

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, 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) Pursuant to California Public Utilities Code Section 854 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).

Application 15-07-009  
(Filed July 2, 2015)

**REPLY BRIEF OF CHARTER COMMUNICATIONS, INC., CHARTER FIBERLINK CA-CCO, 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)**

**PUBLIC VERSION**

**PUBLIC - PURSUANT TO GENERAL ORDER 66-C**

Suzanne Toller  
Alan Galloway  
Davis Wright Tremaine, LLP  
Phone: (415) 276-6536  
505 Montgomery Street, Suite 800  
San Francisco, California 94111  
Email: [suzannetoller@dwt.com](mailto:suzannetoller@dwt.com)  
Email: [alangalloway@dwt.com](mailto:alangalloway@dwt.com)

Attorneys for Advance/Newhouse Partnership,  
Bright House Networks, LLC, and Bright House  
Networks Information Services (California),  
LLC

James W. McTarnaghan  
Anne B. Beaumont  
Perkins Coie LLP  
Phone: (415) 344-7007  
505 Howard Street, Suite 1000  
San Francisco, CA 94105-3204  
Email: [jmctarnaghan@perkinscoie.com](mailto:jmctarnaghan@perkinscoie.com)  
Email: [abeaumont@perkinscoie.com](mailto:abeaumont@perkinscoie.com)

Attorneys for Time Warner Cable Inc. and  
Time Warner Cable Information Services  
(California), LLC

John L. Clark  
Michael B. Day  
Goodin, MacBride, Squeri, & Day, LLP  
505 Sansome Street, Suite 900  
San Francisco, California 94111  
Email: [jclark@goodinmacbride.com](mailto:jclark@goodinmacbride.com)

Attorneys for Charter Communications, Inc.  
and Charter Fiberlink CA-CCO, LLC

March 11, 2016

**PUBLIC - PURSUANT TO GENERAL ORDER 66-C**

## **TABLE OF CONTENTS AND SUBJECT INDEX**

TABLE OF AUTHORITIES .....	V
SUMMARY OF RECOMMENDATIONS .....	XII
INTRODUCTION AND EXECUTIVE SUMMARY .....	2
JURISDICTION .....	8
A.    The Commission’s Review Should Not Focus on Broadband Services, or Other Services Provided by Unregulated Affiliates.....	9
1.    The CPUC’s Statutory Authority Is Limited to “Public Utilit[ies],” and Joint Applicants’ Broadband and Cable Affiliates, and Charter’s and Bright House Networks’ VoIP affiliates, Are Not “Public Utilities.” .....	9
2.    Public Utilities Code § 710 Excludes the Joint Applicants’ Unregulated Broadband and Retail VoIP Services from the CPUC’s Jurisdiction.....	11
3.    The FCC Has Largely Preempted State Broadband Regulation of the Sort Several Parties Seek Here.....	11
4.    Section 706 of the Telecommunications Act of 1996 Does Not Authorize Commission Regulation of Broadband Services Absent State-Law Authority to Do So. ....	13
5.    ORA’s and WGAW’s Remaining Jurisdictional Arguments Are Insubstantial. ....	15
B.    At a Minimum, Jurisdictional Limitations Should Inform the Commission’s Consideration of the <i>Scoping Ruling</i> Factors. ....	18
ARGUMENT .....	22
I.    THE TRANSACTION SATISFIES EACH OF THE § 854(C) FACTORS.....	22
A.    ORA’s Critisms of New Charter’s Financial Health Are Unwarranted. ....	22
B.    ORA Fails to Dispel the Transaction’s Positive Effects on Service Quality.....	26
1.    Benefits to Enterprise and SMB Services Are Uncontested.....	26
2.    ORA Neither Demonstrates Harm Nor Disproves Benefits to TWCIS’s Retail Voice Services.....	27
a.    Charter’s Track Record Demonstrates New Charter’s Incentives to Invest in Innovation.....	28
b.    Charter’s Customer Satisfaction Data Are a More Accurate Barometer Than the Data on Which ORA Relies, and Demonstrate that the Transaction Will Maintain or Improve Service Quality.....	29

c.	ORA Relies on the Wrong Data to Imply Methodologically Unsound Conclusions about Charter's Responsiveness to Service Degradations and Outages. ....	31
d.	ORA's Remaining Voice Service Quality Arguments Are Based on Inapplicable Metrics And Do Not Suggest Any Risk of Service Degradation. ....	34
3.	ORA's Misunderstanding of Charter's Customer Care Process Causes ORA to Criticize that Process Based on the Wrong Data. ....	36
a.	ORA Mischaracterizes Charter's Customer Care Operations and Complaint Handling Policies and Procedures. ....	38
b.	ORA's Specific Claims About Deficiencies in Charter's Customer Service Lack Merit. ....	40
4.	ORA Fails to Show Any Risk of Degraded Service Quality, or Disprove Demonstrated Benefits, to Unregulated VoIP and Broadband Services. ....	42
C.	No Party Disputes that New Charter Will Be Well-Managed. ....	45
D.	IBEW's Characterization of its NLRB Complaint Is Misleading, and Fails to Undercut the Demonstrated Benefits to the Joint Applicants' California Employees. ....	46
E.	No Party Disputes that the Transaction is Fair to Shareholders. ....	49
F.	The Transaction Will Benefit California Communities. ....	49
G.	No Party Disputes that the Transaction Preserves the Commission's Jurisdiction Over Public Utility Operations. ....	49
II.	THE TRANSACTION WILL PROMOTE BROADBAND DEPLOYMENT AND AFFORDABILITY. ....	52
A.	New Charter's Commitments Guarantee That The Transaction Will Drive Expanded Broadband Deployment Throughout California. ....	52
B.	New Charter's Service Offerings Will Promote, Not Diminish, Broadband Affordability. ....	55
C.	The Transaction Will Not Harm Broadband Competition. ....	59
1.	ORA and WGAW Offer No Plausible Mechanism by Which Modestly Increased Regional Concentration Among Non-Competing Service Providers Harms Consumers or Competition. ....	59
2.	New Charter Will Have No Increased Ability to Charge Higher Broadband Prices than the Joint Applicants Do Today. ....	62



3.	Even if WGAW's "Benchmark" Competition Theory Were Meaningful, New Charter Would Be an Improved Benchmark for Competitors Throughout California.....	63
4.	The Joint Applicants Do Not Compete in Online Video Delivery, and the Transaction Will Accordingly Not Remove Competitors from that Market. ....	64
5.	The Transaction Will Not Affect the Prospects of Overbuilding Anywhere in California.....	64
III.	THE TRANSACTION SERVES THE PUBLIC INTEREST.....	65
A.	Greenlining's Criticisms Misapprehend New Charter's Substantial Commitments to Promoting Diversity. ....	66
B.	WGAW's, DISH's, and ORA's Speculative Claims of Harms to OVD Services Are Not Supported in the Record. ....	71
1.	Objections Regarding New Charter's Future Relationships With OVDs Are Outside the Scope of this Proceeding. ....	71
2.	New Charter Will Facilitate Rather Than Frustrate Its Subscribers' Access to OVD Services.....	73
a.	Charter's History and New Charter's Incentives Show that the Transaction Will Benefit OVDs.....	73
b.	New Charter's Commitments Provide Further Assurance that the Transaction Will Not Harm OVDs. ....	76
c.	WGAW Misconstrues Statements of Charter Executives. ....	79
d.	New Charter Will Have No Incentive (Or Ability) to Collude with Comcast.....	80
3.	WGAW's Speculation that John Malone Will Use Separate Business Interests to Harm OVDs Is Unfounded. ....	82
a.	Dr. Malone Will Have No Ability to Harm OVDs.....	83
b.	Dr. Malone Will Have No Incentive to Harm OVDs. ....	85
4.	New Charter Will Not Use Programming Contracts to Harm OVDs. ....	86
C.	Arguments Alleging Harms Relating to MVPD Services and Video Programming Are Insubstantial. ....	88
1.	New Charter's Programming Cost Savings Will Advance Competition in the MVPD Market. ....	88
2.	WGAW's Claims of Harm to the Entertainment Industry Are Unsupported.....	89

IV.	APPROVAL WILL MAINTAIN THE JOINT APPLICANTS' PUBLIC SAFETY COMMITMENTS, AND CFORAT'S CALLS FOR CHANGES TO SOME EXISTING POLICIES HAVE NOTHING TO DO WITH THE TRANSACTION. ....	90
V.	NEW CHARTER WILL FURTHER COMMIT TO SOME, BUT NOT ALL, OF THE OTHER PARTIES' REQUESTS. ....	92
A.	Broadband-Related Conditions. ....	94
1.	Broadband Deployment. ....	94
2.	Broadband Terms and Conditions of Service. ....	97
3.	New Charter's Low-Income Broadband Service. ....	99
a.	Low-Income Broadband Service Eligibility Criteria and Other Requirements. ....	101
b.	Low-Income Broadband Service Adoption Goals. ....	104
c.	Funding Commitments. ....	107
d.	Similar Past Settlements And Commission Decisions. ....	109
e.	Strategic Plans and Oversight Committee. ....	112
f.	New Charter's Low Income Broadband Commitment. ....	113
4.	Open Internet Conditions. ....	114
B.	Unbundling of Customer Premise Equipment. ....	115
C.	Conditions Related to Service Quality. ....	116
D.	Conditions Related to LifeLine. ....	121
E.	Conditions Related to VoIP Battery Backup Power. ....	123
F.	Conditions Related to Arbitration Clauses and Class Action Waivers. ....	125
G.	Accessibility of Communications to Persons with Disabilities. ....	127
H.	Enforcement. ....	131
	CONCLUSION. ....	131

## **TABLE OF AUTHORITIES**

### **CASES**

<i>American Express Co. v. Italian Colors Restaurant</i> , 133 S. Ct. 2304 (2013) .....	127
<i>AT&amp;T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011) .....	126, 127
<i>Benson v. Benson (In re Marriage of Benson)</i> , 36 Cal. 4th 1096 (2005) .....	13
<i>Buckman Co. v. Plaintiffs' Legal Committee</i> , 531 U.S. 341 (2001) .....	13
<i>Canteen Corp. v. State Board of Equalization</i> , 174 Cal. App. 3d 952 (1985) .....	16
<i>Cruz v. Cingular Wireless, LLC</i> , 648 F.3d 1205 (11th Cir. 2011) .....	126
<i>Dean Witter Reynolds Inc. v. Byrd</i> , 470 U.S. 213 (1985) .....	127
<i>Doctor's Associates, Inc. v. Casarotto</i> , 517 U.S. 681 (1996) .....	127
<i>Guth v. Loft, Inc.</i> , 5 A.2d 503 (Del. 1939) .....	83
<i>Ivanhoe Partners v. Newmont Mining Corp.</i> , 535 A.2d 1334 (Del. 1987) .....	83
<i>Lombardi v. DirecTV, Inc.</i> , 549 F. App'x 617 (9th Cir. 2013) .....	126
<i>Lyles v. Sangadeo-Patel</i> , 225 Cal. App. 4th 759 (2014) .....	15
<i>North Hollywood Project Area Committee v. City of Los Angeles</i> , 61 Cal. App. 4th 719 (1998) .....	15
<i>Northern California Power Agency v. Public Utilities Commission</i> , 5 Cal. 3d 370 (1971) ....	21, 22
<i>Perry v. Thomas</i> , 482 U.S. 483 (1987) .....	127
<i>Schoon v. Smith</i> , 953 A.2d 196 (Del. 2008) .....	83
<i>Teachers' Retirement Board v. Genest</i> , 154 Cal. App. 4th 1012 (2007) .....	15-16
<i>Verizon v. FCC</i> , 740 F.3d 623 (D.C. Cir. 2014) .....	13, 14
<i>Wisconsin Department of Industry, Labor &amp; Human Relations v. Gould Inc.</i> , 475 U.S. 282 (1986) .....	48

### **STATUTES**

29 U.S.C. § 158(c) .....	48
--------------------------	----

Cal. Pub. Util. Code § 216(a).....	10
Cal. Pub. Util. Code § 709(d) .....	16
Cal. Pub. Util. Code § 709(e).....	16
Cal. Pub. Util. Code § 710(a).....	10, 11
Cal. Pub. Util. Code § 854(a).....	9
Cal. Pub. Util. Code § 854(b) .....	110, 112
Cal. Pub. Util. Code § 854(c).....	52
Cal. Pub. Util. Code § 882 .....	17
Cal. Pub. Util. Code § 883(a)(4) .....	17
Cal. Pub. Util. Code § 1001 .....	10
Cal. Pub. Util. Code § 1013(a).....	10
Cal. Pub. Util. Code § 2107 .....	10
Cal. Pub. Util. Code § 5840(m)(1).....	10
1987 Cal. Legis. Serv. 849.....	16
1993 Cal. Legis. Serv. 1274.....	16
1994 Cal. Legis. Serv. Ch. 1260 .....	16
1994 Cal. Legis. Serv. Ch. 1284 .....	16
2002 Cal. Legis. Serv. Ch. 308 .....	16
2002 Cal. Legis. Serv. Ch. 674 .....	16
2012 Cal. Legis. Serv. Ch. 733 .....	16
<b>ADMINISTRATIVE RULINGS</b>	
A.15-07-009, <i>Assigned Commissioner’s Scoping Ruling</i> (Nov. 13, 2015) .....	2, 20, 57, 72
<i>In re Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011)</i> .....	112

<i>Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control</i> , Memorandum Opinion and Order, 25 FCC Rcd 5972 (2010).....	78
<i>Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.</i> , Memorandum Opinion and Order, 24 FCC Rcd 8741 (2009).....	78
<i>CPN Pipeline Co. v. Pacific Gas &amp; Elec. Co.</i> , Case 00-09-021, Opinion, D.01-05-086 (May 24, 2001).....	92, 131
<i>In re General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corporation, Transferee, For Authority to Transfer Control</i> , Memorandum Opinion and Order, 19 FCC Rcd 473 (2004).....	84
General Order 96-B (Jan. 12, 2012).....	51
General Order 133-C (July 9, 2009)	118
General Order 153 (Dec. 1, 2011)	.50
<i>In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act</i> , 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 (2015).....	63
<i>Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a)</i> , A.14-04-013, Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Aug. 14, 2014)	14
<i>Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a)</i> , A.14-04-013 & A.14-06-012, Proposed Decision of ALJ Bemserderfer: Decision Granting with Conditions Application To Transfer Control (Feb. 13, 2015)	14, 111

<i>In re Joint Application of Frontier Communications Corp., Frontier Communications of America, Inc. (U-5429C), Verizon California, Inc. (U-1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications, A.15-03-005, Decision Granting Application Subject To Conditions and Approving Related Settlements, D.15-12-005 (Dec. 3, 2015).....</i>	58, 93, 106, 110, 119
<i>In re Joint Application of GTE Corp. ("GTE") and Bell Atlantic Corp. ("Bell Atlantic) to Transfer Control of GTE's California Utility Subsidiaries to Bell Atlantic, Which Will Occur Indirectly as a Result of GTE's Merger with Bell Atlantic, A.98-12-005, Opinion, D.00-03-021 (Mar. 2, 2000).....</i>	28, 72
<i>In re Joint Application of Pacific Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U 1001 C), Which Will Occur Indirectly as a Result of Telesis Merger With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc., A.96-04-038, Opinion, D.97-03-067 (Mar. 31, 1997).....</i>	71, 93, 94, 112
<i>In re Joint Application of SBC Communications, Inc. ("SBC") and AT&amp;T Corp. Inc. ("AT&amp;T") for Authorization to Transfer Control of AT&amp;T's Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a [sic] AT&amp;T's Merger with a Wholly Owned Subsidiary of SBC, Tau Merger Sub Corp., A.05-02-027, Opinion Approving Application To Transfer Control, D.05-11-028 (Nov. 18, 2005).....</i>	78, 112
<i>In re Joint Application of Verizon Communications, Inc. and MCI, Inc. to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI, A.05-04-020, Decision Authorizing Change In Control, D.05-11-029 (Nov. 18, 2005).....</i>	58, 78, 111
<i>Joint Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Case 15-M-0388, Order Granting Joint Petition Subject to Conditions (N.Y.P.S.C. Jan. 8, 2016) .....</i>	59
<i>In re Modernizing the FCC 477 Program, Report and Order, 28 FCC Rcd 9887 (2015).....</i>	63
<i>In re News Corp. and the DirecTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control, Memorandum Opinion and Order, 23 FCC Rcd at 3265 (2008).....</i>	84
<i>Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042, I.15-11-007, Ruling on Pending Motions and Issues Discussed at January 20, 2016 Prehearing Conference (Feb. 4, 2016).....</i>	12

<i>Order Instituting Rulemaking on the Commission's Own Motion To Evaluate Existing Practices and Policies for Processing Offset Rate Increases and Balancing Accounts in the Water Industry To Decide Whether New Processes Are Needed</i> , R.01-12-009, Order Instituting Rulemaking, 2001 Cal PUC LEXIS 1129, 213 P.U.R.4th 425 (Dec. 11, 2001) .....	92
<i>Petition to Adopt, Amend, or Repeal a Regulation Pursuant to California Public Utility Code § 1708.5, specifically to Review the Assessment of Surcharges for the Commission's Public Policy Programs with Respect to Prepaid Wireless Services</i> , P.09-12-018, Decision Denying Petition By Verizon Wireless To Review the Assessment of Surcharges for the Commission's Public Purpose Programs With Respect To Wireless Services, D.10-07-028 (July 29, 2010) .....	92, 131
<i>In re Protecting and Promoting the Open Internet</i> , Report and Order on Remand, 30 FCC Rcd 5601 (2015) .....	10, 19, 117
<i>Rodriguez v. Pacific Gas and Electric Co.</i> , Case 03-08-024, Opinion Dismissing Complaint for Failure to State a Cause of Action, D.04-03-010 (Mar. 16, 2004) .....	18
<b>OTHER AUTHORITIES</b>	
<i>Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership</i> , MB Docket No. 15-149, Joint Applicants Opposition to Petitions to Deny and Response to Comments (FCC Nov. 2, 2015), <a href="http://apps.fcc.gov/ecfs/document/view?id=60001332667">http://apps.fcc.gov/ecfs/document/view?id=60001332667</a> .....	77
<i>Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership</i> , MB Docket No. 15-149, Letter from John L. Flynn to Marlene H. Dortch, Secretary, FCC (Jan. 14, 2016), <a href="http://apps.fcc.gov/ecfs/comment/view?id=60001376031">http://apps.fcc.gov/ecfs/comment/view?id=60001376031</a> .....	77
<i>Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership</i> , MB Docket No. 15-149, Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015 (FCC Oct. 13, 2015), <a href="http://apps.fcc.gov/ecfs/comment/view?id=60001304157">http://apps.fcc.gov/ecfs/comment/view?id=60001304157</a> .....	77
<i>Chairman Wheeler &amp; Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband to Low-Income Americans</i> , Fact Sheet, Doc-338113A1 (Mar. 8, 2016), <a href="http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0308/DOC-338113A1.pdf">http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0308/DOC-338113A1.pdf</a> .....	62
<i>Charter CEO: Cable More than Distribution</i> , CNBC (Nov. 19, 2014), <a href="http://video.cnbc.com/gallery/?video=3000331653&amp;play=1">http://video.cnbc.com/gallery/?video=3000331653&amp;play=1</a> .....	79
David L. Cohen, <i>Internet Essentials: Year Four Progress Report</i> , Comcast Voices (Mar. 10, 2014), <a href="http://corporate.comcast.com/comcast-voices/internet-essentials-year-four-progress-report">http://corporate.comcast.com/comcast-voices/internet-essentials-year-four-progress-report</a> .....	105

Communications Division Report To Legislature, California Public Utilities Commission, <i>Annual Report of Telegraph and Telephone Corporation Employment, Investment, and Contracting in California, As Required by P.U. Code 7912</i> (Oct. 7, 2015) <a href="http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/Final2015PUCCode7912Report.pdf">http://www.cpuc.ca.gov/uploadedFiles/CPUC Public Website/Content/Utilities and Industries/Communications - Telecommunications_and_Broadband/Reports_ and Presentations/Final2015PUCCode7912Report.pdf</a> .....	107
First Amended Charge, NLRB Case 31-CA-150248 (May 12, 2015), <a href="https://www.nlr.gov/case/31-CA-150248">https://www.nlr.gov/case/31-CA-150248</a> .....	47
First Amended Charge, NLRB Case 31-CA-159815 (Sept. 15, 2015), <a href="https://www.nlr.gov/case/31-CA-159815">https://www.nlr.gov/case/31-CA-159815</a> .....	48
Fourth Amended Charge, NLRB Case 31-CA-150248 (Sept 29, 2015), <a href="https://www.nlr.gov/case/31-CA-150248">https://www.nlr.gov/case/31-CA-150248</a> .....	47
Initial Charge, NLRB Case 31-CA-150248 (April 14, 2015), <a href="https://www.nlr.gov/case/31-CA-150248">https://www.nlr.gov/case/31-CA-150248</a> .....	47
<i>Joint Application of Comcast Corp., Time Warner CABLE Inc., Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Information Services (California), LLC; and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC to Comcast Corp. Pursuant to California Public Utilities Code Section 854(a), A.14-04-013, Brief of the Office of Ratepayer Advocates</i> (Dec. 10, 2014) .....	37
Letter from Daniel S. Vandekoolwyk, Deputy Legislative Counsel Bureau to Honorable Ian C. Calderon (June 18, 2015) .....	13, 14
NLRB Docket, Case 31-CA-150248, <a href="https://www.nlr.gov/case/31-CA-150248">https://www.nlr.gov/case/31-CA-150248</a> .....	47
Michael Pierce et al., California Public Utilities Commission, <i>Annual DIVCA Report, For the Year Ending December 31, 2013</i> (Sept. 10, 2015), <a href="http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Service_Provider_Information/Video_Franchising/DIVCAReportSept_10_2015.pdf">http://www.cpuc.ca.gov/uploadedFiles/CPUC Public Website/Content/Utilities and Industries/Communications - Telecommunications and Broadband/Service Provider Information/Video Franchising/DIVCAReportSept_10_2015.pdf</a> .....	106
<i>QuickFacts, California</i> , U.S. Census Bureau, <a href="http://www.census.gov/quickfacts/table/PST045215/06">http://www.census.gov/quickfacts/table/PST045215/06</a> .....	107
Steven C. Salop, Robert Stillman, Jarrod R. Welch, & Serge Moresi, <i>Analysis of Video Programming Foreclosure Issues Involving TWC SportsNet and SportsNet LA</i> (Dec. 3, 2015), attached to <i>Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership</i> , MB Docket No. 15-149, Letter from Samuel L. Feder to Marlene H. Dortch, Secretary, FCC (Dec. 3, 2015), <a href="http://apps.fcc.gov/ecfs/comment/view?id=60001322182">http://apps.fcc.gov/ecfs/comment/view?id=60001322182</a> .....	87



Second Amended Charge, NLRB Case 31-CA-150248 (June 3, 2015), <a href="https://www.nlr.gov/case/31-CA-150248">https://www.nlr.gov/case/31-CA-150248</a> ....	47
Third Amended Charge, NLRB Case 31-CA-150248 (July 1 2015), <a href="https://www.nlr.gov/case/31-CA-150248">https://www.nlr.gov/case/31-CA-150248</a> .....	.47
Scott Thompson, <i>140-mph gusts cause damage, outages, delays in California</i> , CNN Online (Dec. 2, 2011), <a href="http://www.cnn.com/2011/12/01/us/california-winds/">http://www.cnn.com/2011/12/01/us/california-winds/</a> .....	.33
U.S. DOJ/FTC 2010 Horizontal Merger Guidelines (2010) 60, 61	

## SUMMARY OF RECOMMENDATIONS

For the reasons set forth in the Joint Applicants' Opening Brief and herein, the Joint Applicants respectfully recommend that the Commission reach the following conclusions and approve the Transaction:

*First*, the Commission should conclude that the Transaction satisfies each of the § 854(c) factors, which weigh in favor of the Transaction's approval.

*Second*, the Commission should conclude that the Transaction will have no adverse consequences that require mitigation measures beyond New Charter's existing commitments.

*Third*, the Commission should conclude that the Transaction will benefit broadband deployment and affordability. As described in Part II, *infra*, the Transaction will enable New Charter to deploy advanced broadband services throughout California, with no loss of competition, while enhancing affordability.

*Fourth*, for the reasons that the § 854(c) factors weigh in favor of approval, the Commission should conclude that the Transaction will serve the public interest. The Transaction will further deliver substantial additional public benefits through New Charter's initial commitments and its further, focused, California-specific voluntary commitments to address concerns expressed by the other parties, as set forth in Part V, *infra*, and the accompanying Appendix.

*Fifth*, the Commission should conclude that New Charter will maintain the Joint Applicants' commitment to public safety, as explained in Part IV, *infra*.

For these reasons, and as set forth in greater detail in the Joint Applicants' Opening Brief and herein, the Commission should approve the Transaction without delay.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, 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) Pursuant to California Public Utilities Code Section 854 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).

Application 15-07-009  
(Filed July 2, 2015)

**REPLY BRIEF OF CHARTER COMMUN**

**WORKS INFORMATION SERVIC**

Pursuant to § 854 of the California Public Utilities Code, Rule 13.11 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (the “Commission” or the “CPUC”), the *Assigned Commissioner’s Scoping Ruling* (the “*Scoping Ruling*”) dated November 13, 2015, and the February 11, 2016 ruling of Assigned Administrative Law Judge (“ALJ”) Bemederfer amending the schedule of this proceeding, Charter Communications, Inc. (“Charter”), on behalf of itself and its wholly owned subsidiary, Charter Fiberlink CA-CCO, LLC (“Charter Fiberlink”); Time Warner Cable Inc. (“Time Warner Cable”), on behalf of itself and its wholly owned subsidiary, Time Warner Cable Information Services (California), LLC (“TWCIS”); and Advance/Newhouse Partnership, on behalf of itself and its subsidiary Bright

House Networks, LLC (“Bright House Networks”) as well as Bright House Networks’ wholly owned subsidiary, Bright House Networks Information Services (California), LLC (“Bright House California”) (jointly, “Joint Applicants”), respectfully submit this Reply Brief in support of their Joint Application in the above-captioned proceeding (“Joint Application”).

## **INTRODUCTION AND EXECUTIVE SUMMARY**

The Joint Applicants have shown that their combination into “New Charter” will deliver substantial public interest benefits in California—satisfying both the § 854(c) criteria and the additional factors relating to broadband deployment and affordability, the public interest, and public safety set forth in the *Scoping Ruling*.<sup>1</sup> New Charter will be better-positioned to serve California customers, and New Charter has made extensive additional commitments, laid out in the Joint Applicants’ Opening Brief and this Reply Brief, to ensure that the Transaction will have a positive impact in the State and that the benefits will be widely shared among diverse constituencies.

These numerous benefits have been recognized by regulators across the country. As of the Joint Applicants’ filing of this Brief, regulatory agencies in every other state reviewing the Transaction have approved it, and the one outstanding approval is expected to issue shortly.<sup>2</sup> The Federal Communications Commission “FCC” likewise appears to be on track to conclude its review soon. The Transaction also has overwhelming support from a wide array of community organizations and individuals in California and across the nation, as previously described in the Joint Applicants’ Opening Brief. As the Commission was able to observe first-hand at the Janu-

<sup>1</sup> See A.15-07-009, *Assigned Commissioner’s Scoping Ruling* at 5 (Nov. 13, 2015) (“*Scoping Ruling*”). Each of the four issues identified in the *Scoping Ruling* is addressed more fully below.

<sup>2</sup> Review is pending by one of two Hawaii agencies, the other of which has already granted approval.

ary 26, 2016 public participation hearing in Los Angeles, nine out of every ten speakers offering public comments spoke in favor of the Transaction. Their voices speak clearly to the Transaction's myriad qualitative, economic, and community benefits for consumers and the State.

New Charter's commitments to lock in the benefits of the Transaction for consumers, which are set forth in Part I.H of the Joint Applicants' Opening Brief, are already substantial. However, in an effort to demonstrate that they are committed to working with California community groups and regulators, the Joint Applicants have reviewed the conditions requested by other parties in their Opening Briefs, and are prepared to agree that New Charter will make substantial and additional, California-specific commitments to accommodate concerns raised by those other parties. As set forth in greater detail in Part V below and the accompanying Appendix, New Charter will make the following new commitments:

- Deploy broadband passings to at least 70,000 homes and businesses in California communities not currently served by the Joint Applicants' broadband services within three years of the close of the Transaction, the vast majority in unserved or underserved communities where more than 25% of households speak a language other than English in the home.<sup>3</sup>
- Deploy broadband passings to an additional 80,000 additional California homes and businesses within four years following the close of the Transaction, at least half of them in communities where more than twenty-five percent of households speak a language other than English at home, for a total of 150,000 additional broadband passings in California.
- Deploy at least 25,000 out-of-home wireless hotspots within its California service area within four years of the close of the Transaction, at least half in communities where over 25% of households speak a language other than English at home.
- Provide free broadband to at least 75 anchor institutions, at least sixty percent of which are in communities where more than twenty-five percent of households speak a language other than English at home.

---

<sup>3</sup> In all instances in this brief in which Joint Applicants refer to the targeting of New Charter's broadband deployment commitments to areas in which significant portions of households speak a language other than English at home, identification of those communities is based on U.S. Census data for the period 2010-2014.

Collaborate with FirstNet to assist with emergency response capabilities, and to explore opportunities to coordinate deployment projects with statewide networks, such as CENIC, K-12 High-Speed Network, CalREN, and the California Telehealth Network.

Offer 100 Mbps broadband speeds to all approximately 7.5 million homes passed within New Charter's service area within three years of closing (with such speeds, in communities where New Charter is building the new broadband passings above, subject to completion of those efforts).

Offer 300 Mbps broadband speeds to all approximately 7.5 million California households where the Joint Applicants offer broadband today by the end of 2019.

- Allow existing Time Warner Cable and Bright House Networks customers to retain, without material changes that have the intent to discourage, the broadband services they subscribe to at the close of the Transaction for three years from the date of the closing.
- Offer discounted voice service commensurate with the LifeLine discount to all eligible households within legacy Charter and Bright House Networks service areas for at least five years (and either extend this offering into legacy Time Warner Cable service areas, or continue TWCIS's existing LifeLine service, for the same period).

