that Section 706 of the Telecommunications Act provides additional jurisdiction to the Commission to address the implications of the proposed merger “for broadband deployment and affordability in California, notwithstanding the prohibitions of Pub. Util. Code §710,” which the PD declines to address,<sup>31</sup> we agree that Applicants cannot rely on broadband commitments to support their argument that the proposed merger would benefit the public, while simultaneously seeking to exclude those commitments from further scrutiny.<sup>32</sup>

###### 2. Lifeline

CforAT supports the provisions of the PD that would require New Charter’s certificated carriers to offer Lifeline service to all eligible households within its service territory, in accordance with the Commission’s program rules.<sup>33</sup> However, this requirement needs clarification to ensure that low-income customers within the service territory of New Charter receive the intended benefit. First, the Ordering Paragraph as written requires New Charter to offer Lifeline service “within six months of the closing of the Transaction.” This provision must be modified to ensure that the existing Lifeline customers of Time Warner Cable do not lose their service during the transition period. Recommended language is provided in Appendix A. Additionally, the Lifeline requirement does not appear to have a sunset period. CforAT supports

---

<sup>31</sup> PD at pp. 20-21.

<sup>32</sup> See PD at p. 24.

<sup>33</sup> PD at p. 69, Ordering Paragraph 2.j.

a requirement for ongoing provision of Lifeline service, and recommends that this obligation be made explicit, and that customers be notified of their option to obtain Lifeline service.

### **3. Service Quality**

CforAT supports the provisions of the PD that recognize that current level of service quality provided by the Applicant companies is low,<sup>34</sup> and agrees that “if New Charter merely maintains the current service levels of its constituent companies. . . it is difficult to conclude that such a result is in the public interest when current levels are unsatisfactory.”<sup>35</sup> Thus CforAT supports the requirement that New Charter must comply with the Commission’s service quality standards.<sup>36</sup> At the same time, CforAT notes that the Commission is currently considering revisions to the General Order setting out such service quality standards, GO 133-C.<sup>37</sup> As such, the Ordering Paragraph should be modified to require New Charter to meet any service quality standards that may be established in a successor to GO 133-C. Recommended language to achieve this is provided in Appendix A.

Additionally, as previously noted by CforAT, other states such as New York have required specific investments in customer service improvements as conditions for approval of the proposed merger.<sup>38</sup> In order to ensure that New Charter is positioned to comply with all applicable service quality standards, California should similarly require investment if standards are not met.

#### **B. The Commission Must Consider How to Best Ensure that It Can Enforce Any Mitigation Measures It Adopts**

As the Commission is well aware, adoption of mitigation measures as a mechanism to bring a proposed merger into the public interest is a risky strategy. This is primarily because of

---

<sup>34</sup> Belser Testimony at p. 14, CforAT Opening Brief at p. 21.

<sup>35</sup> PD at p. 36.

<sup>36</sup> PD at p. 69, Ordering Paragraph 2.k.

<sup>37</sup> The proceeding in which such revisions are under consideration is R.11-12-001.

<sup>38</sup> Belser Testimony at p. 14, CforAT Opening Brief at p. 21, CforAT Reply Brief at pp. 13-15.

the difficulty in enforcing mitigation measures, and the inability to undo a merger if expectations that actions will be taken to benefit the public do not come to pass.<sup>39</sup>

The risk that a merged entity may not comply with the PD's conditions is not simply hypothetical. For example, consider Ordering Paragraph 2.1, which addresses some of the concerns raised by CforAT regarding public safety as it is impacted by the ability of Charter's voice customers to retain connectivity to the public network during a power outage. This provision, which was discussed above for its importance for public safety, requires New Charter to "comply with the guidelines for customer education programs regarding backup power systems adopted by this Commission in Decision (D.) 10-01-026." The decision referenced in this provision, D.10-01-026, was issued over six years ago in R.07-04-015, which adopted guidelines for customer education programs regarding backup power systems, pursuant to a statute passed by the California legislature. This decision is already binding on Applicants' operations in California. Nevertheless, information provided in the record by CforAT demonstrates that Charter is not currently meeting its obligations under this decision.<sup>40</sup> While the PD now proposes to make compliance with this past decision a condition of allowing the merger to go forward, there is no new or additional mechanism created to better ensure compliance with its requirements in the future than there has been to date. If Charter is not in compliance now, nothing in the PD appears sufficient to bring the merged entity into compliance in the future.<sup>41</sup>

This is of particular concern because there are no general reporting or enforcement provisions in the PD. Except as specified in particular provisions, such as the discussion of the MOUs, no mechanism is set forth in the PD to evaluate New Charter's compliance with the mitigation measures or to require additional action if the merged entity fails to comply. The PD

---

<sup>39</sup> See, e.g. the discussion of the difficulty in mitigating potential harms of a merger through application of conditions as set out in the Alternate Proposed Decision issued in the Comcast/TWC Merger Application on April 10, 2015 in D.14-04-013 *et al.*, at pp. 76-78.