Seek to enroll (and endeavor in good faith to achieve) at least 200,000 broadband customers in New Charter's low-income broadband service, over four years, providing discounted 30/4 Mbps broadband service to households with a child in the National School Lunch Program and to Seniors 65 and older receiving Supplemental Security Income, with initial pricing at \$14.99, including a modem.

Commit \$10 million over that same four-year period to work with community partners to promote broadband adoption.

Commit to service quality reporting consistent with applicable G.O. 133-CC metrics for its interconnected VoIP services for three years and certain additional outage reporting requirements for broadband and VoIP services over the same period.

Create and conduct a customer satisfaction survey in conjunction with ORA.

- Improve New Charter's customer education surrounding battery backup power systems and install such batteries at cost to disabled customers that may have difficulty installing them.

Improve the accessibility of its online content and customer communications to persons with disabilities.

- Provide Commission staff with authority to audit and verify New Charter's compliance with these conditions.

In an effort to address other parties' concerns and meet their fundamental objections, the Joint Applicants have taken the significant step of agreeing that New Charter will make these additional commitments. *See* Part V, *infra*. Based on this record, approval of the Transaction should be expeditiously granted.

Of the 19 parties who had originally intervened in this docket to oppose or express concerns about the Transaction, many have withdrawn their opposition or subsequently expressed support for approval as their concerns have been addressed, including the National Diversity Coalition, the County of Los Angeles, Monterey County, the City of Gonzales, the Town of Apple Valley, and Entravision. Of the numerous California communities served by new Charter, not a single one opposes the Transaction, and hundreds of community, civic, diversity and other organizations throughout California have outwardly expressed public support. Only seven remaining parties have filed briefs, two of which (IBEW and DISH) intervened only at the eleventh hour, and of the other five, the majority have suggested acquiescence to a conditional approval. It is the Joint Applicants' hope that New Charter's additional commitments summarized above and detailed in Part V (and the accompanying Appendix) will substantially satisfy the concerns that still remain.<sup>4</sup>

The Joint Applicants respectfully submit that the remaining seven parties that have filed opening briefs have not shown that the Commission should deny the Transaction or impose conditions above and beyond those agreed to by New Charter. These parties largely fail to properly engage the statutory inquiry before the Commission: *whether the transfers of control of the*

<sup>4</sup> The Office of Ratepayer Advocates ("ORA"), the Writers Guild of America, West ("WGAW"), the California Emerging Technology Fund ("CETF"), the Greenlining Institute ("Greenlining"); DISH Network, Inc. ("DISH"), the International Brotherhood of Electric Workers Locals 639 and 1245 ("IBEW"), and the Center for Accessible Technology ("CforAT").

*TWCIS and Bright House California satisfy the criteria of California Public Utilities Code § 854(c) and are otherwise in the public interest*, as that term is understood as a matter of California law.

Three of these parties—DISH, WGAW, and IBEW—principally direct arguments at this Commission that should be properly directed at other agencies. DISH (exclusively) and WGAW (mostly) focus their briefs on arguments about how the Transaction will supposedly affect the national marketplace for delivery of online video services, a subject at the core of the FCC’s simultaneous review of the national transaction among the Joint Applicants (and outside this Commission’s jurisdiction). Their weak attempt to connect this issue to the “broadband deployment” consideration in this proceeding is illustrated by the fact that DISH submitted no evidence at all and instead filed a brief comprised of a series of links to its own FCC filings. WGAW’s brief consists mostly of repetition of the arguments DISH has been making at the FCC. And IBEW’s submission repeats misleading allegations it has already made before the National Labor Relations Board (“NLRB”)—many of which the NLRB has *already dismissed*. Although the arguments presented by all three of these parties are substantively without merit, as a threshold matter they do not belong in this docket at all.

CETF and CforAT, for their part, use their briefs to request numerous conditions without even attempting to demonstrate how or why those demands are appropriate under the guiding § 854(c)(8) standard, instead seeking to use this proceeding as a leverage point to seek unrelated policy changes or benefits. Nonetheless, New Charter will seek to accommodate CETF’s and CforAT’s requests by making many voluntary commitments that address the vast majority of their concerns. The Joint Applicants have also looked very closely at what these parties accepted in settlements from Frontier in its most recent merger in California with Verizon, using it as a



guidepost. However, in the limited areas where the Joint Applicants have not accepted or offered modification to their proposed conditions, it is because their demands are divorced from the law—they invariably (1) address “harms” alleged to be *currently* present, which by definition are not specific to this Transaction; (2) request that the Commission impose on New Charter requirements that the Commission has historically declined to impose on other similarly-situated providers; or (3) request that the Commission impose unique requirements only on New Charter that should properly be addressed through legislation or industry-wide rulemaking. As the Joint Applicants discuss below, moreover, several of these requested conditions would impose undue commercial burdens on *one provider* to achieve policy outcomes, such as low-income broadband adoption, that, to the extent appropriate for consideration at all, should be equitably addressed through a much larger group of interests—which should include government, the not-for-profit community, and varied private sector partners (from device manufacturers, Internet Service Providers, network providers, and others). These burdens should not be borne exclusively by a single cable provider.

The Joint Applicants are disappointed that Greenlining, for its part, levels unsubstantiated criticisms at New Charter’s commitments to diversity and inclusion. Those criticisms are completely out of step with the unequivocal praise New Charter’s commitments have earned from leading organizations in California and across the nation. As discussed below, Greenlining’s concerns are based on misunderstandings and misrepresentations as to what New Charter’s commitments entail—including many specific, verifiable, and measurable California-specific benefits to diversity and inclusion—and predicated upon unwarranted speculation that New Charter might in bad faith seek to undermine those commitments.

The Joint Applicants are particularly encouraged that ORA has put forward a list of requested conditions. While some of these requests are clearly beyond the scope of this proceeding and preempted by federal law, Joint Applicants have made a good-faith effort to agree to reasonable and appropriate items ORA has requested, even where they do not believe the concerns underlying ORA's requests are warranted. In identifying its own concerns with the Transaction, ORA commits many of the same errors as DISH and WGAW by directing arguments to this Commission that should be—and are—properly part of the FCC's review process. ORA's principal argument—that approval of the Transaction will create increased “regional” concentration among broadband service providers—lacks any basis in economic theory, is based on a methodologically flawed expert report, and addresses considerations largely *outside* the scope of the Commission's jurisdiction. ORA's remaining objections, including to the Joint Applicants' service quality and financial condition, are insubstantial.

In short, the Joint Applicants have demonstrated that approval of this Transaction—with the substantial commitments they have already made, augmented by their acceptance of many of the additional conditions requested by the parties here—is in the public interest and should be granted without delay.

### **JURISDICTION**

As the Joint Applicants have explained, the scope of the Commission's review is constrained by California and federal law. Rather than meaningfully engage with these limitations, ORA and other parties have largely ignored them, relying on irrelevant or superseded statutory provisions of the California Public Utilities Code, an interpretation of federal law that the D.C. Circuit Court of Appeals has expressly *rejected*, and non-precedential CPUC actions and pro-

grams, the significance of which has been undermined by subsequent California legislation and FCC decisions. The Commission instead should focus on two key principles.

*First*, the Joint Applicants reiterate that the Commission does not have authority to withhold approval of the transfer of control over their separate unregulated cable and broadband affiliates (and Charter's and Bright House Networks' respective unregulated VoIP affiliates). Because it is axiomatic that the Commission lacks jurisdiction over unregulated entities, the Joint Applicants believe the *Scoping Ruling* is in error.

*Second*, if the Commission nonetheless adheres to the *Scoping Ruling*'s inclusion of broadband "deployment" and "affordability" alongside general "public interest" considerations related to the Transaction, review of those issues should be narrowly focused—both with respect to the "benefits" and "harms" the Commission considers and with respect to any conditions the Commission seeks to impose.

**A. The Commission's Review Should Not Focus on Broadband Services, or Other Services Provided by Unregulated Affiliates.**

Joint Applicants believe that the decision in the *Scoping Ruling* to provide limited review pertaining to broadband deployment and affordability is incorrect. Because this is a threshold jurisdictional issue, and for sake of preserving their rights to judicial or FCC relief, the Joint Applicants briefly reiterate their basis for that position.

*1. The CPUC's Statutory Authority Is Limited to "Public Utilit[ies]," and Joint Applicants' Broadband and Cable Affiliates, and Charter's and Bright House Networks' VoIP affiliates, Are Not "Public Utilities."*

First, as a *statutory* matter, the § 854 inquiry is limited to "public utilit[ies],"<sup>5</sup> a defined term that includes "telephone corporation[s],"<sup>6</sup> but not fixed VoIP providers<sup>7</sup> or their broadband

<sup>5</sup> Cal. Pub. Util. Code § 854(a); *see* JA Opening Br. at 17–18, 36–37.

and cable affiliates.<sup>8</sup> Although ORA asserts that the Commission “has a duty to ensure that entities over which it has regulatory jurisdiction provide safe and reliable service, *and these entities include the Joint Applicants*,”<sup>9</sup> that is simply wrong. The instant entities over which the CPUC has “regulatory jurisdiction” are not all six “Joint Applicants” and all of their affiliates, but TWCIS, Bright House California, and Charter Fiberlink.

ORA’s suggestion that VoIP and broadband providers “clearly fit within the definition of regulated telephone corporations” flies in the face of California law.<sup>10</sup> It would also come as a shock to the countless broadband and non-CLEC VoIP providers in California who have operated their businesses for years not subject to the requirements such a designation would entail. Indeed, ORA’s position, if adopted, would compel every broadband and unregulated VoIP service provider in the state to immediately discontinue current operations for months while they obtained CPCNs, lest they be penalized for providing unauthorized services.<sup>11</sup> Fortunately, § 710 of the California Public Utilities Code, discussed below, forecloses ORA’s preferred interpretation.<sup>12</sup> The argument that VoIP and broadband affiliates *could be* “telephone corporations” also flouts prior Commission decisions expressly rejecting that approach, cited above.<sup>13</sup> The Commission should not adopt a completely novel interpretation of what a “telephone corporation” is

<sup>6</sup> Cal. Pub. Util. Code § 216(a).

<sup>7</sup> See JA Opening Br. at 17 n.36.

<sup>8</sup> See Cal. Pub. Util. Code § 5840(m)(1).

<sup>9</sup> ORA Opening Br. at 11 (emphasis added).

<sup>10</sup> *Id.* at 11–12.

<sup>11</sup> See Cal. Pub. Util. Code § 1001; *id.* §§ 1013(a), 2107.

<sup>12</sup> ORA fares no better by arguing that the bundling and shared transmission infrastructure of voice, video, and broadband services allows the CPUC to exercise jurisdiction over all of those services. See ORA Opening Br. at 29–30. This theory would effectively undo § 710(a).

<sup>13</sup> See *supra* note 7.

in a merger proceeding, with no notice to the countless other providers such a classification would affect.

2. *Public Utilities Code § 710 Excludes the Joint Applicants' Unregulated Broadband and Retail VoIP Services from the CPUC's Jurisdiction.*

Second, the California legislature has spoken clearly that the CPUC “shall not exercise regulatory jurisdiction or control over [VoIP] and [IP] enabled services except *as required or expressly* delegated by federal law or *expressly* directed to do so by statute or as [otherwise] set forth” by law.<sup>14</sup> ORA addresses this clear statutory command only once,<sup>15</sup> and, as discussed below, in a manner that relies on a flatly *rejected* interpretation of both federal and California law.

3. *The FCC Has Largely Preempted State Broadband Regulation of the Sort Several Parties Seek Here.*

Third, the FCC not only reaffirmed in the *Open Internet Order* that “broadband Internet access service is jurisdictionally interstate for regulatory purposes,” but also announced its “firm intention to exercise [its] preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme” that the FCC has created for broadband Internet access service.<sup>16</sup> That “carefully tailored regulatory scheme” includes not only the specific requirements the FCC imposed on broadband Internet access service providers in the *Open Internet Order*, but also its decision to *forbear* from imposing on broadband providers many of the other public utility requirements traditionally applicable to common carriers, including regulation of the price, terms, and conditions of service.

<sup>14</sup> Cal. Pub. Util. Code § 710(a) (emphases added).

<sup>15</sup> ORA Opening Br. at 11–12 & n.34.

<sup>16</sup> *In re Protecting and Promoting the Open Internet*, Report and Order on Remand, 30 FCC Rcd 5601, 5803–04, ¶¶ 431, 433 (2015) (“*Open Internet Order*”) (quotation marks omitted).

WGAW claims that the Commission rejected a similar preemption-based argument in an interim motions ruling from the CPUC's proceeding regarding the Investigation into the State of Competition Among Telecommunications Providers in California (the "*Ruling on Pending Motions*").<sup>17</sup> This argument is meritless. It is true that the *Ruling on Pending Motions* declined to accept several *Open Internet Order*-based preemption objections to proposed CPUC action. But the Assigned ALJ rejected those preemption arguments on the basis that the Commission was proposing only to gather information, not to impose new requirements or other regulations on broadband providers.<sup>18</sup> Importantly, the *Ruling on Pending Motions* acknowledges that, if the Commission were to "propos[e] to adopt any new or additional regulations" for broadband providers, such action "might affect [broadband Internet access service] and thus be implicated by the FCC's *Open Internet Order*."<sup>19</sup> In this proceeding, as set forth below, many of the conditions requested by ORA and WGAW suffer from this precise jurisdictional defect.

The preemptive effect of the FCC's authority over broadband is especially important here because the FCC is currently engaging in a thorough review process—which has involved extensive discovery and review by FCC Staff of millions of pages of documents, as well as multiple rounds of meetings and briefing—about the precise broadband-related issues that ORA,

<sup>17</sup> WGAW Opening Br. at 10 n.13 (citing *Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042*, I.15-11-007, *Ruling on Pending Motions and Issues Discussed at January 20, 2016 Prehearing Conference*, D.08-09-042, at 5 (Feb. 4, 2016) ("*Ruling on Pending Motions*").

<sup>18</sup> *Ruling on Pending Motions* at 5.

<sup>19</sup> *Id.* at 5.

WGAW, and DISH seek to bootstrap into this proceeding.<sup>20</sup> The FCC is aware of how this Transaction intersects with the FCC’s industry-wide “carefully tailored regulatory scheme” for broadband Internet access service—and has the statutory flexibility to decide *not* to impose certain commitments that ORA, WGAW, CETF, and others have requested. The Supreme Court has previously held that this is precisely the type of scenario where preemption of state action is most appropriate.<sup>21</sup>

4. *Section 706 of the Telecommunications Act of 1996 Does Not Authorize Commission Regulation of Broadband Services Absent State-Law Authority to Do So.*

ORA’s efforts to escape the § 710(a) and preemption-based limitations on the CPUC’s authority fall short. ORA’s principal argument is that § 706 of the Telecommunications Act of 1996 constitutes an express delegation of authority to the CPUC, which is preserved as an exception in § 710(a).<sup>22</sup> In support of this theory, ORA claims support from *Verizon v. FCC*, which invalidated two of the FCC’s then-existing Open Internet Rules.<sup>23</sup> However, § 706 of the 1996 Act *cannot* satisfy § 710’s requirement for an “express” delegation.

The California Supreme Court interprets laws requiring an “express” declaration to require “express written language” allowing for a “clear understanding” of intention.<sup>24</sup> Section

<sup>20</sup> It is telling, for example, that WGAW’s citations to authority consist almost exclusively of *FCC* orders—its brief references *thirteen* FCC orders and reports, but only *two* CPUC decisions and two proposed decisions. See WGAW Opening Br. at 2–3 (Table of Authorities).

<sup>21</sup> See *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 349 (2001) (preempting state tort claims that would have interfered with FDA’s “flexibility” to utilize non-enforcement, because flexibility is a “critical component of the statutory and regulatory framework under which the FDA pursues difficult (and often competing) objectives”).

<sup>22</sup> ORA Opening Br. at 9–11.

<sup>23</sup> *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

<sup>24</sup> See *Benson v. Benson (In re Marriage of Benson)*, 36 Cal. 4th 1096, 1107 (2005); see also Letter from Daniel S. Vandekoolwyk, Deputy Legislative Counsel to Honorable Ian C. Calderon

706 supplies no such express delegation of authority—to the contrary, as the *Verizon* opinion acknowledges, that provision is, at most, “*ambiguous*” with respect to whether § 706 constitutes an *implicit* delegation of authority or is intended as no delegation of authority whatsoever.<sup>25</sup> Thus, *Verizon* in no way supports ORA’s claim that § 706 provides the “clear understanding” necessary to override the limitations on this Commission’s authority.

Moreover, ORA’s § 706 argument was expressly rejected by California’s Legislative Counsel<sup>26</sup>: “[I]t is our view that the authority provided by . . . section [706] to state commissions does not constitute an express delegation to the Commission of regulatory authority over VoIP and IP enabled services within the meaning of PUC § 710.”<sup>27</sup> It is true that the assigned ALJ in the *Comcast* proceeding determined that § 706 of the 1996 Act conferred limited jurisdiction on the Commission to consider certain broadband-related issues, notwithstanding § 710(a).<sup>28</sup> However, that determination was reached without the benefit of guidance from Legislative Counsel above, which postdates the *Proposed Comcast Decision* and which is entitled to “great weight”

(“Counsel Letter”) 2–3 n.3 (June 18, 2015) (collecting similar state and federal authority interpreting “expressly”) (attached to the Joint Applicants’ Response to Protests on the Joint Application (Aug. 17, 2015)).

<sup>25</sup> See 740 F.3d at 637–38 (emphasis added); see also *id.* at 638–39 (§ 706 “*can just as easily be read to vest the [FCC] with authority or as merely hortatory*” (emphasis added)).

<sup>26</sup> Counsel Letter at 6–7.

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U6874C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U6955C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a)*, A.14-04-013, A.14-06-012, Proposed Decision of ALJ Bemserderfer: Decision Granting with Conditions Application To Transfer Control, at 18–21 (Feb. 13, 2015) (“*Proposed Comcast Decision*”); see also *id.*, Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge at 4–6, 10–12 (Aug. 14, 2014).



under California law.<sup>29</sup> The *Proposed Comcast Decision* also predates the FCC's guidance regarding federal preemption in the *Open Internet Order*, which was released shortly thereafter. The Joint Applicants thus respectfully reiterate that any interpretation of § 710(a) must give that provision some independent force, and that using § 706 as a backdoor means for the Commission to exercise regulatory authority over broadband services, as urged by ORA, would render § 710(a) a nullity.<sup>30</sup>

5. *ORA's and WGAW's Remaining Jurisdictional Arguments Are Insubstantial.*

ORA asserts that, “[i]n addition to Section 706(a), the Commission has other sources of authority over advanced communications capabilities.”<sup>31</sup> However, there are three fatal flaws with these arguments. The first flaw is that none of these other sources of authority gets the CPUC past the FCC's assertion of preemption in the *Open Internet Order*. The second flaw is that, under ORA's interpretation of each supposed source of Commission authority, § 710 would be a nullity. It cannot be the case that the Legislature enacted a statute expressly deregulating broadband services, but the Commission can then turn around and exercise precisely the same authority divested by § 710(a) under preexisting statutory provisions, general regulatory funds, and programs.<sup>32</sup> The third flaw is that although ORA has identified a “catalog of statutory and

<sup>29</sup> See *N. Hollywood Project Area Comm. v. City of Los Angeles*, 61 Cal. App. 4th 719, 724 (1998).

<sup>30</sup> See *infra* note 32.

<sup>31</sup> See ORA Opening Br. at 11.

<sup>32</sup> See *Lyles v. Sangadeo-Patel*, 225 Cal. App. 4th 759, 765 (2014) (noting that a statutory provision must be “construe[d] with reference to the entire scheme of the law of which it is a part so that the whole may be harmonized and retain effectiveness and to avoid an interpretation that renders language a nullity” and further explaining that the Legislature “intend[s] reasonable results consistent with its expressed purpose, not absurd consequences” (citations and internal quotation marks omitted)); *Teachers' Retirement Bd. v. Genest*, 154 Cal. App. 4th 1012, 1028 (2007)

other CPUC programs that directly involve broadband,”<sup>33</sup> it fails to explain how any supplies the specific jurisdiction to order the commitments that ORA raises in this proceeding.

Section 709 of the California Public Utilities Code, for example, does not constitute an “express” delegation of jurisdiction over broadband and VoIP services for purposes of § 710’s reservation.<sup>34</sup> Section 709 merely states a set of telecommunications “policies”—none of which purports to confer jurisdiction, and none of which even mentions “broadband” or “Internet Protocol” based technologies. Furthermore, § 709 was enacted in 1987 and amended in 1993, 1994, and most recently in 2002.<sup>35</sup> Section 710 was enacted in 2012,<sup>36</sup> and contains a clear instruction that insofar as § 709 sets policies of “bridging the ‘digital divide’ by encouraging expanded access to state-of-the-art technologies,” and “promoting economic growth . . . from the rapid implementation of advanced information and communications technologies,”<sup>37</sup> those policies are best achieved through market forces and subsidized infrastructure deployment, not further CPUC regulation.

(“We avoid an interpretation that renders any portion of the statute superfluous, unnecessary, or a nullity; this is so because we presume that the Legislature does not engage in idle acts.”); *see also Canteen Corp. v. State Bd. of Equalization*, 174 Cal. App. 3d 952, 960 (1985) (“[W]hen two laws upon the same subject, passed at different times, are inconsistent with each other, the one last passed must prevail . . . [.] [W]here a subsequently enacted specific statute directly conflicts with an earlier, more general statute, the subsequent legislation effects a limited repeal of the former statute to the extent that the two are irreconcilable.”).

<sup>33</sup> ORA Opening Br. at 14.

<sup>34</sup> *See id.* at 12; CETF Opening Br. at 4.

<sup>35</sup> *See, e.g.*, 1987 Cal. Legis. Serv. 849; 1993 Cal. Legis. Serv. Ch. 1274; 1994 Cal. Legis. Serv. Ch. 1260; 1994 Cal. Legis. Serv. Ch. 1284; 2002 Cal. Legis. Serv. Ch. 308; 2002 Cal. Legis. Serv. Ch. 674.

<sup>36</sup> 2012 Cal. Legis. Serv. Ch. 733.

<sup>37</sup> Cal. Pub. Util. Code § 709(d), (e).

The Moore Universal Telephone Service Act, also relied upon by ORA, suffers from similar shortcomings.<sup>38</sup> ORA states that the Moore Act compelled the Commission to “reevaluate prior definitions of basic service in a manner that will . . . effectively incorporate the latest technologies to provide all California residents . . . expanded access.”<sup>39</sup> But this command arises in the context of directing the CPUC to initiate a rulemaking in 2001, to be completed by 2002; such a generic rulemaking instruction cannot trump a subsequently enacted statute divesting the CPUC of jurisdiction to regulate certain services.

The remaining provisions and programs cited by ORA fare no better. Nothing in the California Teleconnect Fund, the California Advanced Services Fund, or the California High Cost Fund-A program, each cited by ORA, qualifies as an express delegation of authority to regulate broadband service quality or the terms and conditions of broadband service.<sup>40</sup> The mere fact that these programs can be used to fund the deployment of broadband infrastructure does not mean that they vest the Commission with residual regulatory authority over broadband services that survived the enactment of § 710. Likewise, the fact that the CPUC, in 2005, *before* § 710(a) divested it of regulatory authority over broadband services, previously compelled merging ILECs to fund a non-profit to address broadband adoption is irrelevant to the Commission’s jurisdiction here.<sup>41</sup>

<sup>38</sup> See ORA Opening Br. at 12.

<sup>39</sup> See *id.* at 12–13. The Joint Applicants note that ORA cited California Public Utilities Code § 882 for this proposition, but the language comes from § 883(a)(4).

<sup>40</sup> See *id.* at 13–14.

<sup>41</sup> See *id.* at 14.

Finally, ORA implies that the Joint Applicants have waived jurisdictional objections by claiming broadband as “the most important benefit of the proposed transaction.”<sup>42</sup> Not so. The Joint Applicants have repeatedly reserved their jurisdictional objections to the broadband-related effects of the Transaction, including in their Application, which ORA incorrectly cites for this proposition.<sup>43</sup> The Joint Applicants have, rather, demonstrated that *if the Commission considers broadband notwithstanding the Joint Applicants’ objections*, the Transaction will have broadband-related public interest benefits. And in any event, subject matter jurisdiction cannot be waived before the CPUC.<sup>44</sup>

**B. At a Minimum, Jurisdictional Limitations Should Inform the Commission’s Consideration of the Factors.**

The Joint Applicants understand that the *Scoping Ruling* has already issued, and that the Commission is unlikely to revisit its limited inquiry into broadband-related issues. Nevertheless, the Commission should at a minimum interpret the *Scoping Ruling* in a manner that is cognizant of the jurisdictional limits on its authority. In addition, as set forth in Part V, *infra*, and Appendix A, the Commission can avoid the jurisdictional difficulties associated with other parties’ requested mandatory broadband- and VoIP-related conditions by accepting New Charter’s robust *voluntary* commitments advancing the same objectives.

<sup>42</sup> ORA Opening Br. at 9.

<sup>43</sup> *Id.* at 9 n.25 (citing pages 7 and 13 of the Joint Application); *id.* at 34 n.117 (citing pages 24 and 25 of the Joint Application).

<sup>44</sup> *Rodriguez v. PG&E Co.*, Case 03-08-024, Opinion Dismissing Complaint for Failure to State a Cause of Action, D.04-03-010, at 3 (Mar. 16, 2004).

*1. Review Under § 854(c), Including of Potential Mitigation Measures Under § 854(c)(8), Is Confined to the CLECs' Regulated Services.*

The integration of § 854(c) into the *Scoping Ruling* does not require, or even permit, an inquiry into New Charter's broadband and unregulated VoIP service quality under § 854(c)(2), as ORA asserts in its brief.<sup>45</sup> As discussed above, the Joint Applicants (with the exception of TWCIS's provision of retail VoIP service) do not currently provide such services through "public utilit[ies]" to "public utility ratepayers." Likewise, none of the Joint Applicants has any "public utility employees," rendering review under § 854(c)(4), as IBEW attempts in its brief, unnecessary. So construed, review under § 854(c) does not risk interfering with the FCC's carefully tailored regulatory framework for broadband.<sup>46</sup>

Adopting such a limited approach is especially important with respect to the Commission's consideration of mitigation measures under § 854(c)(8). Mitigation measures that lack any nexus to harms arising from the operations of state utilities are *ultra vires*.<sup>47</sup> Moreover, the CPUC should be particularly hesitant to impose conditions amounting to public utility requirements on the Joint Applicants' broadband affiliates, as the FCC has explicitly called out the imposition of such "obligations" as triggering careful scrutiny for potential preemption.<sup>48</sup>

*2. Any Broadband "Deployment" and "Affordability" Inquiry Should Focus Exclusively on Those Issues Directly.*

The Commission should also resist calls, by ORA and others, to treat the *Scoping Ruling*'s limited focus on broadband "deployment" and "affordability" as a full-fledged inquiry into

<sup>45</sup> See ORA Opening Br. at 34-42.

<sup>46</sup> See JA Opening Br. at 20-21.

<sup>47</sup> See *id.* at 21 & n.45 (citing *Hempy v. Pub. Util. Comm'n*, 56 Cal. 2d 214, 217 (1961); *cf. Thrifty-Tel, Inc. v. Bezenek*, 46 Cal. App. 4th 1559, 1570-71 (1996); *Burlington N. & Santa Fe Ry. Co. v. Pub. Util. Comm'n*, 112 Cal. App. 4th 881, 891-92 (2003)).

<sup>48</sup> *Open Internet Order*, 30 FCC Rcd at 5804, ¶ 433.

all aspects of the Joint Applicants' broadband services and their position within the marketplace. Despite ORA's request early in this proceeding for a much *broad* proceeding,<sup>49</sup> the *Scoping Ruling* limited the inquiry to how the Transaction will promote broadband "deployment" and "affordability."<sup>50</sup> Thus, ORA errs in asserting that "[t]he Joint Applicants' ability to shift revenues away from competitive MVPD services over to non-competitive broadband . . . clearly falls within the Scoping Ruling's second issue";<sup>51</sup> that "[t]he ability of consumers to access content of any sort over their broadband Internet access service also falls squarely within the Scoping Ruling's second issue";<sup>52</sup> and that "the effects of the proposed transaction on the deployment of broadband . . . include[] the impact on service quality."<sup>53</sup> A more natural interpretation is that "deployment" means the construction and buildout of infrastructure, and "affordability" means efforts to make broadband available to low-income customers.

ORA argues that, "if the FCC has authority to adopt Open Internet Rules pursuant to Section 706(a), then this Commission, which has parallel authority to the FCC under Section 706(a), may adopt similar conditions to promote broadband deployment and competition . . . in California."<sup>54</sup> But this logic is inconsistent with § 710(a)'s prohibition. It also ignores the fact that the FCC's *Open Internet Order* included not only the specific conditions the FCC chose to impose, but also the host of common-carrier requirements the FCC decided *not* to impose.

<sup>49</sup> See, e.g., Protest of the Office of Ratepayer Advocates at 3, 23 (Aug. 7, 2015).

<sup>50</sup> *Scoping Ruling* at 5.

<sup>51</sup> ORA Opening Br. at 31 (citing nothing).

<sup>52</sup> *Id.* at 31 (citing, without explanation, the *Scoping Ruling* text).

<sup>53</sup> *Id.* at 34 (citing nothing).

<sup>54</sup> *Id.* at 11; WGAW Opening Br. at 8–10.

More importantly, the task of balancing provider-specific commitments arising from a merger with industry-wide rules designed in a rulemaking is precisely the enterprise the FCC is currently engaged in, based on its expertise and access to an expansive record it has built over the course of a months-long review process.

3. *The “Public Interest” Inquiry Does Not Include the Indirect Effects of the Transaction on Broadband-Related Services and Content.*

Finally, the Commission’s consideration of the “public interest” impact of the Transaction should be guided and constrained by the jurisdictional limitations set forth above.<sup>55</sup> To the extent that the “public interest” issue in the *Scoping Ruling* encompasses criteria beyond the factors itemized in § 854(c) (e.g., antitrust or other competition-related considerations), they still must be connected to the public utilities—the specific CLECs—that are the subject of the instant Transaction. The authority on which ORA and other parties rely, *Northern California Power Agency (NCPA) v. CPUC*,<sup>56</sup> does not support inquiry into non-regulated services provided by non-jurisdictional affiliates, only into the public interest implications of the matter the Commission is actually reviewing under its statutory authority (here, the CLEC transfers of control).<sup>57</sup> It may be proper under *NCPA* for the Commission to inquire into how the instant changes of control might affect the market for services provided by the Joint Applicants’ respective CLECs, but no party has disputed that these markets are highly competitive in California.<sup>58</sup>

<sup>55</sup> See Part B of Jurisdiction Section, *supra*; JA Opening Br. at 23–24.

<sup>56</sup> See, e.g., ORA Opening Br. at 6–8; WGAW Opening Br. at 8–9.

<sup>57</sup> 5 Cal. 3d 370, 377 (1971).

<sup>58</sup> WGAW gets it exactly wrong to jump from *NCPA*’s holding that the CPUC must consider competition to the specific proposition that “[i]t is therefore within the Commission’s jurisdiction to assess and issue findings on how this transaction will affect competition *in broadband and distribution of online video programming*.” WGAW Opening Br. at 9 (emphasis added). *NCPA* requires that in undertaking a review of a transaction’s effects on competition, the CPUC must

And again, the FCC and DOJ are currently reviewing the precise antitrust issues that ORA and others are trying to bootstrap into this proceeding. A duplicative inquiry by the Commission risks the possibility of conflicting factual conclusions, or even conditions, from different regulatory agencies. Prudence therefore counsels in favor of deferring to the federal agencies' simultaneous review.

## **ARGUMENT**

### **I. THE TRANSACTION SATISFIES EACH OF THE § 854(C) FACTORS.**

#### **A. ORA's Criticisms of New Charter's Financial Health Are Unwarranted.**

The Transaction will create in New Charter a financially sound competitor: it will earn more revenue, will be positioned to further increase revenues by bringing Charter's successful pricing and packaging model to Time Warner Cable and Bright House Networks areas, will benefit from synergies that promise significant financial savings, will pay lower interest rates on its debt, and will maintain a leverage ratio comparable to other providers in the industry.<sup>59</sup>

ORA no longer advances its original theory—that New Charter would need to hike its prices in order to meet the earnings figures in their public securities filings—a claim that the Joint Applicants demonstrated was based on ORA's failure to consider, among other things, that New Charter will have access to the earnings not only of Time Warner Cable and Charter, but also of Bright House Networks.<sup>60</sup> ORA now puts forth only the more muted criticisms that (1)

identify the "definition of [the] *relevant* market." 5 Cal. 3d at 380 (emphasis added). WGAW apparently hopes the CPUC will skip this step.

<sup>59</sup> JA Opening Br. at 25–31.

<sup>60</sup> *Id.* at 34–36.



New Charter will be more leveraged than the Joint Applicants are collectively today,<sup>61</sup> and (2) that ORA's expert does not believe that New Charter can realize its expected synergies, because other multi-system operators ("MSOs") have operating costs that increase with scale.<sup>62</sup> Neither critique holds any merit.<sup>63</sup>

At the outset, ORA's argument that New Charter will be more leveraged than the Joint Applicants are today assumes that leverage reflects poor financial health, which is simply not the case.<sup>64</sup> Indeed, if ORA's position were legal standard, *every* transaction financed in part with debt would fail. The Joint Applicants' Opening Brief fully demonstrates that criticisms of New Charter's financial health based on its leverage are unfounded.<sup>65</sup> Nor is it material, as ORA contends, that New Charter's cost of servicing its debt will exceed the net earnings increase from the Transaction;<sup>66</sup> as Charles Fisher, Charter's Senior Vice President for Corporate Finance, explains, not only will New Charter's debt be at lower interest rates, but its operating cash flow-to-interest expense ratio will be significantly improved.<sup>67</sup> No state commission has found fault with

<sup>61</sup> ORA Opening Br. at 27–29.

<sup>62</sup> *Id.* at 24–25.

<sup>63</sup> ORA errs in arguing in a footnote that the Joint Applicants' "promised synergies are not present" because they are not fully reflected in the Adjusted EBITDA figures presented for 2014 and 2015. *Id.* at 28 n.96. As the Rebuttal Testimony of Charles Fisher makes clear, the figures for 2014 are not *meant* to include any synergies; they are merely intended to be the sum of Adjusted EBITDA for Charter, Time Warner Cable, and Bright House Networks. Fisher Rebuttal, JA-7, 2:7–2:9. For 2015, moreover, New Charter's \$13.828 billion Adjusted EBITDA figure is *meant* to include only \$500 million of leverageable synergies. *Id.* at 2:24–2:26. The projections for 2016 and on, by contrast, reflect significant additional Adjusted EBITDA growth, as Mr. Fisher explains. *Id.* at 5:12–5:23.

<sup>64</sup> JA Opening Br. at 32.

<sup>65</sup> *Id.* at 32–34.

<sup>66</sup> ORA Opening Br. at 27–28.

<sup>67</sup> JA Opening Br. at 33; Fisher Rebuttal, JA-7 at 7:1–7:9.

the financial terms of the Transaction. In fact, the New York Public Service Commission—in evaluating an objection identical to the one ORA makes here—found that New Charter’s healthy cash flow was sufficient to satisfy any concern about its higher interest expense.<sup>68</sup> None of the various regulators in the many other states reviewing the Transaction, including those in states where (unlike in this proceeding) regulators must affirmatively approve debt taken on by public utilities, have denied approval or imposed conditions on this basis.

ORA’s speculation that New Charter will fail to realize its projected synergies should also be given little weight. ORA does not dispute that New Charter will realize cost savings with respect to video programming<sup>69</sup> amounting to approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION: :END HIGHLY CONFIDENTIAL INFORMATION].<sup>70</sup> Although ORA seeks to minimize this synergy on the grounds that it will not lead to lower prices for multi-channel video programming distributor (“MVPD”) customers (an argument to which the Joint Applicants reply in Part III.C.1, *infra*), ORA does not deny that these savings will significantly benefit the financial health of New Charter.

The Joint Applicants’ projection to generate at least another [BEGIN HIGHLY CONFIDENTIAL INFORMATION: :END HIGHLY CONFIDENTIAL INFORMATION] in synergies is fully supported in the record, notwithstanding ORA’s skepticism. These projections represent the considered judgment of executives familiar with the Joint Applicants’ respective businesses,<sup>71</sup> and are reasonable given the overall scope of the Transaction and the entities involved—further, as Dr. Scott Morton testifies, “economies of scale are well known

<sup>68</sup> See note 206, *infra*.

<sup>69</sup> ORA Opening Br. at 25–26.

<sup>70</sup> See Katz Rebuttal, JA-16(HC), Attachment A, ¶ 20 n.18.

<sup>71</sup> Fisher, JA-6(C) at 3:2–3:6.

to exist in the broadband and MVPD markets.” Both the Department of Justice and the FCC have acknowledged that such economies of scale are present in the market.<sup>72</sup>

In an attempt to cast doubt on this widely acknowledged phenomenon, ORA relies exclusively on a correlation graph prepared by Dr. Selwyn, which purports to show that economies of scale are *not* present in the cable industry.<sup>73</sup> Dr. Selwyn’s claims relate only to the Joint Applicants’ costs, and thus do not cast doubt on the increased *revenues* that New Charter can generate by deploying successful Charter policies, such as its customer-friendly pricing and terms of service, across New Charter’s footprint.<sup>74</sup> And the Commission should, in any event, give no weight to a flawed analysis Dr. Selwyn created for purposes of this proceeding. As Dr. Scott Morton has shown, Dr. Selwyn’s back-of-the-envelope correlation fails to follow standards in the “wealth of academic literature on how to quantify economies of scale,” is “highly prone to statistical bias,” fails to “control for unobserved factors,” and *fails to differentiate among the services actually being provided* by the cable companies in his “non-randomly selected” sample. He therefore “misses scale effects for high quality and therefore high cost services.”<sup>75</sup> These and other methodological errors in Dr. Selwyn’s estimates, further detailed in Dr. Scott Morton’s testimony,<sup>76</sup> demonstrate why ORA’s evidence does not cast any real doubt that New Charter will be able to realize significant synergies and cost savings from combining the three companies’ operations.

<sup>72</sup> Scott Morton Rebuttal, JA-5(C), Exhibit B ¶ 67.

<sup>73</sup> ORA Opening Br. at 25.

<sup>74</sup> Fisher, JA-6 at 3:17–4:5.

<sup>75</sup> Scott Morton Rebuttal, JA-5(C), Exhibit B ¶¶ 64–66.

<sup>76</sup> *Id.* ¶¶ 63–68.

**B. ORA Fails to Dispel the Transaction's Positive Effects on Service Quality.**

The Joint Applicants' Opening Brief sets forth significant benefits to service quality for both New Charter's regulated<sup>77</sup> and unregulated<sup>78</sup> services. The benefits of the Transaction for California small and medium sized businesses ("SMBs") and larger enterprise customers stand uncontested, and are substantial. With respect to residential services, ORA selectively quotes some figures while ignoring others that demonstrate Charter's favorable performance, engages in comparisons based on inapposite metrics, and utilizes cherry-picked or incorrect data. Charter corrects ORA's misstatements below.

*1. Benefits to Enterprise and SMB Services Are Uncontested.*

No party contests the Transaction's significant benefits to enterprise and SMB customers.<sup>79</sup> Nor does any party dispute that the market for enterprise services is currently dominated by providers such as AT&T, Verizon, Level 3, and CenturyLink.<sup>80</sup> New Charter will be better equipped, due to its larger scale and more rationalized national footprint, to engage in meaningful competition with such providers. Even ORA concedes that the enterprise-segment effects of the Transaction are merger specific and verifiable.<sup>81</sup>

Although ORA tries to minimize these benefits as available to only a "small subset" of enterprise customers,<sup>82</sup> the record shows otherwise. Not only will New Charter be able to serve

---

<sup>77</sup> JA Opening Br. at 36–37.

<sup>78</sup> *Id.* at 59–61.

<sup>79</sup> *Id.* at 37–42.

<sup>80</sup> *Id.* at 6, 38.

<sup>81</sup> ORA Opening Br. at 23 (describing enterprise market effects as comprising a "concrete merger specific public interest 'benefit'").

<sup>82</sup> *Id.* at 2, 23.

almost [begin CONFIDENTIAL information: :end CONFIDENTIAL information]

additional California business locations that the Joint Applicants could not competitively serve before the Transaction (particularly in the Los Angeles and Bakersfield areas),<sup>83</sup> but the extension of Charter's competitive pricing and packaging into legacy Time Warner Cable and Bright House Networks areas,<sup>84</sup> and New Charter's strong position to invest and innovate in business-oriented services in the future,<sup>85</sup> each stand to benefit *all* enterprise-level businesses and SMBs the Joint Applicants serve or pass today—not just the additional multi-location businesses that New Charter will be able to serve as a result of the Transaction. Those benefits will generate substantial savings for California businesses.

2. *ORA Neither Demonstrates Harm Nor Disproves Benefits to TWCIS's Retail Voice Services.*

The Joint Applicants have also demonstrated that New Charter will maintain or improve the quality of retail voice service provided to current TWCIS subscribers.<sup>86</sup> ORA neither disproves any of the service quality improvements the Joint Applicants have demonstrated, nor ties its arguments to § 854(c)(2). ORA primarily theorizes that *Time Warner Cable* currently has service quality problems, and that Charter has failed to offer sufficiently specific commitments about how to fix them.<sup>87</sup> But that is not true and does not accord with the legal standard. Any existing issues with Time Warner Cable's services are not Transaction-specific harms, absent some indication that New Charter would make those problems worse. In any event, the Joint

<sup>83</sup> JA Opening Br. at 6, 39.

<sup>84</sup> *Id.* at 39–40.

<sup>85</sup> *Id.* at 42.

<sup>86</sup> *Id.* at 43–53.

<sup>87</sup> *See* ORA Opening Br. at 35.

Applicants *have* shown exactly how the Transaction will improve service quality across the Joint Applicants: by, *inter alia*, building on each company's expertise and extending Charter's historic commitment to investing in network reliability and customer service, including onshoring customer service jobs and insourcing field technician jobs, to New Charter's combined operations.

ORA also alleges service problems with Charter, on the theory that Charter will set the corporate culture for New Charter.<sup>88</sup> But as set forth below, the record establishes that Charter currently provides reliable service—and has continued to improve its service quality and reliability, as it has simultaneously grown its California subscribership steadily over the past several years.

a. Charter's Track  
Invest in Innovation.

New Charter's enhanced incentives to invest in innovation—arising from its increased scale and EBITDA, and realized operational savings—are set forth in the Joint Applicants' Opening Brief.<sup>89</sup> As the Commission has previously held, a merged company's achieving scale-based efficiencies that are likely to result in the delivery of new products and services is a verifiable public interest benefit, even where the merging parties do not precisely identify the new products and services that they will offer.<sup>90</sup>

Although ORA questions the existence of scale-based benefits from the Transaction, it fails to address that Charter's track record of innovation as a relatively small company demon-

<sup>88</sup> *See id.* at 35.

<sup>89</sup> *See* JA Opening Br. Parts I, II.B.2.

<sup>90</sup> *See In re Joint Application of GTE Corp. ("GTE") and Bell Atl. Corp. ("Bell Atlantic") to Transfer Control of GTE's California Utility Subsidiaries to Bell Atlantic, Which Will Occur Indirectly as a Result of GTE's Merger with Bell Atlantic ("In re GTE-Bell Atlantic")*, A.98-12-005, Opinion, D.00-03-021, at 81 (Mar. 2, 2000).

strates the approach that New Charter will take. As Charter's Senior Vice President of Government Affairs, Adam Falk, explains, a good example of this is that, under Tom Rutledge's leadership, Charter's product development expenditures increased [begin CONFIDENTIAL information: :end CONFIDENTIAL information] over the course of 2012 through 2014, and its product development headcount experienced similar growth.<sup>91</sup> This strategic orientation allowed Charter, among other things, to roll out its New Pricing and Packaging ("NPP") model and to introduce the Worldbox CPE and Spectrum Guide, both highly innovative offerings.<sup>92</sup> Moreover, Charter's relatively small scale has constrained its ability to field a larger pure research and development team.<sup>93</sup> Accordingly, Dr. Selwyn's analysis of how *other companies* have behaved when they achieve greater scale fails to account for the unique pro-growth culture that is part of Charter's corporate DNA.

b. Charter's Customer Satisfaction  
Better Than the Data  
the Transaction

Data that Charter obtains and tracks in the ordinary course of business demonstrate that Charter's customer satisfaction has been improving consistently over at least the last five years.<sup>94</sup>

<sup>91</sup> JA Opening Br. at 46

<sup>92</sup> *Id.* at 46.

<sup>93</sup> Scott Morton, JA-4(C), Ex. A, ¶ 14 ("[A]ll three firms cite a lack of scale as a reason for having smaller research and development teams.").

<sup>94</sup> See JA Opening Br. at 51–54 (discussing improvement along service lines, among NPP subscribers, and regarding customer service); see also Dering Rebuttal, JA-10(C) at 4:3–12:23. ORA claims that even Charter's data show that Charter's customer satisfaction "remains below average." ORA Opening Br. at 39 n.133. This assertion is simply false; Charter exceeds the cable industry average on an aggregate basis. See Dering Rebuttal, JA-10(C) at 3:17–4:1, 4:9–4:12. ORA also attempts to spin Charter's data as showing a trend from "extremely poor" to "very poor," when, in fact, the data show customers who are "very satisfied" with Charter overall are close to [begin CONFIDENTIAL information: :end CONFIDENTIAL information] and trending up. See *id.* at 5:16. Mr. Gallardo's data, see ORA Opening Br. at 39

These improvements are consistent with Charter's significant investments in network upgrades and in customer care in recent years, including onshoring call center jobs and insourcing field technician positions and its more simplified marketing and sale of services under its NPP initiative—practices that it will bring to legacy Time Warner Cable and Bright House Networks areas as a result of the Transaction.

ORA's principal argument on this point is that Charter and Time Warner Cable *both* receive "poor customer satisfaction ratings and rankings in J.D. Power and American Consumer Satisfaction Index (ACSI)."<sup>95</sup> ORA's focus on Time Warner Cable's *existing* supposedly "poor" performance in the context of § 854(c)(2), however, is irrelevant; the inquiry before the Commission is what effect, if any, the *Transaction* will have on service quality. And the record supports the conclusion that the policies Charter will bring to New Charter—its investments in its network and customer care, as well as its simplified and transparent pricing—have yielded dramatic, positive results.

The detailed customer satisfaction reports Charter receives from Leichtman Research Group ("LRG"), showing steadily improving customer satisfaction, are far more meaningful than the general industry customer satisfaction surveys and reports on which ORA relies. That is especially so with respect to ACSI, which compares ISPs to other industries without regard to differences between those industries.<sup>96</sup> The record shows that [begin CONFIDENTIAL infor-

n.133, also show that Charter's customer satisfaction score has increased. See Dering Rebuttal, JA-10(C) at 4:5–4:8.

<sup>95</sup> See ORA Opening Br. at 35 (broadband customer satisfaction), 38–39 (voice customer satisfaction).

<sup>96</sup> ORA's argument that mergers and acquisitions *generally* have a negative effect on customer satisfaction is non-Transaction specific. See *id.* at 35–36. Moreover, Charter's customer satisfaction continued to rise following its acquisition of the Bresnan cable systems in 2013. See JA Opening Br. at 51–52.



mation:

<sup>97</sup> :end CONFI-

DENTIAL information].

The record thus provides a convincing basis to treat Charter's data as significantly more methodologically sound than the hearsay third-party reports cited by ORA. ORA has not identified any shortcomings with respect to LRG's qualifications, methodology, or results.<sup>98</sup> That said, in the interest of cooperation, as set forth in Part V, *infra*, New Charter will accept ORA's requested condition that New Charter conduct an additional, independent customer satisfaction survey.

c.

sound Conclusions about Chart

In terms of both voice and broadband service, Charter's network exceeds the 99.95% industry norm<sup>99</sup> for network availability.<sup>100</sup> ORA makes a variety of arguments that essentially boil down to the claim that "both Charter and [Time Warner Cable] provided data that show a

<sup>97</sup> J.D. Power does not publicize its methodology or year-to-year changes thereto, preventing meaningful comparison across years.

<sup>98</sup> See ORA Opening Br. at 51.

<sup>99</sup> In a footnote, ORA argues that Charter fails to satisfy the "five-nines" standard, *see id.* at 36–37 n.131, ignoring that this standard is inapplicable to VoIP and broadband operations, *see* JA Opening Br. at 48 & n.142, and that factual differences between legacy telephone service and VoIP make its application to the latter inappropriate. Hayes Rebuttal, JA-11(C) at 5:1–5:6, 5:16–5:20. More to the point, ORA never shows that the Transaction will adversely impact network availability of any of the Joint Applicants' systems.

<sup>100</sup> See JA Opening Br. at 47–48.

high number of voice service outages in California” as well as “long outage durations.”<sup>101</sup> ORA’s critique is flawed for numerous methodological reasons.

*First*, ORA makes an “apples to oranges” error in its comparison of Time Warner Cable and Charter outage datasets. Charter provided ORA with three distinct datasets of outages, pulled from different Charter databases, and which serve different business and regulatory purposes: (1) outages that qualify for reporting under the FCC’s Network Outage Reporting System (“NORS”) rules and regulations; (2) “no dial tone” events, which include difficulties with equipment inside a customer’s home **[begin CONFIDENTIAL information:**

**:end CON-**

**FIDENTIAL information]** and (3) outages within Charter’s network itself, which Charter tracks in the ordinary course of business pursuant to its internal network management practices.<sup>102</sup>

ORA selectively compares Charter’s “no dial tone” events to Time Warner Cable’s outage data.<sup>103</sup> This comparison is meaningless because Charter’s “network outages,” not its “no dial tone” events, comprise the dataset the Commission should evaluate.<sup>104</sup> **[begin CONFIDENTIAL information:**

**:end CONFIDENTIAL information]**<sup>105</sup> Using the correct dataset,

<sup>101</sup> See ORA Opening Br. at 39.

<sup>102</sup> Hayes Rebuttal, JA-11(C) at 9:4–10:23.

<sup>103</sup> See ORA Opening Br. at 39 & n.134, 40 & n.139.

<sup>104</sup> See JA Opening Br. at 49 n.145 (explaining Charter’s internal outage tracking criteria).

<sup>105</sup> Hayes Rebuttal, JA-11(C) at 11:11–11:21.

both Charter's total number of outages and its average response time drop significantly from the misleading comparison cited by ORA.<sup>106</sup> Notably, Charter's network availability exceeds industry norms; in addition, its steady downward trend in network outages per 10,000 lines and consistently fast response time illustrate the success of its investments in better network infrastructure and management practices.

*Second*, ORA compares Charter to Time Warner Cable in terms of their respective performances when confronting NORS-qualifying outages.<sup>107</sup> But NORS-qualifying outages are typically *force majeure* type-events, *e.g.*, earthquakes, fires, and other occurrences entirely outside of the control of the operator.<sup>108</sup> For example, between 2010 and 2015, Charter's longest California NORS-qualifying event involved wide-scale commercial outages that were caused by Santa Ana winds that the federal weather agency referred to at the time as the "strongest early wind event in the past several years."<sup>109</sup> In other words, the frequency and location of NORS-qualifying events is to some extent random. Additionally, to the extent that a NORS-qualifying event involves another party—for example, where the event involves Charter VoIP traffic being carried by a circuit that belongs to a third party—[begin CONFIDENTIAL information:

<sup>110</sup> :end CONFIDENTIAL

information]

<sup>106</sup> Hayes Rebuttal, JA-11(C) at 11:8, 13:10.

<sup>107</sup> ORA Opening Br. at 39–40.

<sup>108</sup> Hayes Rebuttal, JA-11(C) at 18:9–18:11.

<sup>109</sup> Scott Thompson, *140-mph gusts cause damage, outages, delays in California*, CNN Online (Dec. 2, 2011), <http://www.cnn.com/2011/12/01/us/california-winds/>.

<sup>110</sup> Hayes Rebuttal, JA-11(C) at 19:6–19:11.

Notwithstanding these objections to ORA's comparison, Charter reiterates that it has invested heavily in improving its network, both by deploying advanced infrastructure and by adopting best practices for network management, which should further allay concerns about post-Transaction outages.<sup>111</sup> To allay further any concerns in this area, New Charter will also commit, as described in Part V.C, *infra*, to report certain broadband and voice outage data to the Commission, as well as provide NORS data, as ORA has requested.

d.

Finally, ORA purports to have identified several other "service quality issues" arising from the Transaction. Nothing about this argument is Transaction-specific, and it relies on metrics not applicable to Charter's services.<sup>112</sup>

ORA asserts that **[begin CONFIDENTIAL information:**

<sup>114</sup> **:end CONFIDENTIAL information]** Both of these metrics, however, derive from Commission General Order 133-C, which ORA's witness

<sup>111</sup> See JA Opening Br. at 50–51.

<sup>112</sup> Most inexplicable is ORA's assertion that "Charter did not even specifically address service quality issues, even though many issues were raised in protests and the Commission is required under P.U. Code § 854(c) to determine whether the transaction will maintain or improve voice service quality." ORA Opening Br. at 38. The Joint Applicants respectfully direct ORA to the 12 pages that comprise Part I.B.2 of their Opening Brief and the cited testimony of Adam Falk, Dr. Fiona Scott Morton, Keith Hayes, Meghan Dering, Patty Mosberger, and Ashok Kuthyar.

<sup>113</sup> ORA Opening Br. at 40.

<sup>114</sup> *Id.*

admits does not apply to Charter's or Bright House Networks' VoIP operations,<sup>115</sup> and the installation commitments metric, a GRC ILEC measurement, does not even apply to traditional voice providers with operations comparable to the Joint Applicants. Moreover, nothing about these criticisms suggests that the Transaction will have an adverse effect on New Charter's performance along those two metrics. In fact, ORA's witness, Mr. Gallardo, had no material criticism of Charter's performance along either metric.<sup>116</sup>

ORA is also incorrect in asserting that “Charter demonstrates extremely poor performance in *all standardized metrics* regarding the occurrence and repair of service outages,” and that Charter “disregard[s] the standardized metrics” to “rely instead on its own measurements.”<sup>117</sup> The very evidence ORA cites shows the opposite, and ORA admits that G.O. 133-C is not applicable to Charter’s VoIP operations in the first place. Charter tracks and monitors its performance using other metrics, such as service features, pricing and terms of service, and quality of customer care.

Ultimately, ORA's argument appears to be that New Charter has not committed to hit specific targets under various G.O. 133-C metrics, which are not required of peer providers and some of which would not even apply if the Joint Applicants offered traditional voice services

<sup>115</sup> Gallardo, ORA-3 at 1-11:26–1-12:1 (“The Joint Applicants are all VoIP service providers and G.O. 133-C is not currently applicable to them, nor are they required to report information to the Commission subject to G.O. 133-C.”).

<sup>116</sup> Gallardo, ORA-3 at 1-28:2–1-28:4 (finding that Charter “completed [begin CONFIDENTIAL information: :end CONFIDENTIAL information] of [its] service installations within five business days” and “fail[ed] to complete [begin CONFIDENTIAL information: :end CONFIDENTIAL information]”).

**:end CONFIDENTIAL information]**

<sup>117</sup> See ORA Opening Br. at 40–41 & n.142 (emphasis added).

instead of VoIP. But that is not the legal standard under § 854(c)(2). A transaction can improve service quality in ways other than improving performance against specific G.O. 133-C metrics, and a transaction that does not degrade the applicants' *existing* performance "maintain[s]" service quality in accordance with the statute as well.

That said, as a voluntary commitment, New Charter will allay ORA's concern on this topic by agreeing to voluntarily provide reports consistent with G.O. 133-C to the Commission, as set forth in Part V.C, *infra*.

3. *ORA's Misunderstanding of Charter's Customer Care Process Causes ORA to Criticize that Process Based on the Wrong Data.*

The evidence in the record documents that Charter, under Tom Rutledge's leadership, has brought a new focus to customer care, and that Charter's investments and changes in practice in this regard have yielded tangible benefits for its customers. Charter has insourced thousands of customer care jobs, growing by 7,000 employees, including by bringing jobs back from overseas call centers.<sup>118</sup> Charter also has made a substantial investment in providing the training, tools, and continuous coaching for its insourced Customer Service Representatives ("CSRs").<sup>119</sup> Additionally, Charter has adopted convenient customer-facing practices, including same-day, night-time, and weekend appointments, alerts of arrival times, and one-hour windows in some areas.<sup>120</sup>

The results of these changes are impressive. The data demonstrate that Charter is seeing a declining overall contact rate (calls per Primary Service Unit ("PSU")),<sup>121</sup> that fewer incoming

<sup>118</sup> See JA Opening Br. at 54.

<sup>119</sup> See *id.* at 55–56.

<sup>120</sup> See *id.* at 54–56.

<sup>121</sup> See *id.* at 57.

calls require the assistance of a CSR,<sup>122</sup> and that more of the calls that do require the assistance of a CSR are being resolved on first contact.<sup>123</sup> The data also demonstrate that customer satisfaction with Charter's customer service has been improving on an overall basis, and with respect to specific customer service metrics—especially the “courteousness and friendliness” of Charter employees.<sup>124</sup> And separately, Charter has seen meaningful improvement since it **[begin CONFIDENTIAL information:**

<sup>125</sup> **:end CONFIDENTIAL information]**

These metrics demonstrate that, as New Charter expands these same practices across its footprint, improved customer service is an affirmative benefit of the Transaction.

At this time last year, ORA was lauding Charter's extensive and systematic efforts to monitor and improve its delivery of service. ORA described Charter as having a “relatively systematic approach[] to assessing service and improving service quality.”<sup>126</sup> ORA likewise praised Charter's “extensive . . . efforts [when it comes to measuring quality of service].”<sup>127</sup> Nothing about Charter's commitment to service quality has changed in the intervening eleven months, and data for 2015 continue Charter's positive trends.

<sup>122</sup> See *id.*

<sup>123</sup> See Dering Rebuttal, JA-10(C) at 11:1–12:20.

<sup>124</sup> See JA Opening Br. at 53 n.155, 57–58.

<sup>125</sup> See *id.* at 57–58.

<sup>126</sup> *Joint Application of Comcast Corp., Time Warner Cable Inc., [TWCIS], and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of [TWCIS]; and the Pro Forma Transfer of Control of Bright House Networks Information Services (CALIFORNIA), LLC to Comcast Corp. Pursuant to California Public Utilities Code Section 854(a)*, A.14-04-013, ORA Opening Br. at 75 (Dec. 10, 2014).

<sup>127</sup> *Id.* at 76.

a. ORA Mischaracte

As explained in the Joint Applicants' Opening Brief, Charter has [begin CONFIDENTIAL information:

:end

CONFIDENTIAL information]. Charter has provided testimony showing its provision of quality customer service, as well as upward trends along various metrics, both [begin CONFIDENTIAL information:

:end CONFIDENTIAL

information]

ORA has no substantive response to the positive trajectory and performance shown by Charter for both processes. Instead, it speculates that Charter has not put forward data about all "complaints,"<sup>128</sup> since some of Charter's routine customer care contacts include topics that ORA thinks *should be* categorized as "complaints," such as [begin CONFIDENTIAL information:

<sup>129</sup> :end

CONFIDENTIAL information].

ORA's argument is misleading. As set forth above, the Joint Applicants' testimony and Charter's discovery responses to ORA include information and data about *both* Charter's [begin

<sup>128</sup> *Id.* at 41; *see also id.* (suggesting that the data provided by Charter "is only a subset of all actual Charter complaints and may not be fully representative of all of Charter's complaints").

<sup>129</sup> *Id.*



**CONFIDENTIAL information:**

**:end CONFIDENTIAL information]** including the volume of inquiries, Charter's process for resolving them, and the percentage of calls resolved on the first contact.<sup>130</sup> Charter has also introduced detailed testimony to explain how and why it **[begin CONFIDENTIAL information:**

**:end CONFIDENTIAL information]** Thus, customer inquiries about the topics mentioned in ORA's brief, which it suggests are missing, *are* in the record; they are captured in Charter's data regarding its handling and resolution of customer calls, and described in the testimony of Patty Mosberger, because that is how Charter tracks and resolves those types of inquiries in the regular course of business.<sup>131</sup>

As the Joint Applicants' Opening Brief sets forth, this deliberate approach has served both Charter and its customers well. Among other things, this approach has led Charter to improve its CSR call handling, while simultaneously allowing Charter to **[begin CONFIDENTIAL information:**

---

<sup>130</sup> Although the issue is irrelevant to any matter properly before the Commission, ORA takes liberties with its description of Charter's discovery responses. *See id.* at 41 n.145. Charter repeatedly explained **[begin CONFIDENTIAL information:**

**:end CONFIDENTIAL information].** ORA was free at any time to ask for information about routine customer care inquiries about specified topics (such as technical support), but instead insisted that Charter should define some subset as "complaints" **[begin CONFIDENTIAL information:**

**:end CONFIDENTIAL information].** ORA was also free at any time to request information about Charter's customer call handling—and when it did make such a request in December via its Data Request Set 11, Charter responded promptly. And while ORA complains about that Charter provided a supplemental production in February, it fails to mention that the supplement arose out of a meet-and-confer that Charter had offered on January 11, but ORA declined for nearly a month, citing lack of time.