<sup>40</sup> See CforAT Opening Brief at pp. 6-7; CforAT Reply Brief at p. 4.

<sup>41</sup> CforAT should note that it is possible for the merged entity to take steps to come into compliance with Ordering Paragraph 2.1, and Charter commits to do so in its Reply Brief at p. 124. The point here is not that compliance is out of the question. Rather, it is to demonstrate that, if New Charter fails to come into compliance, the Commission's options for forcing it to do so are limited.

does not discuss what actions could follow if, for example, New Charter fails to comply with the provisions of D.10-01-026, or if it fails to offer Lifeline service in accordance with Ordering Paragraph 2.j, or if it fails to make customers aware of the option of acquiring their own modems and cable set-top boxes without any associated increase in the price of services, in accordance with Ordering Paragraph 2.g. Even the obligation for Applicants to certify compliance with D.13-05-035, an obligation which they should have met prior to the issuance of the proposed decision, has limited effectiveness, since the Commission will not be able to take any action if the certification demonstrates any of the problems that were intended to be addressed by the prior decision.

To the extent that the Commission asserts that it could enforce the mitigation measures set out in the PD, even without an express provision allowing it to do so, it remains true that enforcement proceedings can be long and complex, and there is no doubt that New Charter would be both adequately resourced such that it could draw out any enforcement proceedings and sophisticated about regulatory proceedings. Moreover, Commission enforcement actions typically are only initiated after a preliminary determination of harm; they do not prevent harm from occurring.

Even with such limitations, the Commission must make some effort to ensure that it has the capability to review compliance with mitigation requirements, including reporting requirements, secure jurisdiction over New Charter to enforce the provisions of the PD, and dedicated resources to follow up. CforAT's Recommendations for enforcement provisions are set out in Appendix A.

## **V. CONCLUSION**

For the reasons set forth above as well as in our Opening Brief, CforAT respectfully requests that the Commission find generally that the Applicants have not met their burden to justify approval of the Application, and specifically that the Applicants have not demonstrated that the proposed merger would serve the interests of vulnerable consumers such as people with disabilities. The merger should not be approved.



If, notwithstanding the inadequate showing of the Applicants, the Commission determines that the proposed merger should be allowed to proceed, the Commission should require mitigation to minimize or alleviate the potential harms from the merger for affected populations, including people with disabilities, consistent with CforAT's recommendations.

Respectfully submitted,

/s/ Melissa W. Kasnitz

---

MELISSA W. KASNITZ  
Attorney for Center for Accessible Technology  
3075 Adeline Street, Suite 220  
Berkeley, CA 94703  
Phone: 510-841-3224  
Fax: 510-841-7936  
Email: [service@cforat.org](mailto:service@cforat.org)

May 2, 2016

# **APPENDIX A**

## REVISED ORDERING PARAGRAPHS

Ordering Paragraph 2.c (MOUs): Commission staff or any party to ~~the MOUs with the National Diversity Council or CETF or the agreements with the County of Monterey or the City of Gonzales may this proceeding may~~, at any time during the duration of the MOUs or the agreements, as the case may be, apply to this Commission for an order directing New Charter to perform one or more promises contained in the MOUs or the agreements. Additionally, Commission staff may monitor the performance of community beneficiaries who receive funds pursuant to the MOUs or the agreements. New Charter consents to the jurisdiction of this Commission to enter an order enforcing the MOUs or the agreements.

New Ordering Paragraph 2.X (Low-Income Broadband): New Charter will offer its low-income broadband service to all households within its service territory with a household income at or below 150% of the Federal Poverty Level (consistent with eligibility for Lifeline). No otherwise eligible household will be denied enrollment in the low-income broadband program based on current customer status or current arrearages.

OR

In addition to the commitments made in the MOUs with CETF and the National Diversity Council, New Charter will offer its low-income broadband service to all households in its California service territory with a member who receives SSDI benefits. No otherwise eligible household will be denied enrollment in the low-income broadband program based on current customer status or current arrearages.