<sup>131</sup> *See generally* Mosberger, JA-17(C) (discussing customer care operations); Kuthyar Rebuttal, JA-12(C) (discussing Charter complaint handling processes and procedures).

**:end CONFIDENTIAL information]** According to this latter workflow, Charter's goal is to contact the complaining customer to address the issue within **[begin CONFIDENTIAL information: :end CONFIDENTIAL information]** and to completely resolve the issue within **[begin CONFIDENTIAL information:**

**:end CONFIDENTIAL information]**.<sup>132</sup>

b.

Service Lack Merit.

As explained in the Joint Applicants' Opening Brief, Charter aspires to resolve all routine customer communications on first contact, and succeeds in doing so for the vast majority of customer calls.<sup>133</sup> ORA argues that Charter's *complaint* response time is "exceedingly long,"<sup>134</sup> but this argument **[begin CONFIDENTIAL information:**

<sup>132</sup> Kuthyar Rebuttal, JA-12(C) at 4:11–4:22. The data bear this belief out; between August 2014 and December 2015, Charter experienced **[begin CONFIDENTIAL information: :end CONFIDENTIAL information]** California subscribership growth, while simultaneously experiencing an **[begin CONFIDENTIAL information: :end confidential INFORMATION]** decline in complaints per 10,000 subscribers in California. *See* JA Opening Br. at 58 n.177.

<sup>133</sup> *Id.* at 56–57.

<sup>134</sup> ORA Opening Br. at 41.

**CONFIDENTIAL information]**

ORA also mentions that Charter receives “hundreds of millions of [CSR] calls nationwide.”<sup>136</sup> But millions of calls every year that are coded as “requiring the assistance of a CSR” involve simple, one-off interactions, including simply paying a bill or ordering a new piece of equipment.<sup>137</sup> Charter also has invested millions in providing CSRs with the training, specialized knowledge, and tools to handle these calls efficiently, driving increased customer satisfaction with Charter’s customer service. Furthermore, Charter’s contact rate has declined substantially, as has the percentage of calls that actually require the assistance of a CSR to resolve.<sup>138</sup> Charter attributes this decline to better service, more easily understandable NPP practices, and other improvements that it intends to implement across New Charter’s California footprint.

ORA relatedly argues that “Charter and [Time Warner Cable] have not augmented their customer service and technical workforce to keep pace with the increasing number of . . . customers they serve.”<sup>139</sup> However, as recounted above, **[begin CONFIDENTIAL information:**

<sup>135</sup> JA Opening Br. at 57–58 & n.176.

<sup>136</sup> ORA Opening Br. at 41.

<sup>137</sup> Mosberger Rebuttal, JA-17(C) at 16:1–16:14.

<sup>138</sup> JA Opening Br. at 57.

<sup>139</sup> ORA Opening Br. at 36.

CONFIDENTIAL information]<sup>140</sup>

In sum, Charter's approach to customer service has yielded tangible benefits for its subscribers. The Transaction will allow New Charter to deliver similar benefits across its expanded footprint.

4. *ORA Fails to Show Any Risk of Degraded Service Quality, or Disprove Demonstrated Benefits, to Unregulated VoIP and Broadband Services.*

Subject to the Joint Applicants' jurisdictional objections,<sup>141</sup> there is ample evidence in the record that broadband customers of the Joint Applicants' broadband affiliates, like unregulated VoIP customers of Bright House Networks' and Charter's VoIP affiliates, will benefit from the Transaction for the same reasons as the customers of TWCIS's regulated voice services.<sup>142</sup> In addition, Time Warner Cable and Bright House Networks broadband customers will also benefit from having the option of subscribing to New Charter's faster base broadband speeds under customer-friendly pricing and packaging options, which New Charter will roll out in currently digital markets (representing most of the Joint Applicants' California systems) within a year of closing, and in currently non-digital markets as they are taken all digital (to be completed within 30 month of closing at the latest).<sup>143</sup> New Charter is also committed to the continued expansion of Time Warner Cable's 300 Mbps service offering,<sup>144</sup> and will further commit (as set forth in

<sup>140</sup> Mosberger Rebuttal, JA-17(C) at 17:1–18:10.

<sup>141</sup> See Part A of Jurisdiction Section, *supra*.

<sup>142</sup> See *supra* Part I.B.2.

<sup>143</sup> JA Opening Br. at 59–61.

<sup>144</sup> *Id.*

Part V.A.1, *infra*) to expand those 300 Mbps speed offerings throughout its California footprint wherever broadband is currently available.

ORA claims that the conversion of further California markets to an all-digital platform is not a Transaction-specific benefit because Time Warner Cable and Bright House Networks currently plan to complete the conversion of their respective systems standing alone, a proposition for which ORA cites no evidence.<sup>145</sup> New Charter's new broadband speed commitments, however, represent a significant Transaction-specific benefit in the large portions of the Joint Applicants' footprint where such speeds are not yet available. Moreover, neither Charter's current base broadband speeds of 60 Mbps, nor its simplified and transparent pricing and packaging methodology, would be rolled out in Time Warner Cable and Bright House Networks areas but for the Transaction.

ORA raises only a handful of service quality arguments unique to broadband, which are easily refuted. For example, although ORA repeats its arguments based on third-party customer satisfaction surveys, the Joint Applicants have already explained why the thorough customer satisfaction data Charter has provided is entitled to significantly greater weight than the reports on which ORA relies.<sup>146</sup> ORA's outage- and network availability-related criticisms for broadband suffer from the same "apples-to-oranges" flaw as its arguments with respect to voice services, and, additionally, ORA describes Charter's increasing frequency of outages, but fails to index them to subscribership growth. As Keith Hayes, Charter's Senior Vice President of Network Operations explains, when properly indexed, Charter's frequency of outages has declined signif-

<sup>145</sup> ORA Opening Br. at 37.

<sup>146</sup> See Part I.B.2.b, *supra*.

icantly.<sup>147</sup> Finally, Charter's network availability exceeds the industry norm, following Charter's investment in advanced technology and adoption of best network management practices.

ORA also claims a harm from the fact that "the Joint Applicants . . . receive many complaints from customers that indicate serious deficiencies in the quality of their broadband services."<sup>148</sup> But for a growing company, the *aggregate* number of customers who may have reported service difficulties is far less meaningful than the *rate* at which they have done so. As Charter has added more subscribers, and as those subscribers have connected to Charter's network through more and more sophisticated devices, an aggregate increase in service issues may occur.<sup>149</sup> Indexing complaints to account for at least subscribership growth (if not device proliferation) allows for a more meaningful assessment of Charter's delivery of service, and, as Ashok Kuthyar, , Charter's Vice President of Service Delivery and Support testifies, Charter has experienced a significant decline in complaints per 10,000 subscribers over the relevant time period.<sup>150</sup> And the fact that the *other* Joint Applicants receive complaints regarding *their* broadband service, as ORA also argues,<sup>151</sup> has no nexus to any Transaction-specific harm. At best, it confirms that New Charter's rollout of faster base broadband speeds, offered under a convenient and accessible pricing and packaging methodology, will be well received by legacy Time Warner Cable and Bright House Networks subscribers.

ORA next recounts that Charter and Time Warner Cable [**begin CONFIDENTIAL information:**

<sup>147</sup> JA Opening Brief at 49.

<sup>148</sup> ORA Opening Br. at 36.

<sup>149</sup> *Cf.* Mosberger Rebuttal, JA-17(C) at 13:15–13:22 & n.11.

<sup>150</sup> *See* Kuthyar Rebuttal, JA-12(C) at 9:8–10:24.

<sup>151</sup> ORA Opening Br. at 36.

**:end CONFIDENTIAL information]** defining “satisfactory” relative to the 95% benchmark applicable to GRC ILECs under G.O. 133-C.<sup>152</sup> Even leaving aside that the 95% threshold has never applied to *broadband* installation, ORA’s argument is still misleading. Charter’s performance in terms of broadband installation has improved over the period from 2010 to 2015, reaching **[begin CONFIDENTIAL information: :end CONFIDENTIAL information]** for 2015—the highest percentage in the record here.<sup>153</sup>

Again, with broadband as with voice services, ORA’s overarching theory of the case appears to be that Time Warner Cable’s and Bright House Networks’ *existing* broadband services could perform better if judged against metrics designed for traditional telephone companies that do not even apply to broadband services to begin with, and that the Transaction should not be approved because it will not fix these perceived “problems.” That concern is neither Transaction-specific nor encompassed by the legal standard of § 854(c)(2).

**C. No Party Disputes that New Charter Will Be Well-Managed.**

As set forth in the Joint Applicants’ Opening Brief, New Charter will have one of the best management teams in the country.<sup>154</sup> The Joint Applicants have also made commitments to ensure that New Charter’s Board of Directors will reflect the diversity of the communities it serves, as well as to create a Chief Diversity Officer position and ensure upward mobility opportunities for minority employees.<sup>155</sup> No party raises any dispute under this factor, which supports approval.

<sup>152</sup> *Id.*

<sup>153</sup> Clark, ORA-2(C), at III-32, Figure 21.

<sup>154</sup> JA Opening Br. at 61–63.

<sup>155</sup> *Id.* at 63.

**D. IBEW's Characterization of its NLRB Complaint Is Misleading, and Fails to Undercut the Demonstrated Benefits to the Joint Applicants' California Employees.**

The Joint Applicants have shown that, although they do not have any public utility employees in California, the Transaction will treat their other employees fairly, including by creating thousands of new jobs and by promoting a diverse workforce in California and elsewhere.<sup>156</sup> These positive impacts on employees support approval of the Transaction under § 854(c)(4).

Only one party aside from the Joint Applicants addresses § 854(c)(4) in the opening round of briefs—IBEW.<sup>157</sup> But IBEW relies entirely on unsubstantiated claims not admitted into the record in this proceeding,<sup>158</sup> and fails to show that any employees have or will be negatively affected.

IBEW's opposition to the Transaction is not Transaction-specific—it is based solely on a single NLRB Complaint that IBEW filed over a year ago related to Charter's San Luis Obispo facility.<sup>159</sup> Nor has IBEW shown that the San Luis Obispo dispute is likely to recur at any of the Joint Applicants' other locations in California. To the contrary, Charter has a demonstrated history of strong relationships with employees at other California locations, including union employees represented by another IBEW chapter in Burbank, California.<sup>160</sup>

---

<sup>156</sup> See *id.* at 63–67; see also Part I.F, *infra*.

<sup>157</sup> See IBEW Opening Br. at 2–4.

<sup>158</sup> The Joint Applicants have opposed IBEW's motion to accept this late-served evidence. See Joint Applicants' Opposition to Motion of the International Brotherhood of Electrical Workers Locals 639 and 1245 to Accept Late-Served Evidence (Feb. 26, 2016). For all the reasons that Charter has set forth in its opposition, the Commission should not accept IBEW's late evidence and should therefore disregard all of the purported evidence in IBEW's Opening Brief.

<sup>159</sup> See IBEW Opening Br. at 7.

<sup>160</sup> For example, Charter and the IBEW have had a long relationship in Glendale. IBEW has represented employees in Charter's Glendale/Burbank system for decades (long before Charter acquired that system). For more than a decade, Charter and IBEW have successfully negotiated



Critically, the NLRB Complaint that forms the basis of IBEW's arguments here contains nothing more than IBEW's one-sided (and false) *allegations*. The hearing on IBEW's Complaint has not yet commenced.<sup>161</sup> Charter vigorously denies IBEW's allegations in that proceeding, and it would be patently unfair to transform IBEW's unsubstantiated and untested *allegations* in the NLRB proceeding into *findings* in the instant proceeding, particularly because it is clear under the law that the NLRB is the appropriate forum to adjudicate IBEW's claims. This Commission should allow the NLRB to resolve IBEW's San Luis Obispo allegations, and should not entangle itself in that proceeding.

Moreover, IBEW's allegations are grossly misleading. IBEW fails to tell this Commission that the Charter employees in San Obispo have told Charter and the NLRB that they no longer wish to be represented by IBEW. Charter is obligated by law to respect the decision of the majority of its employees and has advised IBEW that it can no longer recognize IBEW as the employees' representative.<sup>162</sup> And although IBEW complains that Charter communicated with

collective bargaining agreements for the Glendale/Burbank employees, without any strikes, lockouts, or unfair labor practices by either party. Thus, even if IBEW's claims about San Luis Obispo were true (which they are not), they do not accurately reflect Charter's overall relationships with employees in California and do not permit any conclusion about how employees will be affected by the Transaction.

<sup>161</sup> See NLRB Docket, Case 31-CA-150248, <https://www.nlr.gov/case/31-CA-150248>.

<sup>162</sup> IBEW also fails to inform the Commission that the NLRB has *rejected* its claim that Charter did not bargain in good faith. IBEW Opening Br. at 6. Although IBEW filed unfair labor practice charges against on this basis, *see* Initial Charge, NLRB Case 31-CA-150248 (Apr. 14, 2015), the NLRB determined that IBEW's charges related to the bargaining lacked merit, and IBEW withdrew them. *See* Fourth Amended Charge, NLRB Case 31-CA-150248 (Sept. 29, 2015); Third Amended Charge, *id.* (July 1, 2015); Second Amended Charge, *id.* (June 3, 2015); First Amended Charge, *id.* (May 12, 2015). The only remaining charges concern conduct *away* from the bargaining table. Nor does IBEW inform the Commission that the NLRB has also determined that Charter had a lawful right to take a position that it would not bargain based on incorrect information on which IBEW based its wage proposal—another accusation IBEW repeats in its brief here—and that IBEW has withdrawn that allegation in the NLRB proceeding as well.

San Luis Obispo employees about the status of bargaining,<sup>163</sup> IBEW fails to inform the Commission that those communications are protected by the National Labor Relations Act.<sup>164</sup> For this reason, IBEW was forced to withdraw these charges in the NLRB proceeding.<sup>165</sup> IBEW should not be allowed to argue that conduct specifically protected by the Act should be used to deny the Transaction.

Furthermore, as Charter explained in Opposition to IBEW's Motion to Accept Late-Served Evidence, it would violate the Supremacy Clause of the U.S. Constitution for the Commission to base its decision on a proceeding before the NLRB. The U.S. Supreme Court held thirty years ago that a state may not impose any penalties beyond those provided by the National Labor Relations Act.<sup>166</sup> Thus, even assuming the IBEW's allegations had any merit (which they do not), preemption dictates their exclusion from this proceeding. Indeed, even IBEW recognizes that the adjudication of alleged "violations of federal labor law . . . are within the jurisdiction of the NLRB."<sup>167</sup>

See First Amended Charge, NLRB Case 31-CA-159815 (Sept. 15, 2015), <https://www.nlr.gov/case/31-CA-159815>.

<sup>163</sup> See IBEW Opening Br. at 5–6.

<sup>164</sup> See NLRA, § 8(c), 29 U.S.C. § 158(c) ("The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.").

<sup>165</sup> See First Amended Charge, NLRB Case 31-CA-159815 (Sept. 15, 2015), <https://www.nlr.gov/case/31-CA-159815>.

<sup>166</sup> See *Wis. Dep't of Indus., Labor & Human Relations v. Gould, Inc.*, 475 U.S. 282, 288–89 (1986) ("Because Wisconsin's debarment law functions unambiguously as a supplemental sanction for violations of the NLRA, it conflicts with the [NLRB's] comprehensive regulation of industrial relations . . .").

<sup>167</sup> Mot. of IBEW to Accept Late-Served Evid. at 5 (Feb. 23, 2016).

**E. No Party Disputes that the Transaction is Fair to Shareholders.**

No party has disputed that the Transaction will be fair to the Joint Applicants' shareholders, who have approved it by overwhelming margins.<sup>168</sup> Thus, § 854(c)(5) favors approval.

**F. The Transaction Will Benefit California Communities.**

The Transaction will bring numerous benefits to California communities, including philanthropic commitments, investments in network buildout that will benefit state and local economies, opportunities for new jobs and training, and a robust low-income broadband offering that has been roundly praised by community-focused organizations.<sup>169</sup> These various benefits are discussed throughout other portions of the Joint Applicants' brief, which they incorporate by reference here—and which demonstrate that approval is warranted under this factor as well.

**G. No Party Disputes that the Transaction Preserves the Commission's Jurisdiction Over Public Utility Operations.**

The Transaction raises no concern under § 854(c)(7), as all three applicants have been good corporate citizens and nothing in the Transaction would diminish the Commission's oversight and auditing authority over their regulated operations.<sup>170</sup> New Charter's voluntary commitments further evidence the Joint Applicants' good faith and corporate citizenship. As no party has presented evidence or argument under this factor, it supports approval as well.

The closest any party comes to disputing this factor is ORA's argument that Charter has not offered LifeLine within its service territory in recent years.<sup>171</sup> As set forth in Part V.D, *infra*, New Charter will commit offering a low-income discounted voice service commensurate with

---

<sup>168</sup> JA Opening Br. at 68.

<sup>169</sup> See *id.* at 68–70, 91–96, 104–11; Parts II.A, II.B, III.A, V.A, V.D, V.G, *infra*.

<sup>170</sup> *Id.* at 68–73.

<sup>171</sup> ORA Opening Br. at 43.

discounts available under LifeLine going forward for five years, thus allaying any such concern. However, Charter's present non-participation in the program does not call into question the Commission's jurisdiction over public utility operations within the meaning of § 854(c)(7). The Commission made an explicit decision *not* to compel VoIP Service providers, such as Charter's registered VoIP affiliate Charter Advanced Services (CA), LLC (and Bright House Networks' similar VoIP affiliate) to participate in the LifeLine Program; G.O. 153 makes clear that "[p]articipation in California LifeLine" by "VoIP" providers is "*optional*."<sup>172</sup> The Legislature's deregulation of VoIP services through § 710(a) reinforces the absence of such a requirement. Charter's and Bright House Networks' respective CLECs, Charter Fiberlink and Bright House California, have likewise been under no obligation to offer LifeLine discounts because they do not serve the residential market, and their nonparticipation thus does not implicate the Commission's jurisdiction.

ORA's various arguments to the contrary are insubstantial. ORA's claim that Charter Advanced Services "has been operating LifeLine service" in California, and is thus subject to the full panoply of obligations of G.O. 153 already,<sup>173</sup> is unsupported. Charter Advanced Services provides discounts to legacy Charter Fiberlink customers who had received LifeLine discounts when Charter Fiberlink served the retail market, but does so at its own cost, without reimbursement.

ORA also makes the stale claim that Charter Fiberlink did not obtain Commission "approval" to exit the residential and retail markets, including participation in LifeLine, over three

<sup>172</sup> G.O. 153 at ¶ 1.3 (emphasis added).

<sup>173</sup> ORA Opening Br. at 43.

years ago.<sup>174</sup> As Charter has shown in its rebuttal testimony, however, it long ago answered Commission Staff's questions regarding Charter Fiberlink's March 2013 assignment to Charter Advanced Services of its retail customers and its accompanying exit from the residential market.<sup>175</sup> And although the issue is now moot in light of New Charter's voluntary agreement to extend discounted voice service commensurate with LifeLine across its footprint for three years, no Commission approval was previously required for Charter Fiberlink to exit the retail voice market because its voice services were, and always have been, VoIP services. Section 710(a) repealed any requirement that VoIP service providers seek or obtain Commission approval before entering markets, exiting markets, or altering the terms and conditions of their services, and Charter was legally entitled to avail itself of the deregulation the Legislature deemed to be the appropriate policy for California.

ORA's argument is also factually mistaken: as ORA's own witness admits, Charter Fiberlink (at Commission Staff's request) in November 2014 filed an advice letter notifying the Commission of its changes to its tariff to discontinue its LifeLine offering.<sup>176</sup> The Commission issued an initial suspension to review Charter Fiberlink's changes to its tariff, but took no further action thereafter.<sup>177</sup> Because the Commission declined to act upon Charter Fiberlink's advice letter, Charter Fiberlink's revised tariff withdrawing the offering of LifeLine services was deemed approved as a matter of law when the suspension period ended.<sup>178</sup> Thus, Charter

<sup>174</sup> *Id.*

<sup>175</sup> Sanders Rebuttal, JA-9 at 13:17–14:16.

<sup>176</sup> Odell, ORA-4 at 5:13–5:17.

<sup>177</sup> Sanders Rebuttal, JA-9 at 14:7–4:16.

<sup>178</sup> See G.O. 96-B, § 7.5.2. ORA's witness Eileen Odell's claim that Charter Fiberlink's Advice Letter "is suspended," Odell, ORA-4 at 5:17, neglects that advice letter suspensions expire

Fiberlink's previous withdrawal from offering LifeLine discounts to new customers provides no basis under § 854(c)(7) to oppose the Transaction, and, going forward, New Charter's commitment to offer discounted voice service commensurate with LifeLine for five years should satisfy ORA's concerns regarding this topic.

## **II. THE TRANSACTION WILL PROMOTE BROADBAND DEPLOYMENT AND AFFORDABILITY.**

As the Joint Applicants presented in their Opening Brief, the Transaction will enable New Charter to invest significantly in the expansion of its advanced broadband systems throughout California, including both transaction-specific buildout and upgrade commitments and strategic positioning of the company to make further investments in the future.<sup>179</sup>

Other parties focus on mistaken suggestions that the Transaction will decrease broadband competition in California, and on a list of requested conditions that are untethered to any Transaction-specific "adverse consequences" necessitating mitigation.<sup>180</sup> The bottom line is that the Transaction will entail no loss in broadband competition anywhere in California; will enable New Charter to make large capital investments in broadband infrastructure; and will ensure that Charter's beneficial Open Internet, interconnection, and consumer contracting policies continue to promote a broadband-focused strategy throughout the New Charter footprint.

### **A. New Charter's Commitments Guarantee That The Transaction Will Drive Expanded Broadband Deployment Throughout California.**

The Transaction will generate improved broadband deployment throughout California. As explained in the Joint Applicants' Opening Brief, New Charter has committed, upon the close after a fixed time—which has long passed. The Commission's current list of suspended advice letters, notably, does not include any reference to Charter Fiberlink's advice letter.

<sup>179</sup> See JA Opening Br. at 91–96.

<sup>180</sup> Cal. Pub. Util. Code § 854(c)(8).

of the Transaction, to make ambitious capital investments that will extend New Charter's high-speed residential and business broadband services to new customers throughout the Joint Applicants' combined national footprint.<sup>181</sup> These investments will include

- **Digital Transitioning.** Transitioning nearly all of New Charter's broadband systems to digital infrastructure, which will ensure that speeds reach Charter's current 60 Mbps base level within 30 months in virtually all areas served by New Charter.<sup>182</sup>

**Broadband Passings.** Adding at least one million broadband passings in the Joint Applicants' franchise areas within four years.<sup>183</sup>

**Commercial Buildout.** Investing \$2.5 billion over four years in commercial buildout, which will ensure an increase in competition for enterprise services—and especially for SMB customers.<sup>184</sup>

- **WiFi Deployment.** Deploying 300,000 new out-of-home WiFi access points, which will raise the competitive stakes among mobile wireless providers by enabling New Charter subscribers to save money on their wireless data plans.<sup>185</sup>

Several parties have requested that New Charter commit to *California-specific* allocations of these pledged national investments.<sup>186</sup> As set forth in greater detail in Part V, *infra*, and the accompanying Appendix, New Charter is willing to accept this request and make California-specific commitments. In particular:

**Digital Transitioning.** New Charter will offer digital video service to approximately 70,000 homes and businesses within its service area that currently are capable of receiving analog-only television services in Kern County, Modoc County, Monterey County, San Bernadino County, and Tulare County, as well as in Bright House Networks' current service area in Kings County. This expanded deployment of digital infrastructure will take place within three years following

<sup>181</sup> See JA Opening Br. at 93–94.

<sup>182</sup> See *id.* at 60.

<sup>183</sup> See Falk, JA-1(C) at 24:20–25:2.

<sup>184</sup> See *id.* at 20:13–20:15.

<sup>185</sup> See *id.*

<sup>186</sup> WGAW Opening Br. at 55–56; ORA Opening Br. at 2.

the close of the Transaction.<sup>187</sup> As reflected in the most recent U.S. Census, these are largely minority communities in which over 25% of households speak a language other than English at home.<sup>188</sup>

**Broadband Passings.** New Charter will deploy broadband passings to 150,000 new California homes and businesses. This commitment includes the approximately 70,000 homes and businesses described above that do not have any broadband service from Charter, Time Warner Cable, or Bright House Networks today and will receive these services within three years as described under the terms above, and an additional 80,000 additional homes and businesses within its California service area within four years of the close of the Transaction. At least 50% of these additional 80,000 passings, too, will be built in communities where more than 25% of households speak a language other than English at home.<sup>189</sup>

**100 Mbps Speeds Within Three Years:** New Charter will make 100 Mbps broadband speeds available to the approximately 7.5 million households throughout its California footprint (subject to completing the broadband passings mentioned above) within three years of the Transaction's close.

**300 Mbps Speeds By End of 2019:** New Charter will make 300 Mbps broadband speeds available to all households in its California footprint where the Joint Applicants provide broadband services today, which total approximately 7.5 million homes, by the end of 2019.

**WiFi Access Points.** New Charter will deploy at least 25,000 out-of-home wireless hotspots within its California service area within four years of the close of the Transaction. At least 50% of these will be in communities where over 25% of households speak a language other than English at home.<sup>190</sup>

- **Rural and Low-Income Broadband.** New Charter will identify 75 public locations in rural and low-income areas in which to deliver broadband access, including wireless capabilities, again with many of these locations serving communities in which over 25% of households speak a language other than English at home.

<sup>187</sup> This three-year time frame is subject to timely receipt of all permits, easements, and other right-of-way authorizations, including but not limited to utility make-ready and may be extended for good cause shown by New Charter.

<sup>188</sup> All references in this brief to the demographics of communities to be served by New Charter based on 2010-2014 U.S. Census Data as set forth in note 3, *supra*.

<sup>189</sup> Subject to the same qualifications in note 3, *supra*.

<sup>190</sup> *Id.*



**B. New Charter's Service Offerings Will Promote, Not Diminish, Broadband Affordability.**

As the Joint Applicants set out in their Opening Brief, the Transaction will substantially improve broadband affordability in California through New Charter's customer-friendly NPP model and through New Charter's robust low-income broadband offering. Some parties suggest that broadband affordability will suffer if the Transaction is approved. These arguments fail, as explained below.

Through Charter's NPP model, New Charter will offer an industry-leading basic service tier of 60 Mbps to virtually all of New Charter service areas. New Charter, moreover, will offer Charter's high-quality, high-speed broadband service at attractive prices, without data caps, usage-based pricing, modem fees, or early termination fees. No party contests that NPP will offer high-quality service on customer-friendly terms, and CETF, for its part, has commended the Joint Applicants on the infrastructure investments that will be necessary to make 60 Mbps available to virtually all California consumers.<sup>191</sup>

WGAW, however, suggests that California consumers will be harmed by the "loss of more affordable broadband tiers," such as Time Warner Cable's current Everyday Low Price plan.<sup>192</sup> As the Joint Applicants have explained, Charter's strategy has been to invest in high-speed broadband services, and Charter has accordingly invested to increase broadband speeds, while offering them at affordable prices. To the degree that customers prefer a lower-speed option, such services will remain available from wireless providers and ILECs.<sup>193</sup> Moreover, because Charter has no current plans to require existing Time Warner Cable or Bright House Net-

<sup>191</sup> CETF Opening Br. at 11.

<sup>192</sup> WGAW Opening Br. at 45.

<sup>193</sup> JA Opening Br. at 105 (citing Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 49).

works subscribers to switch to plans offered under the NPP model, those customers may remain on their current plans if they so choose.<sup>194</sup>

Further, as set forth in Part V.A.1, *infra*, New Charter will address this concern by voluntarily committing to allow existing Time Warner Cable and Bright House Networks customers to retain, without material changes that have the intent to discourage, the broadband services they subscribe to at the close of the Transaction for three years from the date of the closing of the Transaction.

In addition to the benefits that will accrue from the NPP model, New Charter's low-income broadband plan—which has been widely praised by a large number of community-focused organizations<sup>195</sup>—will also offer a tremendous public benefit, contributing significantly to broadband affordability. New Charter's historic offering, which will deliver 30/4 Mbps at initial pricing of \$14.99 per month, will come with a lower per-megabit cost than other services specifically targeting low-income households, and it will be the only such service to include low-income seniors (defined as those sixty-five years of age and older, receiving Supplemental Security Income from the federal government).<sup>196</sup>

Despite the unprecedented scope of New Charter's low-income broadband commitment, various parties attempt to minimize its significance, arguing that New Charter should be required to expand the offering further, for instance, to make the offering available to all low-income

<sup>194</sup> *Id.* at 105–06. WGAW also argues that, as a result of the Transaction, New Charter will have an incentive to increase prices for standalone broadband service or impose data caps in order to foreclose or disadvantage OVDs. *See* WGAW Opening Br. at 46–47. WGAW's argument turns on its claim that there will be decreased competition following the Transaction, which is not the case. *See* Part II.C, *infra*. Moreover, as discussed at length in Part III.B.2.a, *infra*, New Charter's incentives are to *promote* OVDs rather than hinder them.

<sup>195</sup> JA Opening Br. at 78, 109.

<sup>196</sup> *Id.* at 106–08.

households and without any other restrictions on eligibility.<sup>197</sup> As explained by the Joint Applicants in their Opening Brief, and further explained in Part V, *infra*, the insistence that New Charter commit to a variety of *additional* conditions—above and beyond New Charter’s broadband affordability plan—is inappropriate, because the demands lack any nexus to any “harm” created by the Transaction, and because they are in many instances commercially unreasonable, beyond the Commission’s statutory jurisdiction to impose, and preempted by federal law.<sup>198</sup> To the degree that further requirements regarding broadband affordability are necessary, those requirements should be addressed by legislation or rulemaking that includes other stakeholders and applies to all industry participants equally. Requiring New Charter alone to bear the burden of ensuring broadband affordability would be inequitable, and it could damage New Charter’s ability to compete in the marketplace.<sup>199</sup>

ORA additionally suggests that the Commission should not credit New Charter’s low-income broadband offering because “each Joint Applicant could adopt the same program independently outside the merger, as is the case for Bright House Networks.”<sup>200</sup> But that is a *non sequitur*. The relevant question, as set forth in the *Scoping Ruling*, is how approval of the Transaction will promote broadband affordability.<sup>201</sup> Time and again in reviewing transactions, the Commission has credited voluntary commitments without concern for whether the applicants

<sup>197</sup> See, e.g., WGAW Opening Br. at 45–46; ORA Opening Br. at 44; CETF Opening Br. at 4–5; CforAT Opening Br. at 17–18.

<sup>198</sup> See JA Opening Br. at 22–24, 77–79; Part V, *infra*.

<sup>199</sup> JA Opening Br. at 79.

<sup>200</sup> ORA Opening Br. at 2.

<sup>201</sup> *Scoping Ruling* at 5.

could have acted absent the transaction.<sup>202</sup> The Joint Applicants further note that many parties in this proceeding have previously identified alleged shortcomings in Bright House Networks' Connect2Compete program; the record therefore already proves that New Charter's ability to draw on each provider's successes and experiences will result in an improved offering above what each Joint Applicant could offer standing alone.

WGAW also argues, finally, that the Transaction will make broadband services less affordable because New Charter—having acquired debt as part of the leveraged purchase of Time Warner Cable and Bright House Networks—will attempt to increase broadband prices in order to meet its debt obligations.<sup>203</sup> At the outset, the premise behind this argument is mistaken because the Transaction will *improve* Charter's financial condition.<sup>204</sup> Moreover, as Dr. Scott Morton explains, all else being equal, firms set prices so that their marginal revenue is equal to their marginal costs, and because debt payments are fixed rather than marginal costs, they do not affect prices.<sup>205</sup> Therefore, WGAW's speculation that New Charter will increase prices in order to

<sup>202</sup> See, e.g., *In re Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications*, A.15-03-005, Decision Granting Application Subject to Conditions and Approving Related Settlements, D.15-12-005, at 56 (Dec. 3, 2015) (acknowledging, *inter alia*, that Frontier's voluntary commitment to offer certain customers broadband for \$13.99 per month "address[ed] the problems of broadband accessib[ility] and affordability"); *In re Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI*, A.05-04-020, Decision Authorizing Change in Control, D.05-11-029, at 2–3 (Nov. 18, 2005) (acknowledging that Verizon's commitment to provide "naked DSL" would contribute toward ensuring that the proposed merger "will bring the benefits of advanced telecommunications services and telecommunications competition to all Californians").

<sup>203</sup> WGAW Opening Br. at 47–48.

<sup>204</sup> JA Opening Br. at 25–31.

<sup>205</sup> Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 79.

service increased debt is unfounded, and certainly cannot outweigh New Charter's substantial commitment to a low-income broadband offering.<sup>206</sup>

**C. The Transaction Will Not Harm Broadband Competition.**

As the foregoing discussion makes clear, New Charter will extend its broadband footprint beyond the reach of the Joint Applicants' current service offerings as a result of the Transaction. When considered alongside the fact that this Transaction entails absolutely no reduction in horizontal competition in *any* of the Joint Applicants' service areas, these commitments demonstrate that the Transaction delivers a competitive *benefit* to California broadband consumers.

*1. ORA and WGAW Offer No Plausible Mechanism by Which Modestly Increased Regional Concentration Among Non-Competing Service Providers Harms Consumers or Competition.*

Neither ORA nor WGAW raise any credible arguments that the Transaction will reduce broadband competition. ORA relies solely on Dr. Selwyn's Southern California "market" analysis to support its claim of reduced competition.<sup>207</sup> But as the Joint Applicants explained in their opening brief, the idea of "increased concentration" of broadband provision in a region is unteth-

---

<sup>206</sup> WGAW notes that the New York Public Service Commission ("NYPSC") described "the issuance of debt connected to the proposed transaction [as] represent[ing] the single most significant potential detriment." WGAW Opening Br. at 48 (quoting *Joint Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Case 15-M-0388, Redacted Comments of the New York State Department of Public Service, at 36 (N.Y.P.S.C. Sept. 16, 2015)). But the NYPSC declined to impose any debt-related conditions, concluding that such conditions were not warranted. See *Joint Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Case 15-M-0388, Order Granting Joint Petition Subject to Conditions, at 49–50 (N.Y.P.S.C. Jan. 8, 2016) ("[W]e do not believe conditions are warranted in this 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.").

<sup>207</sup> ORA Opening Br. at 17.

ered from any genuine competitive market analysis.<sup>208</sup> Because broadband is provided at the household level, the only relevant marker of competition for broadband is whether households' choices among broadband providers are restricted or expanded by the Transaction. By that measure, Dr. Scott Morton's conclusion is sound: the Transaction "will not result in any meaningful reduction of competition."<sup>209</sup> Neither Dr. Selwyn nor ORA rebuts Dr. Scott Morton's conclusion. They cannot point to more than a handful of census blocks in which there is more than one Joint Applicant currently offering service,<sup>210</sup> and thus they cannot point to any customer or potential customer whose broadband options are reduced as a result of this Transaction.

The mistaken nature of ORA's competition analysis can be seen most clearly when considering its artificial attempts to graft a Herfindahl-Hirschman Index ("HHI") analysis onto the Commission's review of broadband competition. HHI, as defined by the U.S. DOJ/FTC 2010 Horizontal Merger Guidelines ("HMGs"), refers to the sum of the squares of merging firms' market shares, "and thus gives proportionately greater weight to . . . larger market shares."<sup>211</sup> ORA suggests that the Joint Applicants' HHI will rise by 200 points, and be above 2,500, in ten Southern California counties selected by Dr. Selwyn for analysis.<sup>212</sup> But these numbers are meaningless. Calculating HHI for *regional* broadband penetration is a category mistake. Because HHI depends on an initial market definition, applying HHI analysis to a unit of analysis that does not represent an economic market flies in the face of economic theory and practice. As

<sup>208</sup> See JA Opening Br. at 98–101.

<sup>209</sup> Scott Morton, JA-4(C) at 4:17–4:20; see also JA Opening Br. at 96–104.

<sup>210</sup> See JA Opening Br. at 97–98.

<sup>211</sup> U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (2010) ("HMG"), <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

<sup>212</sup> ORA Opening Br. at 19.

Dr. Scott Morton explains, “[j]ust as . . . regional and national ‘market’ definitions are unsound, purported HHI concentration measures from these ‘markets’ are not meaningful.”<sup>213</sup>

The HMGs themselves straightforwardly explain *why* HHI is not applicable to measure broadband concentration in a given region. “Market definition,” they state, “focuses *solely* on demand substitution factors, *i.e.*, on customers’ ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service.”<sup>214</sup> But the purported HHI scores and HHI increases quoted by Dr. Selwyn do *not* reflect any change in California broadband customers’ ability or willingness to switch broadband providers. To make the point starkly, consider two islands, in each of which a different cable company is the exclusive seller of broadband. Under Dr. Selwyn’s faulty method of analysis, the merger of these two companies would “raise” each island’s purported HHI scores from 2,500 to 10,000. But not a single resident of either island would see any alteration in their broadband choices. In such a situation, the HHI measure lacks a nexus to any real competitive changes affecting consumers. The same is true here.

In the absence of any actual harms to service-level competition, ORA and WGAW offer attenuated theories of consumer harm that simply do not withstand scrutiny. As addressed below, the Transaction’s increased regional concentration—which is, in addition to being irrelevant, also overstated<sup>215</sup>—will not have any plausible negative effects on California consumers.

<sup>213</sup> Scott Morton Rebuttal, JA-5(C) Ex. A, ¶ 6 n.6.

<sup>214</sup> HMG § 4 (emphasis added).

<sup>215</sup> ORA relies solely on Dr. Selwyn’s analysis of New Charter’s broadband passings in ten Southern California counties. See ORA Opening Br. at 17–24. The Joint Applicants addressed multiple mistakes in Dr. Selwyn’s concentration analysis in their Opening Brief. See JA Opening Br. at 96–104. WGAW’s arguments regarding market concentration, WGAW Opening Br. at 15, merely replicate the same errors in Dr. Selwyn’s analysis.

2. *New Charter Will Have No Increased Ability to Charge Higher Broadband Prices than the Joint Applicants Do Today.*

Contrary to ORA's assertion, New Charter will have neither the incentive nor the ability to charge higher broadband prices to "offset MVPD revenue losses."<sup>216</sup>

First, ORA bases its assessment on New Charter's share of 25+ Mbps broadband subscribership in California, but as the Joint Applicants explained in detail in their Opening Brief, that cutoff does not reflect the realities of broadband competition.<sup>217</sup> Many customers choose speeds lower than 25 Mbps. Furthermore, many competitors either offer comparable speeds or will be offering 25+ Mbps speeds in the very near future, rendering a snapshot of today's speeds irrelevant for forward-looking analysis.<sup>218</sup> As WGAW admits, the FCC adopted the 25 Mbps cutoff to define a statutory level of "advanced telecommunications capability" under § 706 of the 1996 Act—an inquiry unrelated to the definition of economic markets.<sup>219</sup> Rather, as the Joint Applicants' Opening Brief explained, the FCC has recently used 10 Mbps for purposes more akin to market definition—and FCC Chairman Tom Wheeler proposed to do so again this week.<sup>220</sup> And even if 10 Mbps were no longer a relevant threshold, the FCC's Wireline Competition Bureau staff would be better-positioned to make that determination. The FCC's attention to the broadband marketplace and access to data concerning broadband provision far exceeds

---

<sup>216</sup> See ORA Opening Br. at 18.

<sup>217</sup> See JA Opening Br. at 102–104.

<sup>218</sup> See Scott Morton Rebuttal, JA-5(C), Attachment A, ¶ 49; Scott Morton, JA-4(HC), Ex. B, ¶¶ 136–142.

<sup>219</sup> See WGAW Opening Br. at 13 & n.29.

<sup>220</sup> See JA Opening Br. at 102–03; *Chairman Wheeler & Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband to Low-Income Americans*, Fact Sheet, Doc-338113A1, at 1 (Mar. 8, 2016), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0308/DOC-338113A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0308/DOC-338113A1.pdf).



that which this Commission has received via this Transaction review,<sup>221</sup> and it would be unwise to hazard a new guess at how to define economically salient broadband markets.

*Second*, even if the Commission *were* to look through an arbitrarily defined 25+ Mbps frame, the Transaction still would have no effect on competition levels because California consumers will not see any reduction in the number of broadband providers offering service at those speeds. Thus, the alleged lack of competition at that level would not be Transaction-specific, as Dr. Scott Morton has explained.<sup>222</sup>

3. *Even if WGAW's "Benchmark" Competition Theory Were Meaningful, New Charter Would Be an Improved Benchmark for Competitors Throughout California.*

The record does not contain evidence that the effects of so-called “benchmark” comparisons across providers who do not actually compete with one another for customers are actually material or significant. That said, WGAW claims that the Joint Applicants will no longer serve as benchmarks for one another post-Transaction,<sup>223</sup> neglecting that if its theory of “benchmark” competition were credited, New Charter—as a scaled, advanced broadband service provider—would serve as a far more important benchmark against which to compare *other* broadband providers. New Charter’s policies and practices are at the leading edge of a broadband-first model

<sup>221</sup> For instance, the FCC regularly collects data concerning the speeds and extent of every broadband provider’s current and expected deployments. *See, e.g., In re Modernizing the FCC 477 Program*, Report and Order, 28 FCC Rcd 9887 (2015). It also conducts inquiries into technological change and market behavior to guide its decisionmaking. *See In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 (2015) (“2015 Broadband Progress Report”).

<sup>222</sup> Scott Morton, JA-4(C), Ex. B ¶ 9.

<sup>223</sup> WGAW Opening Br. at 43.

of MSO operation. By obtaining increased scale, New Charter will be able to turn its strategy into the true “benchmark” for the industry. Thus, the Transaction will make the Joint Applicants’ policies into benchmarks against which other providers can be measured. These are far more valuable than the incidental comparisons that WGAW cites, and they only add to the competitive benefits of the Transaction.

4. *The Joint Applicants Do Not Compete in Online Video Delivery, and the Transaction Will Accordingly Not Remove Competitors from that Market.*

ORA does not establish that the Transaction will reduce potential OVD competition among the Joint Applicants. ORA argues that the Joint Applicants are “potential competitors in the OVD space,”<sup>224</sup> but this assertion is not based on anything in the record. None of the Joint Applicants currently offers a standalone OVD (as opposed to a TV Everywhere service), and ORA points to nothing in the record suggesting imminent development of one. ORA likewise ignores that there is a strict legal standard for proving a loss of “potential competition,” which ORA does not even cite, much less attempt to satisfy.<sup>225</sup>

5. *The Transaction Will Not Affect the Prospects of Overbuilding Anywhere in California.*

Finally, WGAW contends that the Transaction will “eliminate . . . potential overbuilding by any of the Joint Applicants,” thus reducing the potential of competition among the three companies.<sup>226</sup> WGAW’s argument assumes that the three companies would otherwise overbuild each others’ respective service areas but for the Transaction. In fact, none of the Joint Appli-

<sup>224</sup> ORA Opening Br. at 21.

<sup>225</sup> Response to Protests at 25–26 (citing *In re GTE* at 51).

<sup>226</sup> WGAW Opening Br. at 44; *see also id.* at 6.

cants has plans or incentives to overbuild each others' networks in California today.<sup>227</sup> Because "[b]uilding network infrastructure requires significant financial commitments," Charter in general "focuses its capital investments in areas where [Charter] already operate[s] in order to develop and provide better services and leverage its existing network deployment."<sup>228</sup> Nothing in the record suggests that Time Warner Cable or Bright House Networks operate differently.

### **III. THE TRANSACTION SERVES THE PUBLIC INTEREST.**

For the many reasons stated in the Joint Applicants' Opening Brief and in Part I, *supra*, the Transaction is in the public interest. To the extent the Commission decides to consider broadband affordability and deployment notwithstanding the Joint Applicants' jurisdictional objections, significant benefits will accrue to Californians through the deployment of advanced broadband services at competitive prices.<sup>229</sup> In addition, through the commitments New Charter has made, the Transaction will have significant positive impact on diversity and minority advancement, both at New Charter and in the communities it serves.

These numerous benefits all support approval. Under the generalized "public interest" rubric, however, several parties have sought to assert that the Transaction will create "harms" outside of the § 854(c) framework, in particular to online video distribution services and in the video programming marketplace more generally. As discussed below, however, these alleged "harms" are unfounded and outside the scope of the CPUC's statutory review in this proceeding. And imposing conditions based on these claimed "harms" could raise preemption concerns.<sup>230</sup> However, to the extent that the CPUC deems effects on OVDs or other video programming with-

---

<sup>227</sup> See Falk, JA-1(C) at 24:8–24:10.

<sup>228</sup> *Id.* at 24:10–24:12; see also, e.g., Scott Morton, JA-4, Ex. A ¶ 15.

<sup>229</sup> See Part II.B, *supra*.

<sup>230</sup> See Part A.3 of Jurisdiction Section, *supra*.

in the scope of its review, the various harms asserted by some of the parties opposing approval are speculative and unsupported by the record.

**A. Greenlining's Criticisms Misapprehend New Charter's Substantial Commitments to Promoting Diversity.**

At the outset, approval of the Transaction will yield benefits in diversity and advancement of minority communities, as New Charter has made substantial and concrete commitments to promote diversity in virtually every facet of New Charter's business. These commitments are memorialized in a Memorandum of Understanding with several leading multicultural organizations ("Diversity MOU")<sup>231</sup> and in a Memorandum of Understanding with the National Diversity Coalition ("California MOU").<sup>232</sup> Charter's commitments to diversity support approval of the Transaction under the Commission's general public interest inquiry as well as under § 854(c)(4) (fair and reasonable to employees) and § 854(c)(6) (benefits to communities in California).

A wide array of multicultural California and national groups have expressed their support for Charter's commitment to diversity and the Transaction, including the following:

- AIDS Project Los Angeles
- Alhambra Chamber of Commerce
- Asian Americans Advancing Justice
- Asian Pacific American Institute for Congressional Studies
- Beverly Hills Hollywood NAACP
- Black Association
- Black Chamber of Commerce of Orange County
- CalAsian Chamber of Commerce
- California Hispanic Chambers of Commerce
- California Journal for Filipino Americans
- California Latino Leadership Institute
- City of Montebello
- Crossings TV

---

<sup>231</sup> Falk Rebuttal, JA-3, Ex. A.

<sup>232</sup> Memorandum of Understanding between Charter Communications, Inc. and the National Diversity Coalition (submitted by motion and granted by Presiding Officer on Feb. 17, 2016).

- East West Players
- Equality California
- Hispanas Organized for Political Equality
- Hispanic Federation
- Latino Journal
- League of United Latin American Citizens
- Los Angeles NAACP
- Los Angeles Urban League
- Media Action Network for Asian Americans
- Museum of African American Arts
- National Action Network
- National Asian American Coalition
- National Council of La Raza
- National Diversity Coalition
- National Hispanic Foundation for the Arts
- National Latina Business Owners Association
- National Urban League
- North San Diego NAACP
- Oasis Center International
- Organization of Chinese Americans—Asian Pacific American Advocates
- Service Employment Redevelopment National
- Society for Hispanic Professional Engineers
- Vamos Unidos U.S.A
- Wall Memorias Project<sup>233</sup>

Despite this chorus of support, there is a lone voice in opposition to the Transaction on diversity issues. And Greenlining's dissent arises from a misunderstanding of the evidence in the record.

As an initial matter, Greenlining asserts that "Charter's testimony discussing diversity consist[s] of a scant one page" that "simply repeats" Time Warner Cable's current diversity practices.<sup>234</sup> This claim is false. Charter has submitted (i) the Rebuttal Testimony of Adam Falk, which devotes eleven pages to detailing New Charter's commitments to diversity,<sup>235</sup> (ii) the Di-

---

<sup>233</sup> Falk Rebuttal, JA-3 at 3:17–3:25; Appendix A to JA Opening Br.

<sup>234</sup> Greenlining Opening Br. at 2.

<sup>235</sup> Falk Rebuttal, JA-3 at 1:19–11:24.

versity MOU, which sets forth specific and concrete plans to promote diversity,<sup>236</sup> (iii) a press release that summarizes some of the support the Diversity MOU has received from leaders of multicultural organizations,<sup>237</sup> and (iv) the California MOU, which ensures that the Diversity MOU will be implemented in a way that facilitates its success and effectiveness in California.

Greenlining also significantly misrepresents the contents of Charter's MOUs. According to Greenlining, the MOUs do not improve upon the Joint Applicants' current efforts and do not contain any "real commitment to diversity."<sup>238</sup> But the MOUs include concrete commitments to promote diversity in virtually all facets of New Charter's business, including but not limited to the following:

**Corporate governance**

- New Charter will appoint at least three diverse candidates to its Board of Directors (one African American, one Latino American, one Asian American/Pacific Islander).
- New Charter will create the position of Chief Diversity Officer to lead New Charter's diversity efforts, which position will be within one reporting level of New Charter's CEO and will have decision-making authority.
- Executives' compensation will depend in part on their success in furthering diversity and inclusion.
- New Charter will establish an External Diversity Council comprised of highly esteemed non-employees who represent a diverse constituency and who will monitor and evaluate New Charter's diversity initiatives, and to whom New Charter will report diversity data and information.
- New Charter and the External Diversity Council will work together to create a Diversity Strategic Plan, which will include detailed goals and objectives, including metrics and timelines, for New Charter's diversity initiatives.

**Suppliers**

- New Charter will voluntarily report for a period of five years information included in the Commission's General Order 156, and actively participate in the Commission's annual public hearing on GO 156 to the extent requested.
- New Charter will become a member of the National Minority Supplier Development Council, and will partner with the U.S. Black Chamber of Commerce and

---

<sup>236</sup> *Id.*, Ex. A.

<sup>237</sup> *Id.*, Ex. B.

<sup>238</sup> Greenlining Opening Br. at 3.

the U.S. Hispanic Chamber of Commerce, as well as other minority-led business organizations.

- New Charter will expand its use of minority-owned companies, including (i) establishing a relationship with at least one or more minority law firms in a metropolitan area in which it maintains a significant presence, (ii) engaging at least one minority-owned advertising agency, (iii) increasing its spending on advertising with minority-owned media, and (iv) growing the diversity of its banking and other financial services partners.
- New Charter will provide annual reports and data related to its supplier diversity efforts to designated multicultural leadership organizations, on request and subject to non-disclosure agreements.
- Within five years of the close of the Transaction, New Charter's aspirational supplier diversity goals will be consistent with other similarly situated cable operators' supplier diversity spend in California, taking into account the time frames over which those operators have been tracking such goals.
- New Charter will participate in procurement-related events that showcase diverse suppliers, and create other opportunities for building relationships with minority-owned suppliers.
- New Charter will invest in programs that mentor and coach diverse business owners who desire to compete for contracting opportunities.
- New Charter will use an internal system to track its spending with diverse suppliers.

#### **Employment**

- New Charter will work with multicultural organizations to assist in identifying, training and recruiting qualified people of color and other diverse candidates to fill at least 10,500 field technician and customer service jobs anticipated to be created as part of New Charter.
- New Charter will invest in local community programs designed to prepare people of color and other diverse individuals to succeed in the workplace.
- New Charter will support and partner with local trade schools and other organizations to train and/or certify diverse individuals in all facets of the cable industry.
- New Charter will create ten internships annually for students who attend minority-serving educational institutions in New Charter's footprint.

#### **Philanthropy**

- New Charter will increase its philanthropic giving in support of minority-led and minority-serving organizations, and will develop a specific goal for such giving.
- New Charter will create opportunities for internships for students from communities of color.
- New Charter will promote the positive impact of its partnerships with community organizations by increasing the provision of public service announcements and by using social media, advertising and other outlets to disseminate information about New Charter's diversity efforts.

#### **Programming**

- New Charter will expand carriage of and agree to at least one programming agreement extension with existing African American focused programming net-

works on the New Charter system that will cover no fewer than an aggregate of 6,000,000 subscribers, within nine months after the closing of the Transaction, subject to negotiation of customary terms.

- New Charter will expand its carriage of Latino targeted English Language programming networks by no fewer than an aggregate of 6,000,000 subscribers, within nine months after the closing of the Transaction, subject to negotiation of customary terms.<sup>239</sup>

Greenlining speculates that New Charter could try to sabotage its own commitments to diversity by, for example, hiring a CEO who ignores the commitments, or providing diversity training to its workforce “only once” and then abandoning the commitments.<sup>240</sup> But the MOUs also protect against these speculative scenarios—the External Diversity Council (comprised of twelve non-employees representing diverse constituencies) established by the Diversity MOU will provide regular monitoring, review and evaluation of New Charter’s diversity efforts, including review of reports and data on New Charter’s diversity efforts.<sup>241</sup>

Greenlining is also incorrect in asserting that the Joint Applicants have failed to show that their diversity efforts will benefit California. Because California will represent one of New Charter’s largest markets, it is certain that California will benefit from New Charter’s commitments to diversity, which will impact New Charter’s entire footprint. For example, some of the commitments made at the national level—such as the appointment of three diverse members to New Charter’s Board of Directors—will necessarily benefit the entirety of New Charter’s footprint, including California. Greenlining also effectively ignores the California MOU, the very purpose of which is to “ensure that the benefits of the National MOU are implemented in a way

---

<sup>239</sup> Falk Rebuttal, JA-3, Ex. A (Diversity MOU); California MOU.

<sup>240</sup> Greenlining Opening Br. at 3–5.

<sup>241</sup> Falk Rebuttal, JA-3, Ex. A.



that facilitates its success and effectiveness in California, and reaches the diverse constituencies that [the National Diversity Coalition] represents in the State.”<sup>242</sup>

In light of the foregoing, there is no legitimate basis to discount the significant Transaction-specific benefits to diversity and inclusion.

**B. WGAW’s, DISH’s, and ORA’s Speculative Claims of Harms to OVD Services Are Not Supported in the Record.**

Three parties erroneously argue that New Charter will have the incentive and means to inflict competitive harm on OVD services.<sup>243</sup> As explained below, these considerations are not properly part of this proceeding, and even if they were, they are illogical and unsupported in the record.

*1. Objections Regarding New Charter’s Future Relationships With OVDs Are Outside the Scope of this Proceeding.*

The limitations on the Commission’s jurisdiction set forth in the Joint Applicants’ Opening Brief and Part A of the Jurisdiction Section, *supra*, are particularly significant, as they pertain to any effects of the Transaction on “edge providers” like OVDs, which provide services to consumers over the Internet. For one, the marketplace for Internet content and applications is inherently national and interstate, such that review of the Transaction’s effects on OVDs is appropriately conducted at the national level.<sup>244</sup> There is no California market for HBO NOW, for instance, distinct from the national market for HBO NOW. Consistent with their jurisdiction over

---

<sup>242</sup> California MOU at 2 (emphasis added).

<sup>243</sup> See, e.g., ORA Opening Br. at 30–33; WGAW Opening Br. at 16–37; DISH Opening Br. at 3–7.

<sup>244</sup> See *In re Joint Application of Pacific Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U 1001 C), Which Will Occur Indirectly as a Result of Telesis Merger With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc.*, A.96-04-038, Opinion, D.97-03-067, at 68-69 (Mar. 31, 1997) (declining to adopt mitigation measures where, among other things, “the issues are being addressed . . . by the FCC”).

the national implications of the Transaction, the FCC and the DOJ are currently reviewing its effect on OVDs.

DISH, in particular, has participated fully in those FCC proceedings, submitting *nine* filings on the alleged effect of the Transaction on OVDs.<sup>245</sup> Yet, perhaps concerned that the FCC will find its arguments unpersuasive, DISH now seeks to improve its chances of interfering with the Transaction (which will create in New Charter a strong competitor to DISH's core MVPD services) by airing the same arguments before the Commission. WGAW also restates arguments already before the FCC, often piggybacking off of DISH's FCC filings,<sup>246</sup> and ORA's arguments in these areas amount to summaries of DISH's and WGAW's submissions. If the Commission were to duplicate the FCC's and DOJ's months-long and ongoing review, it would waste resources, risk conflicting conclusions on identical topics, and raise serious federal preemption concerns.<sup>247</sup>

WGAW and ORA also try to shoehorn consideration of OVDs into the *Scoping Ruling*.<sup>248</sup> In addition to being unacceptably speculative,<sup>249</sup> their arguments concern the national marketplaces for *video programming services* and *edge services*—not the Joint Applicants' regulated utility operations or “broadband deployment and/or affordability.”<sup>250</sup> Thus, in addition to

---

<sup>245</sup> See generally DISH Opening Br. (citing DISH submissions to the FCC).

<sup>246</sup> See, e.g., WGAW Opening Br. at 24 (highlighting the broad scope of the FCC's review of the AT&T-DirecTV merger and statements by DOJ's Assistant Attorney General for the Anti-trust Division, William Baer); *id.* at 25 (relying on statements of Charter executives quoted in DISH's FCC filings).

<sup>247</sup> See Part A.3 of Jurisdiction Section, *supra*.

<sup>248</sup> See, e.g., WGAW Opening Br. at 16–19; ORA Opening Br. at 30–33.

<sup>249</sup> See *In re GTE-Bell Atlantic*, D.00-03-021 at 122 (“declin[ing]” to deny merger “based on speculation”).

<sup>250</sup> *Scoping Ruling* at 5.

the jurisdictional reasons not to consider these arguments,<sup>251</sup> they are unconnected to the topics of the *Scoping Ruling* as a factual matter.

2. *New Charter Will Facilitate Rather Than Frustrate Its Subscribers' Access to OVD Services.*

Even if the Commission *were* to consider arguments regarding the effects of the Transaction on OVDs, it should find meritless claims that the Transaction will harm them. The record demonstrates that these claims run contrary to Charter's *actual* conduct, its commitments in this proceeding, and the economic incentives that New Charter will face. Further, if the Transaction *genuinely* threatened OVD services, then one would expect to see the nation's leading OVDs, such as Netflix, Hulu, and Amazon.com, all lining up to oppose it. The absence of such opposition—paired with Netflix's vigorous *support* for the Transaction—suggests the argument is being wielded tactically by parties opposed to the Transaction for unrelated reasons.<sup>252</sup>

a. Charter's History and New Charter's Incentives Show that the Transaction Will Benefit OVDs.

New Charter will have every incentive to promote the availability of OVD services, rather than hinder them in an ill-conceived bid to gain MVPD revenues. As Dr. Scott Morton explains, broadband subscribership will be the major driver of New Charter's growth, and OVD services are a "major driving force" of broadband subscriber growth.<sup>253</sup> The Joint Applicants' broadband subscribers already exceed their video subscribers nationally by roughly 2.6 mil-

---

<sup>251</sup> See Part B of Jurisdiction Section, *supra*.

<sup>252</sup> DISH's core business, for instance, is as an MVPD that will face strengthened competition from New Charter's MVPD services, and WGAW may see advantage in preventing New Charter from reaching a scale at which it can negotiate for more favorable video programming prices.

<sup>253</sup> Scott Morton, JA-4(C), Ex. B ¶ 78.

lion,<sup>254</sup> and, as Dr. Scott Morton further explains, “[t]he tilt of subscribers toward broadband is likely to continue into the future.”<sup>255</sup> Furthermore, Charter’s broadband revenue relative to its operating costs has grown, while operating margins for Charter’s video service have declined due to increased direct variable costs contrasted with only modest increases in video revenue per subscriber.<sup>256</sup> The Joint Applicants’ average gross margins for broadband, therefore, are higher than those for video service.<sup>257</sup> Thus, contra ORA and WGAW,<sup>258</sup> it would be unwise for New Charter to disfavor OVDs in order to protect its MVPD business from competition. As Dr. Scott Morton concludes, New Charter’s interests will be served by “mak[ing] the consumer broadband experience *more* attractive to consumers,” not less, in order to expand broadband subscribership.<sup>259</sup>

Moreover, as Dr. Scott Morton explains, Dr. Selwyn’s assumption that consumers choose between MVPD and OVD services is mistaken.<sup>260</sup> As the record shows, OVD services are typically complements to, rather than substitutes for, the Joint Applicants’ video services—meaning that, even if New Charter’s overriding goal were to protect MVPD subscribership, it still would have little incentive to interfere with OVDs.<sup>261</sup>

Even if New Charter wanted to harm OVDs, it could not do so without losing broadband customers. ORA and WGAW dispute this, pointing to New Charter’s purported “dominance and

---

<sup>254</sup> *Id.*, Ex. A ¶ 40.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*, Ex. A ¶ 41; *see also id.* ¶¶ 42–44 (discussing margins for single play subscriptions).