New Ordering Paragraph 2.X (Low-Income Broadband): In addition to the commitments made in the MOUs with CETF and the National Diversity Council, New Charter will provide equipment that provides connectivity for multiple computers and wireless devices in a household at no additional cost to the customer. This can be provided via a router (either internal to the modem provide or separately) or wi-fi access.

New Ordering Paragraph 2.X (Low-Income Broadband): New Charter shall enroll California customers in the low-income broadband program consistent with the standards set in New York, which required 120,000 annual connections over five years (40,000 per year), as adjusted for eligible populations. New Charter will provide annual reports on its success in enrolling households in the low-income broadband program. If New Charter fails to meet its annual enrollment goals, it will work with Commission staff to improve its enrollment efforts.

Ordering Paragraph 2.j (Lifeline): Within six months of the closing of the Transaction, New Charter's certificated carriers shall offer Lifeline phone service discounts to all eligible households (in accordance with CPUC Lifeline rules) within its service territory. All customers who currently receive Lifeline service from any Applicant will retain eligibility to continue to receive such service during the transition period. Six months after the closing of the Transaction, New Charter shall provide written notice to all of its customers about the availability of its Lifeline service.

Ordering Paragraph 2.k (Service Quality): Within one year of the closing of the Transaction, New Charter shall meet all service quality standards for voice communication established in General Order 133-C or any successor to General Order 133-C that may be adopted by the Commission.

New Ordering Paragraph 2.X (Service Quality): If New Charter fails to meet service quality standards, it shall invest in service quality improvements at a rate comparable to those adopted by the New York PSC in its Order approving the merger with conditions.

New Ordering Paragraph 2.X (Stand-Alone Broadband): Even for households that are not eligible for low-income broadband, New Charter shall offer affordable stand-alone broadband service. Consistent with the Order issued by the New York PSC, New Charter shall continue Time Warner's Everyday Low Price offering and shall offer a new 60 Mbps standalone broadband product throughout its territory at uniform national pricing.

New Ordering Paragraph 2.X (Effective Communication): Charter shall ensure that all customer communications are accessible to customer with disabilities. Charter shall, at minimum, provide communications in the following alternative formats, if requested: large print, Braille, electronic and audio. Charter shall inquire whether customers can use standard print materials and ensure that they are aware of the availability of alternative formats when they initiate service. Any customer who requests to receive bills in an alternative format shall automatically receive all direct communication in the same format. Standard print materials and materials provided for broad distribution, such as advertising, shall include key information in large print, including information about the availability of alternative formats and information on how such material can be requested. Alternative format versions of all printed material shall be provided promptly upon request by any customer. Key documents, including contracts and “welcome kits” shall be readily available in alternative formats without delay for new customers. All information about the low-income broadband program offered by New Charter shall be available in alternative formats, including but not limited to outreach and enrollment materials.

New Ordering Paragraph 2.X (Effective Communication): New Charter shall review the design and presentation of the information available on its web site, including any separate website optimized for mobile use, and on any mobile apps, and certify to the Director of the Commission’s Communication Division compliance with WCAG 2.0 AA standards for all content and functionality, including third-party content and functionality, within 12 months after the closing date of the Transaction.

New Ordering Paragraph 2.X (Battery Backup Power): New Charter will install battery backup units at no cost in any household with an income at or below 150% of the Federal Poverty Level.

OR

New Charter will offer battery backup units at cost to any household with an income at or below 150% of the Federal Poverty Level. Eligible households will be allowed to

purchase battery backup units using installment payments, with no fewer than three installments offered.

New Ordering Paragraph 2.X (Battery Backup Power): Battery backup units must be positioned in locations where a battery indicator is visible. Additionally, and particularly if a household includes someone who is blind/low vision or if visible placement of a voice modem is not possible, low-battery indicators should include audible alerts. New Charter shall provide assistance to any customer who is unable to change the battery without help, particularly including people with disabilities and seniors. A question regarding whether such help is required should be part of any installation process.

New Ordering Paragraph X (Enforcement): For a period of five years following the closing of the Transaction, New Charter shall file an annual report with the Commission no later than March 31st of the following calendar year detailing its compliance with the conditions imposed by this decision. If New Charter does not promptly and fully comply with these conditions then parties, the public, or the Commission may take enforcement action against New Charter based on the Commission's rules, orders, and decision, and the California Public Utilities Code, and New Charter shall not contest the Commission's jurisdiction to do so.