<sup>257</sup> *Id.*, Ex. B ¶ 101, tbl. 5.

<sup>258</sup> *See* ORA Opening Br. at 30–31; WGAW Opening Br. at 23.

<sup>259</sup> Scott Morton, JA-4(C), Ex. A ¶ 57 (emphasis added).

<sup>260</sup> Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 39.

<sup>261</sup> *Id.*, Attachment A ¶¶ 39–40.

monopoly over most of the Southern California 25/3 broadband market.”<sup>262</sup> But there will be no loss of broadband competition as a result of the Transaction—either at Dr. Selwyn’s inapposite 25 Mbps threshold or at the significantly lower speeds needed to enjoy today’s leading OVD services.<sup>263</sup> Consequently, ORA’s professed concerns lack any Transaction-specific basis. And the competition that exists today<sup>264</sup> will continue to incentivize New Charter to maintain Charter’s existing OVD-friendly practices.<sup>265</sup>

Moreover, ORA’s and WGAW’s speculation about future harms ignores Charter’s historical and current practices. Charter’s efforts to integrate OVD content into its Spectrum Guide user interface, *while beyond the scope of this proceeding*, demonstrate that the company does not view OVD services as a threat to its traditional cable programming.<sup>266</sup> Similarly, as Dr. Scott

---

<sup>262</sup> ORA Opening Br. at 18; *see also* WGAW Opening Br. at 26–27; *see also* WGAW Opening Br. at 26–27.

<sup>263</sup> JA Opening Br. at 96–104.

<sup>264</sup> Scott Morton Rebuttal, JA-5(C), Ex. A. ¶ 49 (describing existing and future rivals to New Charter in the broadband market, including “fiber and cable offerings from Verizon and Frontier, fiber over-builders (like Google and Cincinnati Bell), AT&T, and Century link,” as well as competition from “DSL offerings from various telcos”).

<sup>265</sup> WGAW additionally flyspecks Dr. Scott Morton’s reliance on a study by Global Strategy Group, asserting that the study has been “roundly criticized.” But WGAW cites only one source of that “criticism”: DISH’s self-serving submission to the FCC. WGAW Opening Br. at 27 (citing *Application of Charter Communications, Inc., Time Warner Cable, Inc. and Advance/Newhouse Partnership for Consent to Transfer of Control of Licenses and Authorizations*, MB Docket No. 15-149, Petition to Deny of DISH Network Corporation, at 52–53 (FCC Oct. 13, 2015)).

<sup>266</sup> Scott Morton, JA-4(C), Ex. A ¶ 32 (describing design of Spectrum Guide to “include OVDs in the program grid” and Charter’s “active[]” efforts to include OVD “programming applications within the Charter programming grid” to “allow subscribers to access the OVD programming directly from the grid rather than via a separate Internet session”). ORA attempts to turn Charter’s OVD-friendly practices upside down, claiming that New Charter could selectively harm certain OVDs by refusing to integrate them into Spectrum Guide. *See* ORA Opening Br. at 32. Yet, such a strategy would be against New Charter’s interest, which, as the Joint Applicants’ have explained at length, are advanced by the widespread use of OVDs.

Morton explains, “[t]he primary rationale for [Charter’s] speed increases”—from 1 Mbps to 60 Mbps in the course of five years—has been “to *facilitate* use of streaming video services.”<sup>267</sup> And Charter’s interconnection policy and consumer contracting practices (such as the absence of data caps) demonstrate its support of OVD entry and innovation. Charter’s OVD-friendly practices have contributed to its excellent reputation among Internet content providers—including Netflix, which opposed the Comcast–Time Warner Cable merger but has publicly supported this Transaction. Indeed, Netflix’s CEO, Reed Hastings, recently stated that the Transaction would be a “tremendous positive” for content providers like OVDs.<sup>268</sup>

b. New Charter’s Commitments Provide Further Assurance that the Transaction Will Not Harm OVDs.

New Charter also has made commitments to the FCC that will ensure Charter’s OVD-friendly practices remain in place following the Transaction.<sup>269</sup> Specifically, New Charter has committed, for three years, not to charge customers additional fees to use third-party Internet applications, not to impose data caps, not to engage in usage-based billing, and to maintain a settlement-free interconnection policy.<sup>270</sup> Moreover, as noted above, New Charter has committed, also for three years—regardless of the outcome of the federal litigation over the FCC’s *Open Internet Order*—not to block or throttle Internet traffic or engage in paid prioritization.

Despite these binding commitments, DISH asks the Commission to read its many FCC filings, which assert that New Charter will charge for interconnection, employ usage-based billing, and generally work to harm OVDs. The Joint Applicants have refuted DISH’s arguments in

---

<sup>267</sup> Scott Morton, JA-4(C), Ex. B ¶ 218 (emphasis in original).

<sup>268</sup> Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 46.

<sup>269</sup> Scott Morton, JA-4(C), Ex. A ¶ 44.

<sup>270</sup> Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 44.

the FCC proceeding, and—to the extent the Commission wishes to consider DISH’s submissions—respectfully refer the Commission to their relevant FCC filings in response.<sup>271</sup>

WGAW similarly contends that New Charter may eventually impose data caps, misleadingly claiming that Charter’s Residential Internet Acceptable Use Policy (“AUP”) included data caps until recently.<sup>272</sup> Charter has responded to this mischaracterization, too, as part of the FCC’s review.<sup>273</sup>

ORA and DISH are also wrong that New Charter will engage in practices that have the potential to harm OVDs when its three-year commitment period concludes.<sup>274</sup> New Charter has limited its commitments to three years because it is impossible to predict future changes in a rapidly developing industry.<sup>275</sup> Additionally, as Dr. Scott Morton notes, three years is more than sufficient to ensure New Charter will not foreclose OVDs, as market conditions at that time will

---

<sup>271</sup> See *Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership*, MB Docket No. 15-149, Joint Applicants Opposition to Petitions to Deny and Response to Comments, at 52–56 (FCC Nov. 2, 2015) (“Opposition to Petitions to Deny”), <http://apps.fcc.gov/ecfs/document/view?id=60001332667>; see *Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership*, MB Docket No. 15-149, Letter from John L. Flynn to Marlene H. Dortch, Secretary, FCC (Jan. 14, 2016), <http://apps.fcc.gov/ecfs/comment/view?id=60001376031>.

<sup>272</sup> See WGAG Opening Br. at 37.

<sup>273</sup> Although Charter once performed a very limited trial to enforce monthly data limits against a small number of egregious users under its previous AUP, that trial ended over *four years ago*, and the limits in Charter’s legacy AUP thereafter were vestigial. See *Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership*, MB Docket No. 15-149, Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015, at 159-62 (FCC Oct. 13, 2015) (“Charter FCC RFI Responses”), <http://apps.fcc.gov/ecfs/comment/view?id=60001304157>.

<sup>274</sup> ORA Opening Br. at 32.

<sup>275</sup> Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 48. As Charter has explained regarding this same question at the FCC, three years represents a significant time commitment given possible developments in the industry and broadband’s importance to New Charter’s business and future. Because it is impossible to predict what new technologies will alter current practices, New Charter needs to maintain some flexibility to change and adapt. See Part V.A.4, *infra*.

likely make a strategy of OVD foreclosure even more unprofitable than it would be now.<sup>276</sup> New Charter will face increasing broadband competition in future years from fiber and cable offerings, fiber over-builders, and improved DSL, which may reach speeds in the range of 100 Mbps.<sup>277</sup> With the marketplace likely only to expand, and with competitive speed offerings available to customers likely to increase, any strategy by New Charter to foreclose OVDs would diminish its competitive position and would devalue its investments in higher broadband speeds.<sup>278</sup> A commitment of three years is also consistent with the term imposed by the FCC in analogous transactions, as recognized by the Commission.<sup>279</sup> WGAW's and ORA's demand that the Commission require longer-term commitments is therefore unwarranted.<sup>280</sup> As set forth in the Part A.3 of the Jurisdiction Section, *supra*, such conditions would also be preempted by federal law.

---

<sup>276</sup> Scott Morton Rebuttal, JA-5(C), Attachment A ¶ 49.

<sup>277</sup> *Id.*

<sup>278</sup> Scott Morton, JA-4(C), Ex. B ¶ 218.

<sup>279</sup> See *In re Joint Application of SBC Communications, Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a [sic] AT&T's Merger with a Wholly Owned Subsidiary of SBC, Tau Merger Sub Corp.*, A.05-02-027, Opinion Approving Application To Transfer Control, D.05-11-028, at 26-27 (Nov. 18, 2005) (finding significant that the applicants accepted additional merger conditions imposed by the FCC to maintain the same number of peering partners for three years, and to enforce the FCC's net neutrality principles for two years); *In re Verizon*, D.05-11-029, at 26 (same); see also *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, 6001-10 (2010) (imposing conditions on the Frontier and Verizon for three years); *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8741, 8767-8771 (2009) (imposing conditions on Embarq and CenturyTel for two to three years).

<sup>280</sup> See Part V.A.4, *infra*.



c. WGAW Misconstrues Statements of Charter Executives.

WGAW incorrectly claims that certain statements by Charter executives suggest that New Charter will seek to harm OVDs.<sup>281</sup> In fact, however, the comments WGAW highlights are consistent with—and underscore—Charter’s support for OVDs.

With respect to the 2014 statement of Charter CEO Tom Rutledge that “[a]nybody who sells their content over the top [(“OTT”)] and also expects to continue to exist inside a bundle . . . is really deluding themselves,” Mr. Rutledge was not expressing hostility to OTT content, but was simply making the point that direct OTT content delivery is a departure from the traditional MVPD content bundle.<sup>282</sup> Indeed, as Mr. Rutledge further explained in the same interview, “I want over-the-top because it makes my broadband service valuable. I have a really good broadband product, and I can make it better with relatively easy capital investment, so the more people use it, the more value is [earned] by it.”<sup>283</sup> Mr. Rutledge’s explanation is consistent with Dr. Scott Morton’s testimony that New Charter will have no incentive to harm OVDs, because doing so would harm the combined company’s higher-margin broadband business.<sup>284</sup>

Nor do the statements submitted by HBO’s parent company, Time Warner Inc., to the FCC regarding negotiations between HBO and Charter show hostility to OTT content.<sup>285</sup> To the

---

<sup>281</sup> WGAW Opening Br. at 24–25 (citing Attachment to Ex Parte Communication from Pantelis Michalopoulos and Stephanie A. Roy, Counsel for DISH Network Corporation to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (FCC Jan. 20, 2016); Ex parte Communication from Steven G. Bradbury, Counsel for Time Warner Inc. to Marlene H. Dortch, Secretary, FCC (Jan. 13, 2016)).

<sup>282</sup> *Charter CEO: Cable More than Distribution*, CNBC (Nov. 19, 2014), <http://video.cnbc.com/gallery/?video=3000331653&play=1>.

<sup>283</sup> *Id.*

<sup>284</sup> See Part III.B.2.a, *supra*.

<sup>285</sup> WGAW Opening Br. at 25.

contrary, they reflect [begin HIGHLY CONFIDENTIAL information:

:end HIGHLY CONFIDENTIAL infor-

mation].<sup>286</sup> WGAW's claims to the contrary notwithstanding, Charter executives' statements do not show any "antagonism" to OVDs.

d. New Charter Will Have No Incentive (Or Ability) to Collude with Comcast.

WGAW and DISH are also incorrect that New Charter would have any incentive to collude with Comcast to harm OVDs.<sup>287</sup>

*First*, as explained above, New Charter has no incentive to harm OVDs in the first place.<sup>288</sup>

*Second*, because of conflicting technological platforms and business plans, New Charter and Comcast have little ability to collude and even less incentive to do so.<sup>289</sup> As Dr. Scott Morton explains, "[p]erhaps the most important[]" factor differentiating the two firms is that Comcast is vertically integrated with the marquee national programming content of NBCUniversal, whereas New Charter will control only limited programming interests, none of them national.<sup>290</sup>

---

<sup>286</sup> [begin HIGHLY CONFIDENTIAL information:

:end HIGHLY

CONFIDENTIAL information]

<sup>287</sup> WGAW Opening Br. at 37–41; DISH Opening Br. at 2–3.

<sup>288</sup> See Scott Morton, JA-4(C), Ex. B ¶¶ 78–81, 120–126; Part III.B.2.a, *supra*.

<sup>289</sup> Scott Morton, JA-4(C), Ex. B ¶ 166–167.

<sup>290</sup> *Id.*, Ex. B ¶ 192.

The differing incentives arising from these business differences would make it difficult and unstrategic for the two companies to coordinate with each other. New Charter will provide consumers with access to the online and cable programming they want without regard to whether it harms a particular producer of programming.

Moreover, the Joint Applicants understand that, unlike New Charter, Comcast operates according to a more CPE-centric delivery model, investing heavily in advanced set-top-boxes on its Xfinity platform, so that all OVD activity on the Comcast system has to route through their set-top box.<sup>291</sup> By contrast, Charter's new interface, Spectrum Guide, is cloud-based, and because it uses common programming language, it is relatively easy for entities, including OVDs, to design applications for the Spectrum Guide.<sup>292</sup> Because New Charter and Comcast employ different strategies when it comes to technology and consumer-contracting practices, Dr. Scott Morton concludes, it would be implausible for them to arrive at a collusion strategy that would benefit them both.<sup>293</sup> WGAW's attempt to undermine Dr. Scott Morton's analysis by pointing to Charter's recently introduced Spectrum Guide TV app misses the point:<sup>294</sup> it is the difference in Comcast's and Charter's CPE-centric and cloud-based strategies, respectively, that would make collusion untenable. Moreover, WGAW misconstrues the nature of Spectrum Guide TV app, which merely gives *existing Charter customers* an additional way to view the content they have

---

<sup>291</sup> Scott Morton, JA-4(C), Ex. B ¶¶ 53–58, 166–167.

<sup>292</sup> *Id.* ¶¶ 40, 43, 166–167. The differences between Charter's cloud-based delivery method and Comcast's hardware-based method are a further indication of the difference between the two firms when it comes to OVDs, and make it wholly unrealistic that New Charter and Comcast could agree on any shared collusive strategy.

<sup>293</sup> *Id.* ¶¶ 166–167. As Dr. Scott Morton explains, “when two firms have different profit-maximizing strategies, it is not plausible to imagine that they will voluntarily agree to take the same strategy [*i.e.*, collusion], as that would harm one of the two.” *Id.* ¶ 167.

<sup>294</sup> WGAW Opening Br. at 26.

purchased with their cable TV service on an IP-enabled device<sup>295</sup> and is therefore not intended to compete with OVDs, like Sling TV, as WGAW claims.<sup>296</sup>

*Finally*, there is no plausible mechanism through which the two firms could collude even if they wanted to. Among other obstacles, New Charter and Comcast would lack any realistic means of enforcing a collusive agreement.<sup>297</sup> Because the two firms do not compete for the same customers, there are no opportunities to exercise traditional means by which collusive partners typically police such agreements (such as a price war), leaving only very visible (and very expensive) options for enforcement.<sup>298</sup>

3. *WGAW's Speculation that John Malone Will Use Separate Business Interests to Harm OVDs Is Unfounded.*

Lacking any case against New Charter itself, WGAW alleges that Dr. John Malone—who is not a party to this proceeding—will use his indirect interests in the Discovery Communications (“Discovery”) and Starz programming companies to harm OVDs by withholding their programming, or charging prices above competitive levels.<sup>299</sup> This theory is premised on the notion that Malone will direct Discovery or Starz to act against its own best interests in order to favor New Charter, a different company. The Commission should reject that speculation. Dr. Malone has neither the incentive nor the ability to force Starz or Discovery to act against its own best economic interests.

---

<sup>295</sup> See Scott Morton, JA-4(C), Ex. B ¶ 18 & n.12.

<sup>296</sup> WGAW Opening Br. at 26.

<sup>297</sup> Scott Morton, JA-4(C), Ex. B ¶¶ 164–196.

<sup>298</sup> *Id.* ¶¶ 195–196.

<sup>299</sup> See WGAW Opening Br. at 27–34.

a. Dr. Malone Will Have No Ability to Harm OVDs.

Dr. Malone lacks the power to force Discovery (a publicly traded company) or Starz (which is owned by a publicly traded company) to act against their best interests in order to help New Charter's bottom line. Principles of corporate law and good governance prevent Dr. Malone from using his ownership interests in Discovery and Starz to serve New Charter.<sup>300</sup> WGAW presents no compelling evidence that Dr. Malone would or could disregard those rules. Furthermore, following the Transaction, Dr. Malone will have only a minority indirect voting interest in New Charter (and a much smaller indirect equity interest), resulting from Liberty Broadband's ability to vote no more than 25.01% of New Charter's shares. Thus, WGAW is plainly incorrect in its suggestion that Dr. Malone will have "de facto control"<sup>301</sup> over New Charter.

WGAW's argument relies<sup>302</sup> on the FCC's review of the Liberty-DirecTV transaction<sup>303</sup> and the NewsCorp-Hughes transaction,<sup>304</sup> but those transactions are far afield. The Liberty-DirecTV merger was to give Liberty Media an interest in DirecTV exceeding 40%, so that Liber-

---

<sup>300</sup> Because a shareholder owes a fiduciary duty to a corporation if the shareholder "exercises control over the business affairs of the corporation," *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1344 (Del. 1987), Dr. Malone would be prohibited by the duty of loyalty from using any power over Discovery or Starz decision-makers to serve New Charter against the interests of Discovery or Starz. See, e.g., *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939); *Schoon v. Smith*, 953 A.2d 196, 206 (Del. 2008).

<sup>301</sup> WGAW Opening Br. at 28.

<sup>302</sup> *Id.* at 32-33.

<sup>303</sup> *In re News Corp. and the DirecTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3267, ¶ 2 (2008) ("*Liberty-News Corp.-DirecTV Order*").

<sup>304</sup> *In re General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corporation, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473 (2004) ("*News Corp.-Hughes Order*").

ty Media (of which Dr. Malone was Chairman) had “*de facto* control” over DirecTV.<sup>305</sup> At the time, moreover, Dr. Malone was Chairman of the Board and Chief Executive Officer of Discovery Holding Company, which held a two-thirds interest in Discovery.<sup>306</sup> No similar circumstances are present here. In the News Corp-Hughes transaction, News Corp. publicly admitted it would “obtain effective control over Hughes” based on its 34% ownership share and ability to appoint five out of eleven directors.<sup>307</sup> Mr. Malone will not have anywhere near that share of influence over New Charter.

Nor will Dr. Malone (or Advance/Newhouse) have the ability to keep Discovery and other affiliated programming from New Charter’s competitors. Dr. Malone’s duty of loyalty to Discovery would prevent him from taking actions that benefit himself at the expense of the company and its other shareholders. WGAW points out that Charter’s Form 10-K reports Liberty’s potential influence over Charter, and cites the anticompetitive concerns that the FCC identified in the *Liberty Media-DirecTV Order* and the *News Corp.-Hughes Order*.<sup>308</sup> But the mere existence of overlapping ownership is not a talismanic indicator of competitive harm from a merger, and the economic analysis of Drs. Salop and Stillman establishes that this case does not present a comparable risk of anticompetitive conduct. WGAW also cites the *Comcast-NBCU Order*,<sup>309</sup> but in that case a vast array of marquee NBC-Universal programming was at issue—and the proposed transaction was to give Comcast direct majority ownership of NBC-Universal. Here, New

---

<sup>305</sup> *Liberty-News Corp.-DirecTV Order*, 23 FCC Rcd at 3267, ¶ 2.

<sup>306</sup> *Id.* at 3273, ¶ 12.

<sup>307</sup> *News Corp.-Hughes Order*, 19 FCC Rcd at 518–19, ¶¶ 97–98 & n.283.

<sup>308</sup> WGAW Opening Br. at 31–34.

<sup>309</sup> *Id.* at 34 n.119 (citing *In re 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, 26 FCC Rcd 4238 (2011)).

Charter will own only very limited programming interests, and John Malone's minority ownership interest in Discovery and Starz is not comparable to Comcast's direct majority interest in NBC-Universal.

b. Dr. Malone Will Have No Incentive to Harm OVDs.

Even if Dr. Malone *could* exert his will over the companies to serve his private interests, WGAW vastly exaggerates his incentives to use Discovery and Starz to favor New Charter—and does so without conducting any economic analysis to support its assertions.<sup>310</sup> As Drs. Salop and Stillman explain, Ms. Blum-Smith—who is not an economist—“does not address the question of [Dr. Malone's] economic incentives.”<sup>311</sup> Therefore, without *any* basis in the record to support a finding of harm, the Commission should refrain from opining on those incentives.

If the Commission does consider the question, however, expert testimony by Drs. Salop and Stillman demonstrates that Dr. Malone lacks the incentive to harm OVDs through foreclosing them from, or increasing their affiliate fees for, Starz and Discovery programming.<sup>312</sup> Among other things:

- Dr. Malone's indirect holdings in Charter will be miniscule (representing 1.7% of the company),<sup>313</sup> such that any benefit he might receive from New Charter harming OVDs would be significantly outweighed by the losses that he would suffer were Discovery and Starz to withhold programming and lose licensing fees and advertising revenues.<sup>314</sup>

---

<sup>310</sup> See Salop & Stillman Rebuttal, JA-13(HC) at 4:11–4:18 (pointing out that WGAW did not analyze any of the relevant factors that would provide economic support for the assertion that Dr. Malone would be incentivized to prompt Starz and Discovery to withhold programming from OVDs).

<sup>311</sup> *Id.* at 5:20.

<sup>312</sup> See *id.* at 7:15–16:17; *id.*, Exhibit A ¶¶ 17–66.

<sup>313</sup> Opposition to Petitions to Deny at 46.

<sup>314</sup> See Salop & Stillman Rebuttal, JA-13(HC) at 10:16–10:17; 14:14–14:17.

- Any hypothetical foreclosure of OVDs would likely occur at a national level.<sup>315</sup> But New Charter, because it has a limited footprint, would not internalize a significant portion of any gains accruing to video distributors as a result of a strategy designed to harm OVDs.<sup>316</sup>
- Even with a hypothetical *local* foreclosure strategy targeted at OVDs serving customers in New Charter’s footprint only, New Charter *still* would not internalize the full measure of local gains because New Charter faces competition in its service areas, and also will not always serve the full extent of a given city or region.<sup>317</sup>
- Discovery and Starz content is not “must see” content the withdrawal of which from OVDs would harm their success. As Drs. Salop and Stillman explained in their report to the FCC, withholding either Discovery’s or Starz’s programming from OVDs would be unlikely to induce a significant number of subscribers to stop using those OVDs.<sup>318</sup> A profit-sacrificing strategy by Discovery or Starz would simply not generate sufficient value for New Charter for Dr. Malone to attempt to pursue it.<sup>319</sup>

These considerations, together, demonstrate that Dr. Malone will lack the incentive to attempt to use Starz and Discovery to harm OVDs.<sup>320</sup>

#### 4. *New Charter Will Not Use Programming Contracts to Harm OVDs.*

DISH asserts that New Charter will use contractual tools such as most favored nation (“MFN”) clauses or alternative distribution mechanism (“ADM”) clauses to withhold programming from OVDs.<sup>321</sup> To support its assertion, DISH provides links to its FCC filings concerning programming contracts<sup>322</sup>—a tactic that should merely reinforce that the market for programming content is national, and falls outside the Commission’s purview. In any case, as the Joint

---

<sup>315</sup> See *id.* at 10:18–11:2; 14:18–14:23.

<sup>316</sup> See *id.* at 10:21–10:22; 11:1–11:2, 14:18–14:23.

<sup>317</sup> See *id.* at 11:3–11:16, 14:24–15:3.

<sup>318</sup> Opposition to Petitions to Deny, Ex. C (Steven C. Salop, Robert Stillman, Serge X. Moresi, and Jarrod Welch, *Analysis of Video Programming Foreclosure Issues Involving Dr. John Malone and Advance/Newhouse Partnership*) ¶¶ 36, 80.

<sup>319</sup> See Salop & Stillman Rebuttal, JA-13(HC) at 11:17–12:10, 15:9–15:12.

<sup>320</sup> See *id.* at 16:11–16:17.

<sup>321</sup> DISH Opening Br. at 4–5.

<sup>322</sup> See *id.*



Applicants have explained in their *own* FCC filings on the question, New Charter will lack the incentive to negotiate its programming contracts in any such fashion.<sup>323</sup>

ORA raises a similar theory, speculating that New Charter may foreclose OVDs from the limited programming it will control itself, such as Los Angeles Dodgers games.<sup>324</sup> However, as Drs. Salop and Stillman have explained to the FCC—which has already vetted this identical issue—New Charter is unlikely to use its control over SportsNet LA (the network carrying Dodgers games) to harm rival programming distributors.<sup>325</sup> No evidence supports ORA’s insinuations to the contrary. Indeed, notwithstanding Time Warner Cable’s role as the exclusive advertising and affiliate sales agent for SportsNet LA (to which New Charter will accede), Time Warner Cable itself has no OTT distribution rights for Dodgers programming, thus belying ORA’s unsupported allegation that New Charter would use that relationship as a means to block new OVD entry.

---

<sup>323</sup> See Opposition to Petition to Deny at 65–68, <http://apps.fcc.gov/ecfs/document/view?id=60001332667>; Katz Rebuttal, JA-16, Ex. A, Attachment A, ¶¶ 110–131, <http://apps.fcc.gov/ecfs/document/view?id=60001332668> (Katz Declaration, starting on 80); Michael L. Katz, *Charter-TWC-BHN: A Response to Dr. Evans*, ¶ 12 (attached to Letter from John L. Flynn to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149 (Jan. 29, 2016)), <http://apps.fcc.gov/ecfs/document/view?id=60001416712>.

<sup>324</sup> ORA Opening Br. at 21.

<sup>325</sup> See Steven C. Salop, Robert Stillman, Jarrod R. Welch, & Serge Moresi, *Analysis of Video Programming Foreclosure Issues Involving TWC SportsNet and SportsNet LA*, ¶ 6 (Dec. 3, 2015), attached to *Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership*, MB Docket No. 15-149, Letter from Samuel L. Feder to Marlene H. Dortch, Secretary, FCC (Dec. 3, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001322182>.

**C. Arguments Alleging Harms Relating to MVPD Services and Video Programming Are Insubstantial.**

As the Joint Applicants have explained repeatedly, the markets for video programming and distribution fall outside the scope of this proceeding.<sup>326</sup> However, were the Commission to consider those Transaction's effects on those markets, they would count as positives. Contrary to arguments raised by WGAW and DISH, New Charter's effects on the market for programming and distribution will generate meaningful programming cost savings, advancing competition in the MVPD market, without competitive harms to programmers or distributors.

*1. New Charter's Programming Cost Savings Will Advance Competition in the MVPD Market.*

As Dr. Katz's careful analysis shows, the Transaction will generate significant marginal programming cost savings.<sup>327</sup> Based on his analysis of highly confidential programming contracts held by the Joint Applicants, Dr. Katz projects these savings to reach **[begin HIGHLY CONFIDENTIAL information: :end HIGHLY CONFIDENTIAL information]** over time.<sup>328</sup> By strengthening New Charter's overall financial position and health, these savings will create a stronger competitor in California. *See* Part I.A, *supra*.

ORA contends that California customers will see no benefit from those savings.<sup>329</sup> Because Joint Applicants have never claimed "lowered MVPD prices" as a benefit of this Transaction, and no party points to any *harm* arising from New Charter's significant programming cost savings, ORA's argument is not pertinent to the Commission's review. It is also wrong. Marginal cost reductions lead to reductions in the profit-maximizing quality-adjusted prices that a

---

<sup>326</sup> *See* JA Opening Br. at 23–24; Part A.1 of Jurisdiction Section, *supra*.

<sup>327</sup> *See* Katz Rebuttal, JA-16(HC), Attachment A, ¶¶ 18–39.

<sup>328</sup> *See id.*, Attachment A, ¶ 20 n.18.

<sup>329</sup> ORA Opening Br. at 25–26.

firm otherwise would charge.<sup>330</sup> As Dr. Katz shows, that would be true even for a monopolist; it is equally true for a firm like New Charter, which will continue to face strong competition for MVPD service customers.<sup>331</sup> At the customer level, Dr. Katz's analysis estimates marginal programming cost savings of **[begin HIGHLY CONFIDENTIAL information:**

**:end HIGHLY CONFIDENTIAL information]**,<sup>332</sup> which, given the competitiveness of the market for MVPD services, will likely create a pass-through of approximately **[begin HIGHLY CONFIDENTIAL information:** **:end HIGHLY CONFIDENTIAL information]** to offset programming cost increases.<sup>333</sup> These savings will place New Charter in a position to better compete against other MVPD providers.

2. *WGAW's Claims of Harm to the Entertainment Industry Are Unsupported.*

Finally, absent WGAW's unsupported theory about discrimination against OVDs, nothing remains of WGAW's suggestion that the Transaction will harm Los Angeles area's entertainment industry.<sup>334</sup> There is no link between this Transaction and the entertainment industry's output. As Dr. Katz explained in his analysis of this argument in Joint Applicants' FCC proceed-

---

<sup>330</sup> See Katz Rebuttal, JA-16(HC), Attachment A, ¶ 10 & n.5, ¶¶ 57-58, ¶ 65 & n. 73. Dr. Katz explains: "Given the rate at which programming costs are projected to continue rising, even the programming cost savings generated by the proposed transactions will not be enough to reverse the tide of rising costs. Rather, the cost savings will slow the rate of increase and, thus, lessen—but not eliminate—future pressures on New Charter to raise the quality-adjusted prices of its video services. Consumers will benefit from the cost savings because quality-adjusted video services prices will rise more slowly than they would in the absence of the proposed transactions." *Id.* ¶ 10 & n.5.

<sup>331</sup> See *id.*, Attachment A, ¶¶ 40-43.

<sup>332</sup> See *id.*, Attachment A, ¶ 24 tbl. 1.

<sup>333</sup> See *id.*, Attachment A, ¶ 65; *Id.* ¶ 10 & n.5..

<sup>334</sup> WGAW Opening Br. at 41-43.

ing, the entertainment industry is healthy and growing, and New Charter's consolidation will have a negligible effect on the demand for video content.<sup>335</sup>

**IV. APPROVAL WILL MAINTAIN THE JOINT APPLICANTS' PUBLIC SAFETY COMMITMENTS, AND CFORAT'S CALLS FOR CHANGES TO SOME EXISTING POLICIES HAVE NOTHING TO DO WITH THE TRANSACTION.**

Public safety considerations further support approval of the Transaction.<sup>336</sup> Charter is an experienced provider of E911 services in California, provides reliable backup power options that meet Commission and FCC requirements and recommendations, and educates its VoIP customers regarding backup power. Charter has also invested significantly in network improvements to monitor and improve performance and reduce the frequency and duration of outages. These efforts have had positive results for customers.<sup>337</sup>

CforAT believes that New Charter should do even more to foster public safety. It would like New Charter to offer more outreach and education to customers about back-up emergency power and the limits to network access during power outages; to provide backup power units at a discount for low-income and vulnerable customers; and to provide information on battery replacement and service. CforAT also believes the Commission should impose on New Charter backup battery power requirements that exceed FCC requirements.<sup>338</sup>

---

<sup>335</sup> See Katz Rebuttal, JA-16(HC), Attachment A, ¶¶ 75–89; *id.* at ¶ 88.

<sup>336</sup> JA Opening Br. at 111–13.

<sup>337</sup> *Id.* at 111–13.

<sup>338</sup> CforAT infers Charter's noncompliance with D.10-01-026 from the fact that Charter objected to its Data Request about "compliance" with D.10-01-026. Charter objected to CforAT's Data Request because it was worded in a manner that sought a legal conclusion, and CforAT never asked to meet and confer on the subject. The evidence shows that Charter is in the process of improving its customer education materials to ensure that customers are educated regarding the topics set forth in D.10-01-026. See Sanders Rebuttal, JA-9 at 6:19–7:2.

The record, however, demonstrates that the Joint Applicants provide reliable backup power options that meet Commission and FCC requirements and recommendations. Indeed, as even ORA's witness on these issues has conceded, Charter is already meeting upcoming FCC requirements to offer backup power options to customers, and Charter's backup power options meet best practices recommendations by providing customers with warning lights to signal when a battery is operational and when it is degraded.<sup>339</sup> Charter also offers its voice service customers the option of purchasing backup batteries so that they may continue to access their Charter VoIP services (offered by a Charter VoIP affiliate that is not a party to this proceeding) in the event of a power outage.<sup>340</sup>

Moreover, Charter provides robust customer education surrounding backup power options, including E911 services and how to keep voice services functional in the event of a power outage.<sup>341</sup> These educational materials are featured on Charter's web site, in its user guide and in the form of stickers for placement on or near subscribers' home phones.<sup>342</sup>

At bottom, CforAT's concerns are not specific to this Transaction or even to Charter. They are policy concerns about whether service providers *in general* do enough to assist disabled customers. If the Commission believes that additional public safety requirements (such as those proposed by CforAT) should be considered, then they should be promulgated through an industry-wide rule-making proceeding, standard-setting for device manufacturers, or legislation that

---

<sup>339</sup> *Id.* at 7:5–7:10 (citing E. Gallardo Testimony at 2-2 and 2-3).

<sup>340</sup> *Id.* at 4:15–4:19.

<sup>341</sup> *Id.* at 3:17–8:11.

<sup>342</sup> *Id.* at 4:20–6:16.

applies to all service providers.<sup>343</sup> It would be impractical and unfair to hold New Charter to a different standard than any other service provider.<sup>344</sup> Notwithstanding that objection, as set forth in Part V.G below, New Charter is making additional, voluntary commitments to address CforAT's concerns.

## **V. NEW CHARTER WILL FURTHER COMMIT TO SOME, BUT NOT ALL, OF THE OTHER PARTIES' REQUESTS.**

Notwithstanding the substantial commitments already laid out in Part I.H of the Joint Applicants' Opening Brief, several parties ask that the Commission impose numerous additional conditions to any approval. As set forth below, the Joint Applicants believe that further conditions are not appropriate under the relevant legal standard: under § 854(c)(8), the Commission is to evaluate the need for "mitigation measures to prevent significant adverse consequences which might result" from a transaction, and, as shown in Parts I–IV above, no such "adverse consequences" exist here.

---

<sup>343</sup> See *CPN Pipeline Co. v. Pacific Gas & Elec. Co.*, Case 00-09-021, Opinion, D.01-05-086, at 10, 18 (May 24, 2001) (stating that a dispute raised "an industry-wide issue that requires consideration of a multitude of factors. . . . [that] cannot properly be addressed in an individual complaint proceeding," and that a case "involving only two parties is not an appropriate forum for determining industry-wide policy"); *Order Instituting Rulemaking on the Commission's Own Motion To Evaluate Existing Practices and Policies for Processing Offset Rate Increases and Balancing Accounts in the Water Industry To Decide Whether New Processes Are Needed*, R.01-12-009, Order Instituting Rulemaking, 2001 Cal PUC LEXIS 1129, at \*18, 213 P.U.R.4th 425 (Dec. 11, 2001) ("[T]he Water Division staff concludes that ... the Commission's consideration of ORA's recommendations should not be limited to one utility, but rather, should be considered on an industry-wide basis. We agree.").

<sup>344</sup> See *Petition to Adopt, Amend, or Repeal a Regulation Pursuant to California Public Utility Code § 1708.5, specifically to Review the Assessment of Surcharges for the Commission's Public Policy Programs with Respect to Prepaid Wireless Services*, P.09-12-018, Decision Denying Petition By Verizon Wireless To Review the Assessment of Surcharges for the Commission's Public Purpose Programs With Respect To Wireless Services, D.10-07-028, at 5 (July 29, 2010) (finding that "broad issues of industry-wide importance" should not be addressed in "piecemeal fashion" in a proceeding involving one party, and instead should be resolved in a rulemaking that applies more broadly).

Nonetheless, in the interest of cooperation, the Joint Applicants believe that a number of the proposed additional conditions—although not necessary—can be implemented by New Charter and are willing to make additional commitments to accommodate those requests. The Joint Applicants are particularly encouraged that ORA, notwithstanding its opposition to the Transaction, has proposed conditions. New Charter will commit to accommodate a number of ORA’s proposals, and, in some places where the Joint Applicants believe that ORA’s requests are impractical, New Charter will undertake alternative commitments in the same areas.

However, New Charter cannot commit to all of the conditions that parties have requested, as some of them either (a) are commercially unreasonable, (b) lack a nexus to a Transaction-specific<sup>345</sup> “harm” under § 854(c)(8),<sup>346</sup> (c) exceed the Commission’s jurisdiction and/or raise preemption concerns under federal law, or (d) impose inappropriate burdens on New Charter to address policy concerns that should be dealt with through general industry rules or legislation.<sup>347</sup>

---

<sup>345</sup> The Commission’s statutory task is “to mitigate potential *transaction specific* harms.” *In re Frontier*, D. 15-12-005, at 55 (emphasis added). It is not to mitigate harms that would exist “with or without the merger.” *In re Pac. Telesis Grp.*, D. 97-03-067, at 70.

<sup>346</sup> *In re SBC Commc’ns*, D.05-11-028, at 60 n.130 (explaining that without “a standard of review” for mitigation measures, the Commission “[i]nstead . . . use[s] the authority to propose any needed mitigation measures *in conjunction with [its] review of criteria 1 through 7*” (emphasis added)); *id.* at 91, 96 (accepting applicants’ argument that “protesting parties [were] seek[ing] improperly to use th[e] [merger review] proceeding as an open mi[c] on issues previously litigated and a grab bag of concessions that would advance their individual interests, but bear no direct relationship to the merger”; characterizing the proposed mitigation measures as a “litany of conditions” without any “basis upon which to conclude” that they addressed adverse consequences; concluding that the “request for conditions . . . [therefore] ha[d] little merit”; and refusing even to identify and “discuss” certain proposals which were not “needed to prevent serious adverse consequences” and did not “represent reasonable options” (internal quotation marks and footnote omitted)).

<sup>347</sup> See *In re Pac. Telesis Grp.*, D.97-03-067 at 68–69 (declining to adopt mitigation measures where “the[] issues are being addressed both by the FCC and by our Commission in a different forum,” and noting that the CPUC had adopted industry-wide rules similar to the proposed mitigation measures).

With those general principles in mind, the Joint Applicants address each of the various proposals below.

**A. Broadband-Related Conditions.**

Numerous proposed conditions involve New Charter's broadband operations—ranging from deployment and adoption measures, to network upgrades, to Open Internet-type conditions. The power to impose *mandatory* conditions on New Charter with respect to any of these topics lies well outside the Commission's jurisdiction for reasons set forth in the "Jurisdiction" section, *supra*, and some of the other parties' specific requests—particularly CETF's—are infeasible. In any case, however, New Charter will make additional voluntary commitments as set forth below, which address many of the commenters' concerns.

*1. Broadband Deployment.*

New Charter has already committed to numerous broadband deployment initiatives nationwide, including taking virtually all of New Charter's California footprint all-digital, raising base broadband speeds to 60 Mbps or higher to virtually every home passed, building at least one million new broadband passings, investing \$2.5 billion in commercial buildout, and deploying at least 300,000 wireless hotspots.<sup>348</sup> They have also committed in California to bring high-speed broadband and VoIP services to numerous unserved communities in the Salinas Valley region of Monterey County, including the Cities of Gonzales, Greenfield, Soledad, and others, bringing high-speed broadband connectivity to over [Begin Confidential Information: :End Confidential Information] additional homes that lack such access today.<sup>349</sup>

---

<sup>348</sup> JA Opening Br. at 93–94.

<sup>349</sup> *Id.*



Onto these already substantial commitments, ORA, WGAW, and CETF have now added additional requests, with ORA asking that New Charter be required to build out to 98% of households in each census block (or portion thereof) within its cable television franchise service areas,<sup>350</sup> WGAW asking that New Charter be required to deploy 150,000 line extensions in California,<sup>351</sup> and CETF urging that New Charter be required to identify and deploy high-speed broadband into at least ten “priority unserved and underserved areas.”<sup>352</sup>

None of these demands bears any plausible connection to the governing § 854(c)(8) standard of mitigating Transaction-specific harm, as the record shows that the Transaction will create incentives for New Charter to increase, rather than decrease, broadband deployment in California. However, New Charter is prepared to accept these requested conditions in significant part. Specifically:

- Within three years following the Transaction’s close, New Charter will provide service to new broadband passings for approximately 70,000 homes and businesses within its service area that currently are capable of receiving analog-only cable television services from Charter and Bright House Networks within the following counties within the New Charter service area: Kern County, Modoc County, Monterey County, San Bernardino County, Kings County, and Tulare County. These counties include the following unserved or underserved communities: portions of unincorporated Monterey County, City of Gonzales, City of Soledad, City of Greenfield, City of King City, Alturas, City of Porterville, City of Farmersville, City of Woodlake, Boron, Yucaipa, Phelan/Wrightwood, City of Lindsay, and City of Adelanto, among others. According to the United States Census for the period 2010–2014, the vast majority of these new broadband passings will be in communities where more than 25% of households speak a language other than English in the home<sup>353</sup> and therefore is provides an added benefit to communities of color, thus addressing CETF’s request for broadband deployment into priority unserved and under-

---

<sup>350</sup> ORA Opening Br. at 46-47.

<sup>351</sup> WGAW Opening Br. at 55–56.

<sup>352</sup> CETF Opening Br. at 6–7, 35-36.

<sup>353</sup> All references in this brief to the demographics of communities to be served by New Charter based on 2010-2014 U.S. Census Data as set forth in note 3, *supra*.

served areas.<sup>354</sup>

- In addition to the 70,000 new broadband passings above, New Charter will deploy new broadband passings for 80,000 additional homes and businesses within its California service area within four years following the close of the Transaction, achieving the total of 150,000 requested by WGAW. Again, at least 50% of those new broadband passings will likewise be in communities where more than 25% of households speak a language other than English at home.<sup>355</sup>
- New Charter will deploy at least 25,000 out-of-home wireless hotspots within its California service area within four years of the close of the Transaction. As with New Charter's broadband deployment commitments set forth above, at least 50% of those wireless hotspots will be in communities where more than 25% of households speak a language other than English at home.<sup>356</sup>
- New Charter will provide free broadband to at least 75 anchor institutions within its service territory in California, including but not limited to schools, libraries, community centers, senior centers or religious institutions. At least 60% of those anchor institutions will be in communities where more than 25% of households speak a language other than English at home.
- New Charter will accept CETF's request that it collaborate with FirstNet to assist with emergency response capabilities, and that it also explore opportunities to coordinate deployment projects with statewide networks, such as CENIC, K-12 High-Speed Network, CalREN, and the California Telehealth Network.

ORA's additional demand—that New Charter achieve broadband availability to 98% of households within each census block or portion thereof within cable franchise areas—is unrealistic and unworkable. Charter does not deploy plant to every home within its franchise area for many legitimate reasons. Portions of some census blocks (particularly geographically large ones) are outside of its service area. Populations may be insufficiently dense for buildout to be cost-effective. Technical, geographic, or legal obstacles (including terrain that cannot be crossed for either engineering or legal reasons, such as wetlands, watersheds, state or federal parklands,

---

<sup>354</sup> The three-year time frame is subject to the timely receipt of all permits, easements and other right-of-way authorizations, including but not limited to utility make-ready, and may be extended for good cause shown by New Charter.

<sup>355</sup> The four-year time frame is subject to the same qualifications in note 354, *supra*.

<sup>356</sup> Subject to the same qualifications in note 3, *supra*.

etc.) may make such connections either cost-prohibitive or infeasible. The Rebuttal Testimony of Greg Mott, for instance, details the technical and economic challenges that can be associated with building out particular portions of Charter's broadband network.<sup>357</sup> Notably, ORA offers no evidence of the cost or feasibility of its proposed buildout requirements and the Commission has no record evidence before it on which to evaluate this proposed condition. Given the significant commitments New Charter is agreeing to in connection with WGAW's and CETF's requests, the Joint Applicants respectfully submit that ORA's additional deployment metric is not supported by the record and should not be ordered.

## *2. Broadband Terms and Conditions of Service.*

New Charter has committed to bring Charter's base 60 Mbps speeds to all California homes and businesses New Charter serves, as well as extend Charter's proven and popular transparent pricing and packaging models.<sup>358</sup> Several parties have made requests that New Charter commit to additional service terms and related network upgrades, including CETF's request that New Charter be compelled to upgrade its broadband network "to meet service and performance requirements set by regulatory agencies to support prevalent consumer applications,"<sup>359</sup> WGAW's requests that New Charter offer speeds of 100 Mbps throughout its service area,<sup>360</sup> ORA's request that New Charter offer speeds of 300 Mbps to all households with current broadband availability by the end of 2019, and WGAW's demands that New Charter (a) continue to honor Time Warner Cable's existing pricing and service offerings without material changes for three years, and (b) offer a standalone broadband product, at 25 Mbps, for \$30 a month for ten

---

<sup>357</sup> See Mott Rebuttal, JA-8, at 5:1–5:21, 8:1–8:15.

<sup>358</sup> JA Opening Br. at 59–60.

<sup>359</sup> CETF Opening Br. at 7.

<sup>360</sup> WGAW Opening Br. at 56.

years, subject to speed increases at the Commission's discretion or triggered by the FCC's threshold for "advanced telecommunications services." New Charter is willing to make voluntary commitments to accept most, but not all, of these conditions.

New Charter will commit to the speed increases requested by both ORA and WGAW—specifically, that New Charter will make speeds of 100 Mbps available to all homes and businesses it serves throughout its California network within three years of the Transaction's close, and make speeds of 300 Mbps available to all households with existing broadband availability offered by New Charter by December 31, 2019. New Charter will also commit to honor Time Warner Cable's and Bright House Networks' broadband pricing offerings, without material changes, for existing customers for three years following the close of the Transaction, similar to WGAW's request. To memorialize these commitments, Charter will agree to the following:

New Charter commits to deliver broadband speeds of at least 100 Mbps within 3 years of closing the Transaction to all homes passed within its service area, subject to completion of its commitment, *supra*, under which it will deploy 70,000 new broadband passings to current analog-only cable service areas in Kern, Kings, Modoc, Monterey, San Bernadino, and Tulare counties.

New Charter will offer broadband Internet Service with speeds of at least 300 Mbps download to all households with current broadband availability from New Charter in its California network by December 31, 2019. On December 31, 2016, and every year thereafter until December 31, 2019, New Charter shall submit a progress report to the Commission and ORA identifying progress made.

New Charter will allow existing Time Warner Cable and Bright House Networks customers to retain, without material changes that have the intent to discourage, the broadband services they subscribe to at the close of the Transaction for three years from the date of the closing.

CETF's and WGAW's further demands regarding the terms and conditions of the Joint Applicants' broadband services, however, are unnecessary and legally inappropriate. CETF's request that New Charter have a continuing obligation "to meet service and performance re-

quirements set by regulatory agencies to support prevalent consumer applications”<sup>361</sup> is vague, and rendered unnecessary by New Charter’s commitment to make increased broadband speeds up to 100 Mbps and 300 Mbps available on the timeframes set forth above. WGAW’s similar request for an obligation to continue offering a standalone broadband plan, at ever-increasing speeds, for a fixed price for ten years, is unrelated to any aspect of the Transaction, unreasonable and commercially impractical, and would impede New Charter from keeping pace with evolving competitive and technological conditions. It also would constitute regulation (including naked price regulation) of New Charter’s broadband services far beyond the scope of the Commission’s jurisdiction, preempted by federal law, and not imposed on any other broadband provider in California.

### 3. *New Charter’s Low-Income Broadband Service.*

New Charter will launch its low-income broadband offering, subject to eligibility and program rules set out in Part V.A.3.f, *infra*, within six months of the close of the Transaction, and will roll out the offering to its full California footprint (subject to broadband availability) within 15 months of closing, with an estimated **[BEGIN CONFIDENTIAL INFORMATION:**

**:END CONFIDENTIAL INFORMATION]** households expected to qualify.<sup>362</sup> The low-income service will offer initial prices at just \$0.50 per Mbps download speed, significantly cheaper than any other low-income offerings from providers such as Frontier, AT&T, and Com-

---

<sup>361</sup> CETF Opening Br. at 7.

<sup>362</sup> The Joint Applicants had originally estimated that **[BEGIN CONFIDENTIAL INFORMATION:** **:END CONFIDENTIAL INFORMATION]** households would be eligible; however, based on further review of its methodology, have revised those estimates.

cast.<sup>363</sup> This is an enormous benefit of the Transaction, as even CETF recognizes that no such service offering at comparable speeds exists in the Joint Applicants' footprint today.<sup>364</sup>

Although various parties demand that New Charter do *even more* to advance broadband adoption by low-income households, these demands seek to impose on New Charter low-income broadband requirements not imposed on any other provider in California—and, to the Joint Applicants' knowledge, anywhere else in the country. No party making such demands even pretends that its requested conditions are guided by § 854(c)(8) to mitigate any harm to the affordability of broadband to low-income households resulting from the Transaction. To the contrary, conditioning approval upon infeasible mandates that no prudent business could accept would harm Californians by denying them the benefits of New Charter's historic offering.

CETF—whose proposed conditions, including achieving an utterly unrealistic 45% adoption rate and the capitalization of a \$285 million affordable broadband fund, are the most unreasonable—never links its proposed conditions to any Transaction-specific harm. Rather, its theory is that “Charter is essentially ‘buying’ the Digital Divide in California and, therefore, has an extraordinary obligation to support broadband adoption.”<sup>365</sup> But it is not the “obligation” of a single service provider to address a multifaceted and complex public policy issue. Rather, it should be addressed through generally-applicable rulemaking or legislation and widely shared among all stakeholders, including the public, the nonprofit sector, and all industry participants. This proceeding is governed by a statutory framework, under which the inquiry is whether the Transaction will advance “broadband affordability” and whether any “mitigation” measures are

---

<sup>363</sup> Falk Supplemental, JA-2 at 4:8-19.

<sup>364</sup> CETF Opening Br. at 20.

<sup>365</sup> *Id.* at 18.

needed to address Transaction-specific harms.<sup>366</sup> The proposed conditions related to low-income broadband adoption are inconsistent with that statutory framework.

a. Low-Income Broadband Service Eligibility Criteria and Other Requirements.

New Charter's low-income broadband program will be available to seniors aged 65 and older who receive SSI, as well as households with children participating in the federal school lunch program. Charter structured the low-income plan based on its own experience in the market, consulting with groups representing communities with low levels of broadband adoption, and learning from the experiences of other providers' low-income broadband offerings.<sup>367</sup> It would be unreasonable, therefore, for the Commission to expand New Charter's program by imposing additional conditions. Moreover, New Charter's low-income broadband service is a *national* offering being rolled out across New Charter's footprint and being discussed with the FCC, and mandating state-specific variations from a national offering would create a number of pragmatic difficulties for New Charter's administration of the service.

Nonetheless, various parties ask the Commission to tinker with the program by requesting a litany of policy and business rule changes. CETF, for instance asks that the program be made available to all households earning less than \$40,000 per year.<sup>368</sup> ORA makes a similar request.<sup>369</sup> The Center for Accessible Technology asks for the program to be made available to all households earning less than 150% of the poverty level (or, alternatively, all households in

---

<sup>366</sup> *Scoping Ruling* at 5; Cal. Pub. Util. Code § 854(c)(8).

<sup>367</sup> Falk Supplemental, JA-2 at 2:16–3:9.

<sup>368</sup> CETF Opening Br. at 3–5.

<sup>369</sup> ORA Opening Br. at 44, 49.

which a person receives SSI benefits).<sup>370</sup> And WGAW goes still farther, asking that the program be made available to all households earning less than 300% of the poverty level, or to all households with a disabled resident.<sup>371</sup>

In addition to the Commission's lack of jurisdiction to regulate broadband prices, these various demands are not Transaction-specific, because lack of broadband access is not a consequence of the Transaction. Moreover, New Charter's decision to focus on connecting low-income households with children and low-income seniors (an underserved population no other provider is targeting today) reflects a reasonable prioritization of resources. Calls to impose on New Charter the responsibility to provide *all* low-income households with access to low-cost broadband are particularly inappropriate given that the FCC is currently focusing on reforming the federal Lifeline program to address such issues on an industry-wide basis.<sup>372</sup>

The series of other business rule changes demanded by other parties are similarly flawed. For instance, CETF and CforAT (among others) insist that New Charter should not require customers to settle existing debt with the company as a condition of enrolling in the low-income broadband program, and that New Charter should be required to enroll its existing broadband customers as well as those who have been its broadband customers in the previous 60 days.<sup>373</sup> CETF and WGAW similarly request that New Charter be ordered to expand its low-income broadband offering even further—for instance, by not requiring credit checks, deposits, or long-term contracts; by not charging installation fees; or by not requiring a social security number as a

---

<sup>370</sup> CforAT Opening Br. at 19.

<sup>371</sup> WGAW Opening Br. at 54.

<sup>372</sup> See note 220, *supra*.

<sup>373</sup> CETF Opening Br. at 22; CforAT Opening Br. at 18; WGAW Opening Br. at 55; ORA Br. at 44-49.



condition of enrollment. Charter considered the experience of other low-income broadband offerings and input from community groups in formulating a set of rules and eligibility requirements around the offering, including identification of potential barriers to adoption and ways to ameliorate them. Based on that process, New Charter is committing to free self-installation, not requiring a credit check, not requiring long-term contracts, and allowing existing customers of its voice and cable video services to subscribe without delay. And no social security number is needed *today* to participate in the NSLP so that would not change as a result of Charter's program. Households with students that participate in the program are eligible already even if they do not have social security numbers. Given those carefully selected policies to remove barriers to adoption, New Charter is entitled to take into account reasonable considerations to ensure that its low-income service can be administered in a commercially viable manner and one that properly prioritizes its resources. For instance, the 60-day condition sensibly focuses the low-income service on *adoption* by households who do not have broadband. Requiring customers to settle prior debt preserves incentives for existing customers to repay the amounts that they have voluntarily accrued, limiting potential for abuse. And because New Charter's low-income offering will be rolled out as a national service, introducing state-by-state variation in its other terms and conditions, as the requested conditions would do, would complicate the challenge of administering it across New Charter's footprint.

Equally unsupported are CETF's requests that New Charter's affordable broadband service also include free routers and digital literacy training.<sup>374</sup> New Charter's commitment to provide program participants with modems at no additional charge already significantly advances the affordability of the service. Moreover, the \$10 million Charter has committed to support

---

<sup>374</sup> CETF Opening Br. at 21, 23.

adoption efforts, set forth below, may be used for digital literacy or other efforts that encourage adoption.

Finally, CETF unreasonably asks that New Charter be required to continue offering its affordable broadband program for a minimum of five years, or until 80% of eligible households have high-speed Internet access.<sup>375</sup> By committing to offer the service for at least four years from launch, New Charter is already substantially meeting this request. There is neither reason nor authority to compel New Charter to extend the duration of a program that would not exist in the Transaction's absence.

b. Low-Income Broadband Service Adoption Goals.

Particularly unreasonable are requests that the Commission require that New Charter achieve unrealistic adoption rates for its low-income service. For example, CETF asks that New Charter be required to achieve 45% broadband adoption among eligible low-income households within five years, with a long-term goal of 80% adoption.<sup>376</sup> ORA makes a similar request but places it even further out of reach by asking that the 45% target apply to *each individual census block*.<sup>377</sup> CforAT, although not specifying a specific number, still asks that the Commission set “[s]pecific goals for the low-income program to reach in enrolling low-income communities.”<sup>378</sup>

New Charter is willing, as an aspirational goal, to agree that over a period of four (4) years, it will seek to enroll 200,000 broadband customers, which the company will endeavor in good faith to achieve. New Charter further commits to provide annual reports for four years following commencement, identifying numbers of households enrolled, as requested by CforAT.

---

<sup>375</sup> *Id.* at 4, 25.

<sup>376</sup> *Id.* at 5, 23–26.

<sup>377</sup> ORA Opening Br. at 44-45, 49.

<sup>378</sup> CforAT Opening Br. at 20.

Compelling any particular adoption results, however—which might *never* be achieved—would be entirely unlawful. The requested 45% goal has no connection to any harm said to result from the Transaction. Achieving any compulsory enrollment target, moreover, will be outside New Charter’s control: New Charter can offer and market a low-income broadband program, but whether eligible customers enroll in the program depends upon many factors, including their individual preferences for wireless, phone company low-broadband services, or no broadband at all.<sup>379</sup>

A 45% mandate, moreover, is unattainable. By way of comparison, the penetration rate for Comcast’s Internet Essentials program in California, four years after the program’s introduction, was 20%.<sup>380</sup> The 45% figure put forward by ORA and CETF, moreover, **[begin CONFIDENTIAL INFORMATION:**

**[end**

**CONFIDENTIAL INFORMATION]** Those rates have taken many years of investment and marketing to attain, and have not involved the same challenges associated with enrolling a customer segment consisting solely of low-income customers. ORA’s further request that the 45% rate be obtained in each census block separately is unrealistic. Notably, and as explained in the Joint Applicants’ Opening Brief, a 45% adoption requirement is vastly disproportionate to the 200,000-household voluntary aspiration goal *to which CETF agreed* as part of the Frontier-

---

<sup>379</sup> JA Opening Br. at 82.

<sup>380</sup> See David L. Cohen, *Internet Essentials: Year Four Progress Report*, Comcast Voices (Mar. 10, 2014), <http://corporate.comcast.com/comcast-voices/internet-essentials-year-four-progress-report>.

Verizon approval mere months ago, which involved a statewide carrier of relatively comparable size.<sup>381</sup>

Even aside from these points, the 45% mandate that CETF and ORA propose has no basis in reality. *First*, CETF appears to have derived it from an expectation of 90% wireline broadband adoption among the general population.<sup>382</sup> Yet that number itself is plucked out of thin air and is wildly unrealistic, given that the latest Commission report estimates it around 77% in California as of the end of 2013—including anything with download speeds of at least 200 kbps—after many years of availability.<sup>383</sup> CETF’s argument that the Commission’s staff has found 45% to be a reasonable adoption rate for the *wireless LifeLine* program<sup>384</sup> neglects that *overall* wireless adoption is dramatically higher than wireline adoption. The Commission’s estimates place wireless adoption around 127% of the adult population and more than 100% of the total population and in California,<sup>385</sup> more than one and a half times as high as the total wireline

---

<sup>381</sup> In that proceeding, Frontier committed (for instance) to fund the purchase of 50,000 Wi-Fi capable tablets as part of a public-private partnership, and to collaborate with CETF and others towards an “aspirational target” of 200,000 low-income adoptions (including the 50,000 tablets) within three years—both conditions considerably more realistic than what CETF is demanding here. *In re Frontier*, D.15-12-005, at 7, 56–57, 74–75; *id.* at App. E, Attachment A 7–8.

<sup>382</sup> CETF Opening Br. at 31 n.49.

<sup>383</sup> See Michael Pierce et al., California Public Utilities Commission, *Annual DIVCA Report, For the Year Ending December 31, 2013*, at 6 and 30 (Sept. 10, 2015), [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-\\_Telecommunications\\_and\\_Broadband/Service\\_Provider\\_Information/Video\\_Franchising/DIVCAReportSept\\_10\\_2015.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Service_Provider_Information/Video_Franchising/DIVCAReportSept_10_2015.pdf).

<sup>384</sup> CETF Opening Br. at 24.

<sup>385</sup> Compare Communications Division Report To Legislature, California Public Utilities Commission, *Annual Report of Telegraph and Telephone Corporation Employment, Investment, and Contracting in California, As Required by P.U. Code 7912*, at 7 Table 2 (Oct. 7, 2015) [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-\\_Telecommunications\\_and\\_Broadband/Reports\\_and\\_Presentations/Final2015PUCCode7912Report.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/Final2015PUCCode7912Report.pdf) (37,760,297 wireless customers in CA) with *QuickFacts*,

broadband rate (let alone the lower adoption rate among the low-income customer segment), making it wholly arbitrary to apply a *wireless* benchmark in formulating a *wireline* mandate.

*Second*, participation in low-income benefit programs is far from universal. Many New Charter broadband subscribers who are eligible for the low-income program, in other words, simply will not enroll—just as a great many eligible households do not enroll in LifeLine.

*Third*, many customers in New Charter's footprint who choose low-income plans will not choose New Charter at all. Instead, they will choose plans offered by AT&T or Frontier (formerly Verizon), which serve the vast majority of New Charter's California territory and thus will compete against the combined company. In a particular area, if New Charter and Frontier (for instance) each serve 50% of broadband subscribers, then achieving a 45% enrollment rate among low-income households would require that (a) 90% of low-income households adopt broadband; and (b) 100% of those households enroll in a low-income program offered by either Charter or Frontier. Both numbers are clearly unrealistic.

Approval of the Transaction cannot hinge on a requirement that cannot reasonably be met, and doing so would jeopardize the benefits that New Charter's low-income broadband service will otherwise bring to Californians. New Charter's voluntary commitment to an aspirational goal of 200,000 enrollments in four years represents a reasonable approach that demonstrates New Charter's good faith and the public interest benefits of the Transaction.

c. Funding Commitments.

Equally audacious is CETF's request that New Charter be required to pay \$285 million into a fund to promote customers' adoption of the company's low-income broadband pro-

---

California, U.S. Census Bureau, <http://www.census.gov/quickfacts/table/PST045215/06> (CA total and adult population).

gram.<sup>386</sup> New Charter will commit \$10 million, over four years following the launch of the offering, to organizations to support public-private partnerships and technology initiatives to help promote broadband adoption in low-income communities within its service area. Moreover, as noted, *supra*, New Charter will provide free broadband to at least 75 anchor institutions within its service territory in California, including but not limited to schools, libraries, community centers, senior centers or religious institutions.

CETF's request has absolutely nothing to do with any harm supposedly resulting from the Transaction. It is an attempt to use the Commission's approval process as leverage to obtain financial support that it has been unable to obtain through legislation or rulemaking. And CETF's figure is truly massive: it amounts to a significant portion of the *total* annual long-run synergies of \$800 million the Joint Applicants expect to eventually be able to realize *nationwide* after integrating their operations.<sup>387</sup>

CETF's suggestion that these expenditures will pay for themselves is divorced from reality.<sup>388</sup> CETF's logic rests on the notion that once New Charter has invested an initial \$275, all subscriber fees are pure profit.<sup>389</sup> This ignores the *costs* New Charter must pay to provision its low-income broadband service, including installation costs, CPE (with New Charter providing modems without a rental fee); network operating costs; network capacity costs from adding hun-

---

<sup>386</sup> CETF's logic is that acquiring a single low-income broadband customer will cost \$275—which, when multiplied by the total number of households that CETF believes should be eligible for the program, and then multiplied by 45%, yields a total of \$285 million. CETF Opening Br. at 5–6.

<sup>387</sup> CETF's \$285 million request is also based on the flawed assumption that all low-income households must be eligible for New Charter's low-income broadband program. As set forth above, however, New Charter's program will be more targeted in its eligibility criteria, and there is no reason for the Commission to broaden those criteria.

<sup>388</sup> *Id.* at 29–30.

<sup>389</sup> *Id.* at 30.

dreds of thousands of new subscribers; costs associated with customer churn, including the costs of opening and closing accounts; and costs associated with general account management, such as billing, customer service, and bad debt.<sup>390</sup>

In short, CETF's funding demand is absurd—and beyond the Commission's jurisdiction to compel in any event. New Charter's voluntary \$10 million commitment, set forth above, represents a reasonable investment and supports approval.

d. Similar Past Settlements And Commission Decisions.

CETF claims that its demands are supported by past Commission decisions. In fact, however, those demands—particularly its demand for a \$285 million fund—are grossly disproportionate to anything that past applicants have voluntarily agreed to, let alone anything that the Commission has ordered applicants to accept. New Charter's voluntary commitments to an aspirational goal of 200,000 low-income broadband enrollments in four years, as well as provision of \$10 million to community group partners to promote the offering over the same period, are more than reasonable. The Commission should recognize as much.

*Frontier-Verizon*, issued just a few months ago, is most directly on point. In that proceeding, § 854(b) rather than § 854(c) supplied the governing standard, meaning that—unlike here—the transaction was required not only to be in the public interest, but also to “equitably allocate[]” its economic benefits to ratepayers.<sup>391</sup> Subject to that heightened standard, Frontier made—and CETF and ORA accepted—a voluntary contribution of \$3 million for broadband out-

---

<sup>390</sup> CETF's argument is also flawed in its implicit assumption that the requisite number of new customers would enroll *immediately* upon New Charter's satisfaction of its funding commitment. The rather simplistic view of customer enrollment is belied by the fact that CETF's condition itself contemplates a period of five years to achieve the adoption target.

<sup>391</sup> Cal. Pub. Utils. Code § 854(b).

reach.<sup>392</sup> Here, New Charter will voluntarily contribute more than three times that amount—whereas CETF, which was so satisfied with the Frontier offering that it entered into a *settlement* for that amount, now asks New Charter to contribute *ninety-five times* as much. In the Frontier-Verizon transaction, moreover, Frontier’s low-income broadband plan involved speeds of just 7 Mbps, offered for \$13.99/month. New Charter’s low-income plan will offer speeds that are more than four times faster, at rates that are just 7% higher—making only one-quarter the cost, per Mbps download speed, as Frontier’s offering. Finally, Frontier agreed to—and, again, CETF and ORA accepted—an “aspirational target” of 200,000 enrolled customers in its program.<sup>393</sup> New Charter’s voluntary aspirational goal to enroll 200,000 customers in its low-income broadband plan is comparable. CETF’s and ORA’s requests for a 45% mandatory adoption rate in this proceeding is clearly disproportionate to what they—and the Commission—accepted mere months ago. The Frontier-Verizon settlement confirms that CETF’s and ORA’s wildly higher demands here are unreasonable and should be rejected out of hand.

*Verizon-MCI*, also relied upon by CETF, likewise demonstrates the disproportionate nature of CETF’s demand here. Verizon and MCI *voluntarily* offered to commit \$15 million total for CETF. But even that figure overstates the actual commitment because up to 50% of it—*i.e.*, \$7.5 million—could be double-counted towards the increased philanthropy totals to which the companies had agreed.<sup>394</sup>

*Comcast-TWC*, by contrast—on which CETF heavily relies—is inapposite. Unlike Frontier-Verizon, the *Comcast Proposed Decision* is not precedential: Comcast never agreed to

---

<sup>392</sup> *In re Frontier*, D.15-12-005, App. E, Attachment A at 8–9, ¶ 24.

<sup>393</sup> *Id.*, App. E., at 7, ¶ 17.

<sup>394</sup> *In re Verizon*, D.05-11-029, at 129-30.



either the adoption or funding conditions; its comments on the proposed decision made clear that it vigorously opposed the \$285/household and 45% adoption rate; and the Commission itself never ordered either proposed condition.

Even setting that point aside, the conditions in that case arguably had a nexus under § 854(c)(8) to a Transaction-specific harm: the proposed decision emphasized “the anti-competitive consequences that Comcast’s post-merger market power may have on the deployment of broadband in California,”<sup>395</sup> and also expressed concerns that the merger would “jeopardize Lifeline and other low-income programs.”<sup>396</sup> Such concerns are inapplicable here. And even there, the proposed decision *rejected* CETF’s recommendation of a long-term enrollment rate of 80%<sup>397</sup>—the same demand CETF now repeats.<sup>398</sup>

Moreover, the factual circumstances surrounding low-income broadband were quite different in that proceeding. Comcast was *already* legally obligated (by the FCC, not the Commission) to offer a low-income broadband service as a condition of its acquisition of NBCUniversal; here, by contrast, New Charter is voluntarily creating a low-income broadband program that otherwise would not exist. What is more, a 45% adoption rate for Comcast’s program was even *more* realistic than a 45% adoption rate here, as low-income offerings from AT&T and Frontier did not yet exist as competitors to Comcast’s plan. And Comcast’s Internet Essentials program was markedly inferior to New Charter’s proposed low-income service, offering speeds of just 6 Mbps rather than 30 Mbps. The *Comcast Proposed Decision*, in short, should not provide a basis for the Commission to accept CETF’s extravagant demands.

---

<sup>395</sup> *Proposed Comcast Decision* at 68.

<sup>396</sup> *Id.* at 51.

<sup>397</sup> Compare *id.* at 70, with *id.* at 78.

<sup>398</sup> See CETF Opening Br. at 25.

Other decisions on which CETF relies, which are either from very long ago and/or involved significantly different factual circumstances and legal considerations, do not support its position, either. For instance, in *Comcast-NBCUniversal*, the FCC noted serious public interest concerns, completely absent here, arising out of the vertical integration of the merged entity.<sup>399</sup> In *SBC-AT&T*, the Commission's funding requirements came against the backdrop of concerns—not present here, in light of New Charter's existing voluntary commitments—that “the combined company will focus its technology investments in affluent areas, and not maintain its commitment to assist low-income communities, small and minority-owned businesses, seniors and the disabled community in the wake of the merger.”<sup>400</sup> And the commitments in the 1997 *Pacific Telesis-SBC* transaction,<sup>401</sup> like the *Frontier-Verizon* proceeding, arose under the heightened § 854(b) standard not applicable here.

e. Strategic Plans and Oversight Committee.

Finally, CETF asks that New Charter be required to collaborate with the Commission and other stakeholders to develop strategic plans to close the Digital Divide and to address broadband adoption in each region.<sup>402</sup> CETF also asks the Commission to establish an advisory oversight committee to monitor New Charter's low-income broadband adoption progress.<sup>403</sup> New Charter

---

<sup>399</sup> See, e.g., *In re Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4282, 4284-85, 4288-89, ¶¶ 110, 116, 124 (Jan. 20, 2011).

<sup>400</sup> *In re SBC Commc'ns*, D.05-11-028, at 85. Up to 50% of the funding requirement, moreover, could be double-counted towards the applicants' separate commitment to increase corporate philanthropy. *Id.* at 79.

<sup>401</sup> *In re Pac. Telesis Grp.*, D.97-03-067, at 14.

<sup>402</sup> CETF Opening Br. at 5, 26, 33.

<sup>403</sup> *Id.* at 6, 33.

is willing to participate in a collaborative, industry-wide process involving all applicable providers and stakeholders. However, New Charter should not be singled out for compulsory collaboration requirements not borne by other providers.

f. New Charter's Low Income Broadband Commitment.

In sum, New Charter will launch its low-income broadband offering within 6 months of the close of the Transaction, and will roll out the offering everywhere in its California footprint where it offers broadband service within 15<sup>404</sup> months of closing. Enrollment will be available to families with students in the National Student Lunch Program and to seniors 65 and older who receive SSI benefits, subject to the following rules:

- No exclusion of current cable or voice customers;
- No credit check;
- Not eligible if New Charter (Charter, TWC or BHN) broadband customer within the past 60 days;
- Subscribers must clear any bad debt to New Charter;
- No long-term contracts;
- No modem lease fees; and
- Free self-installation.<sup>405</sup>

New Charter will extend this offering for at least four years after the offering is launched and will report annually to the CPUC for four years following commencement of the offering, identifying, at minimum, the number of households enrolled. New Charter will invest \$10 million over four years following the launch to help promote broadband adoption in low-income communities. There is no basis, under existing state law, for the Commission to order anything further. The offering has been widely praised by state regulatory agencies, consumers, and leading

---

<sup>404</sup> In a further effort to demonstrate good faith consideration of concerns raised by other parties, the Joint Applicants are accelerating this New Charter commitment from its original projected rollout within three years after closing.

<sup>405</sup> To the extent the FCC's review and possible approval of the Transaction results in modifications to New Charter's national offering, Joint Applicants would also adopt those same changes in California.

organizations concerned with the digital divide. Moreover, were the CPUC to adopt other parties' proposed conditions, in addition to exceeding the CPUC's jurisdiction, and risking preemption under federal law, the CPUC would be interfering with the program's rules that have been proposed to, and accepted by, other regulatory agencies, and that will be implemented uniformly across New Charter's footprint.

#### 4. *Open Internet Conditions.*

New Charter has already made numerous commitments relating to an open Internet in connection with the FCC's review of the Transaction.<sup>406</sup> As set forth in Joint Applicants' Opening Brief, requests that the Commission impose California-specific conditions going beyond their national commitments—in particular, WGAW's demand that New Charter's open Internet commitments be extended from three years to ten,<sup>407</sup> and ORA's demand that such commitments remain in place until the Commission reaches some future determination as to the status of broadband competition in California<sup>408</sup>—are both unreasonable (as the market for broadband services is constantly evolving) and flatly preempted by federal law.<sup>409</sup> They also bear no plausible relationship to the *Scoping Order*. Furthermore, these national commitments—which include the commitment not to impose data caps and the commitment to offer Charter's industry-leading settlement-free interconnection policy to all qualifying interconnection partners<sup>410</sup>—are *benefits* to Californians, not harms requiring remedy. For jurisdictional and preemption reasons, enforcement of those commitments rests with the FCC, not with this or other State Commissions.

---

<sup>406</sup> JA Opening Br. at 85–86.

<sup>407</sup> WGAW Opening Br. at 55.

<sup>408</sup> ORA Opening Br. at 47.

<sup>409</sup> JA Opening Br. at 85–86.

<sup>410</sup> *Id.* at 11–12.

WGAW's similar demand that the Commission dictate the terms of access to New Charter's video user interface and set-top boxes<sup>411</sup> suffers from the same jurisdictional and policy flaws as the demand for extended open Internet commitments. Moreover, given that these are all national issues being addressed in the FCC's review, any unique requirements imposed on New Charter's interstate broadband services by a single state would be unworkable. The Commission should defer to the FCC's resolution of the open Internet-related issues in this proceeding, which will be fully implemented nationwide, including in California.

**B. Unbundling of Customer Premise Equipment.**

ORA proposes, as a condition to the transaction, that New Charter be required to unbundle the cost of any Customer Premise Equipment (CPE) used in connection with all of its services.<sup>412</sup> The Commission should reject this condition, which is not in the public interest, exceeds both the *Scoping Ruling* and the Commission's statutory jurisdiction under California law, and is preempted by federal law.<sup>413</sup>

*First*, this condition is not in the public interest. Charter charges a single rate for its broadband service, and does not charge its customers, as a practice, any additional money for the modem necessary to access that service. To be clear, Charter does not prevent other companies from manufacturing modems and selling them to Charter's customers, provided that the modems are compatible with Charter's network. Charter's policy saves its subscribers money, and it

---

<sup>411</sup> WGAW Opening Br. at 56.

<sup>412</sup> ORA Opening Br. at 47–48.

<sup>413</sup> To the extent this condition applies to other services such as MVPD services, it is outside the scope of the proceeding and the Commission's jurisdiction. That said, Charter has no quarrel with the proposition that it "must comply with any FCC requirements regarding customer ownership of set-top boxes," *Id.* at 47 n.160. The FCC has not, however, imposed any comparable requirements on customer ownership of modems.

promotes transparency, by ensuring that the advertised price for Charter's broadband service is the actual price subscribers will have to pay to access the Internet. Charter instituted its policy in response to customer frustration over unexpected extra costs on their bill, and it should not be required to abandon that policy. Time Warner Cable charges and Bright House Networks each charger their customers monthly modem fees today, and California customers stand to save a tremendous amount of money off their monthly bills as a result of Charter's more favorable policies. The Commission should recognize this as a tremendous benefit, not a matter worthy of ORAs suggestion to impose a restrictive condition.

*Second*, ORA's proposed condition exceeds the Commission's jurisdiction under California law due to § 710(a), and Joint Applicants believe it to be preempted by federal law. The FCC has made clear that it would preempt any state regulation that would "impos[e] obligations on broadband service that are inconsistent with [the FCC's] carefully tailored regulatory scheme," including state regulation of "the rates of broadband Internet access service through tariffs or otherwise."<sup>414</sup> ORA's proposed condition would require Charter to change the rates for its bundled service by charging separately for its modems. Such a condition would be inconsistent with federal law.

### **C. Conditions Related to Service Quality.**

ORA proposes three conditions related to New Charter's broadband and VoIP service quality. As set forth in Part I.B, *supra*, the Joint Applicants maintain that because there is no evidence that the Transaction will degrade service quality, there is no basis for imposing "mitigation" measures on this topic, and for reasons stated in the "Jurisdiction" section, *supra*, the Commission lacks authority to regulate the terms and conditions of their VoIP and broadband

---

<sup>414</sup> *Open Internet Order*, 30 FCC Rcd at 5804, ¶ 433.

services in any event. However, New Charter is willing to accept significant portions of ORA's requested conditions, albeit with some modest modifications to ensure that New Charter's unregulated service offerings do not thereby become subject to requirements that even its *regulated* peers and competitors are not held to.

*First*, ORA requests that New Charter report certain service quality metrics (derived from G.O. 133-C) and that it also "meet all service quality standards" in that order.<sup>415</sup> New Charter is prepared to accept reporting requirements, for three years, commensurate with those required of regulated carriers with comparable operations, *i.e.*, facilities-based URF Carriers with 5,000 or more customers. As written, ORA's condition includes reporting obligations for "Installation Intervals" and "Installation Commitment," both of which apply only to GRC ILECs, a designation that would not apply to any of the Joint Applicants or their affiliates even if they offered traditional voice services instead of VoIP.<sup>416</sup> G.O. 133-C, moreover, requires only reporting, it does not set mandatory standards for the reported metrics—yet ORA's condition would also require that "New Charter will *meet* all service quality standards of G.O. 133-C (or subsequently updated rules) for VoIP services (or equivalent voice service)."<sup>417</sup> While Joint Applicants have every intention to meet the standards, imposing them as an enforceable commitment, when such commitment does not even apply to ILECs and was not part of ORAs settlement with Frontier in its merger with Verizon, would be unduly discriminatory. Therefore, New Charter will agree to report the standards, for three years, in the same general manner imposed on Frontier.

---

<sup>415</sup> ORA Opening Br. at 49.

<sup>416</sup> G.O. 133-C §§ 3.1, 3.2 (July 9, 2009).

<sup>417</sup> ORA Opening Br. at 49 (emphasis added).

Given that there is no demonstrated need to impose service quality requirements on New Charter's VoIP operations, much less any jurisdiction for the Commission to do so, the Joint Applicants believe that a reasonable implementation of ORA's condition would be for New Charter to agree to voluntarily report service metrics for three years consistent with G.O.133-C as set forth below:

For a period of three years, commencing 180 days from the close of the Transaction,<sup>418</sup> New Charter will report to the Commission and ORA on a quarterly basis, on the service quality metrics for New Charter's voice services in California, including VoIP services, consistent with the reports under G.O. 133-C (or subsequent updated rules), in the manner in which G.O. 133-C (or a subsequent updated General Order 133) applies to facilities-based URF carriers with 5000 or more customers:

- a. Customer Trouble Report (less than 6 per 100 working lines)
- b. Out of Service Report (90% w/in 24 hours)
- c. Answer Time (80% of calls in less than 60 seconds)

In exchange, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of CPUC staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.

*Second*, ORA requests that New Charter "decrease the quantity and severity (as measured by duration and number of customers affected) of voice and broadband service outages" and provide "semiannual reports containing monthly service reliability data and outage information," and including certain specified data elements.<sup>419</sup> For reasons set forth in Parts I.B.2.c and I.B.4, *supra*, there is neither any basis in the record to impose this condition nor does the Commission have jurisdiction to do so.<sup>420</sup> Moreover, ORA's condition would also subject New Charter's unregulated services to regulatory obligations not borne by its regulated peers, which face no com-

---

<sup>418</sup> Although ORA had requested 60 days, 180 represent a more reasonable timeframe for the Joint Applicants to devise appropriate reporting processes, given that neither Charter's nor Bright House Networks' VoIP affiliates are subject to such reporting requirements today.

<sup>419</sup> See ORA Opening Br. 50.

<sup>420</sup> See also JA Opening Br. Part I.B.4.



parable requirements regarding the absolute number of outages on their systems.<sup>421</sup> One of the reporting metrics ORA requests, moreover—“Steps taken to prevent the outage from recurring”—would impose on New Charter a new and highly burdensome requirement inconsistent with how it tracks data today, potentially requiring a highly onerous manual process. Therefore, although New Charter is willing to accept ORA’s requested condition in part and for three years, the commitment should be no more stringent than what ORA and the other intervening parties accepted in the settlement in the *Frontier-Verizon* proceeding,<sup>422</sup> and will make the following additional commitment:

New Charter will provide the CPUC and ORA, beginning June 30, 2016, with semi-annual reports containing monthly service reliability data and outage information for a period of no less than three years. The report shall include the following data elements:

- i. Service Type (VoIP, Broadband, or Both VoIP and Broadband)
- ii. Number of customers affected
- iii. Number of residential customers affected
- iv. Number of Small Business customers affected
- v. Number of Large Business customers affected
- vi. Outage Start Date and Time
- vii. Service Restoration Date and Time
- viii. Duration of outage in total minutes
- ix. Location of outage
- x. Description of the Cause
- xi. Description of the Root Cause
- xii. Description of the Incident
- xiii. Description of the equipment that failed (if any) and location within the network that was impacted
- xiv. Methods used to restore the outage (Resolution Method)

In addition, New Charter will provide a confidential copy of Federal Communications Commission (FCC) Network Outage Reporting System (NORS) reports for

---

<sup>421</sup> As set forth in note 147, *supra*, it is also nonsensical to require a provider to “decrease the quantity” of outages in absolute terms without indexing, in accordance with industry practice, for the number of lines the provider serves.

<sup>422</sup> See *In re Frontier*, D.15-12-005, App. F, Ex. 1, at 9–10.

New Charter's California VoIP services to the Commission and ORA within three business days after such filing with the FCC.

In return, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of CPUC staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.

*Finally*, ORA also proposes a “Customer Satisfaction Survey” condition.<sup>423</sup> As set forth in Part I.B.2.b, *supra*, Charter already obtains and tracks customer satisfaction data, and ORA has not presented any objections to the survey design or the resulting data. New Charter is nonetheless willing to accept ORA’s Customer Satisfaction Survey proposal, subject only to three minor modifications:

(1) Questions and sampling should focus on English- and Spanish-speaking customers, as those are most-spoken in California, and additional language requirements are likely to complicate the survey design and undercut its ability to obtain a statistically representative sample.

(2) Given the limited pool of independent researcher firms and the extent to which the Joint Applicants routinely retain such firms in their business, it would impractically limit the pool of potential vendors to exclude any firm that has worked with one of the Joint Applicants in any capacity. Selecting an independent research firm that has not done customer satisfaction research for the Joint Applicants in the past will adequately ensure independence.

(3) Due to the highly confidential contents of the Report prepared by the Survey Consultant, it should be shared with others—including “Commission Staff, New Charter, ORA,” or “other groups that participated in the planning process”—only on a confidential basis.

Accordingly, New Charter commits as follows:

---

<sup>423</sup> ORA Opening Br. at 51.

No later than 180 days from the closing of the Transaction, New Charter, in consultation with ORA shall select and retain an independent expert Survey Consultant ("Survey Consultant"), subject to standard confidentiality provisions. This Survey Consultant will not have previously provided any customer satisfaction services or contract work with Charter, Time Warner Cable, or Bright House Networks in California and shall act independently to develop the survey design and survey questions for a multi-lingual customer satisfaction survey in the New Charter California service area. The Survey Consultant will solicit input from stakeholders, including Commission staff, New Charter, ORA and other consumer groups in jointly held meetings facilitated by the Survey Consultant. The survey design and questions must be finalized no later than nine months from the closing of the Transaction. In addition to English proficient customers, the survey design must also include Spanish speaking customers identified as having limited English proficiency, and must include some customers who speak at least the top three languages spoken in New Charter service territory. The survey must measure customer satisfaction for broadband and voice services (including VoIP), and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages and the necessity for maintaining battery backup. New Charter shall cooperate with all reasonable requests from the Survey Consultant, including supply the Survey Consultant on a monthly basis the list of existing customers, closed and/or completed installation orders, and closed/completed trouble report tickets from which the Survey Consultant will generate its survey sample. The Survey Consultant shall solicit input, through virtual or in person meetings with Commission staff, New Charter, and ORA to design the structure and content of its reports containing the survey results on an ongoing basis. The surveys will commence 12 months from the closing the transaction and will continue for two years. The Survey Consultant shall issue a survey Report to the Commission, New Charter, ORA and other consumer groups that participated in the planning process containing the results of the survey every quarter. The final report shall be submitted 24 months from the commencement of the surveys.

In connection with this commitment, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of CPUC staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.

#### **D. Conditions Related to LifeLine.**

As set forth in Joint Applicants' Opening Brief, there are no plans to change TWCIS's provision of LifeLine services.<sup>424</sup> ORA, however, insists that New Charter be required not only to maintain TWCIS's provision of LifeLine services, but also to *expand* them into Charter's and

---

<sup>424</sup> JA Opening Br. at 42.

Bright House Networks' legacy footprints,<sup>425</sup> a demand CforAT repeats.<sup>426</sup> As with many of ORA's other demands, it is untethered from any consequences of the Transaction: the Joint Applicants' voice services compete in a highly competitive market, in which customers have access to offerings by, among others, ILECs, wireless carriers, and "over-the-top" VoIP providers, and there has been no claim that this Transaction will in any way diminish such competition or otherwise adversely affect voice affordability. Moreover, notwithstanding ORA's argument that the Joint Applicants are already required to participate in the California LifeLine program,<sup>427</sup> no such obligation exists today.<sup>428</sup>

That said, in the further interest of cooperation, New Charter is willing to make the following commitment:

Within 180 days<sup>429</sup> after close and extending for five years after closing, New Charter will offer its fully-featured standard residential voice service, at discounted rates equal to those available under the California LifeLine program, to residential customers meeting California LifeLine eligibility requirements within New Charter's legacy Charter and Bright House Networks service areas. The rates shall not exceed the amount charged to customers for the lowest priced service available under the California LifeLine program (e.g., currently, metered-rate service at \$3.66). New Charter will annually notify its voice customers of the availability of this discount, as well as advertise the availability of this discount on New Charter's website and in its direct mail and mass media marketing materials. New Charter will inform its customers about how to establish eligibility for the discount, and will retroactively credit such discounts to new customers up to 90 days upon the customer's establishing eligibility. New Charter will provide such discounts at its own cost, without seeking reimbursement from the California LifeLine Fund, and will report annually an accounting of the number of customers receiving this service on a county-by-county basis.

---

<sup>425</sup> ORA Opening Br. at 48.

<sup>426</sup> CforAT Opening Br. at 20–21.

<sup>427</sup> ORA Opening Br. at 43.

<sup>428</sup> See Part I.G *supra*.

<sup>429</sup> Although ORA requests that this offering commence in 60 days, more time will be needed for New Charter to create the necessary internal systems and processes.

Additionally, although not immediately applicable to legacy Time Warner Cable service areas in California, should New Charter apply for and receive authority to discontinue California LifeLine from the Commission within the five-year time frame after close, New Charter shall offer the same terms in legacy Time Warner service areas as specified herein and applicable to legacy Charter and Bright House Networks service areas.

This commitment exceeds ORA's and CforAT's demand that New Charter offer discounts through the LifeLine program: not only will New Charter offer discounted voice services to eligible customers at the same rates as LifeLine services, but it will do so at its own cost, without seeking reimbursement. Moreover, the voice service offered will be the same fully-featured voice service New Charter provides to its non-discounted customers. Thus, this voluntary commitment represents a significant benefit to California even above and beyond ORA's and CforAT's request.

**E. Conditions Related to VoIP Battery Backup Power.**

As set forth in Part IV *supra*, CforAT's requests that New Charter take additional steps surrounding backup power for its VoIP services have nothing to do with this Transaction and inappropriately seek to subject New Charter to requirements to which its peers and competitors are not subject. Moreover, the Joint Applicants currently provide reliable backup power options that meet Commission and FCC requirements and recommendations—practices that New Charter will be well positioned to continue; and Charter currently educates its VoIP customers regarding backup power.<sup>430</sup>

Additionally, some of what CforAT asks for is commercially unreasonable and should not be required uniquely of New Charter. For instance, with no demonstration that such a condition is feasible, it requests that the low-battery indicators on New Charter's VoIP modems "in-

---

<sup>430</sup> JA Opening Br. at 111-12.

clude audible alerts” and that New Charter “include alternative methods of alerting customers” of low batteries.<sup>431</sup> However, CforAT provides no record evidence that modems with such features compatible with New Charter’s network are available from reliable and trusted vendors today at reasonable costs. Moreover, providing “alternative methods” of alerting customers of low batteries would presumably require New Charter to remotely monitor them, and there is no evidence in the record as to the technical feasibility or cost of this requirement either. To the extent CforAT wishes to see these features integrated into voice modems, it should be lobbying device manufacturers and standards-setting bodies or petitioning for a general rulemaking in which such matters can be discussed with the benefit of a complete record, not asking that the Commission impose untested technical requirements of unknown cost and feasibility on one provider.

Similarly inappropriate is CforAT’s demand that New Charter “at the time of sale” provide information about backup power limitations of VoIP services,<sup>432</sup> a standard to which no other VoIP provider is held and which would complicate New Charter’s marketing and sales efforts. Nor has CforAT developed a sufficient record on this issue in this proceeding. There is nothing about New Charter’s VoIP operations, or about this Transaction, that would merit subjecting New Charter to customer education requirements any different from those the Commission applies to other providers, and the Commission already has very robust requirements surrounding battery backup education, which New Charter will commit to comply with under (D.) 10-01-026.

---

<sup>431</sup> See CforAT Opening Br. at 10.

<sup>432</sup> *Id.*

Nonetheless, New Charter is willing to make reasonable commitments to improve customer education, train its technicians, and offer batteries to certain vulnerable populations at lower costs. Without conceding any nexus to a Transaction-specific harm, as set forth below:

New Charter shall comply with the guidelines for customer education programs regarding customer backup power systems adopted by the Commission in Decision (D.) 10-01-026. Customer education notices shall be made available to all residential customers in English and Spanish, including Braille and Large Print in both languages, as requested by customers. New Charter will work with staff of the Commission's Communications Division to develop the form and language of such notices. The customer education notices will be communicated to all customers of New Charter no later than 180 days following the effective date of the Transaction, unless the 2016 notice has already been sent to customers, in which case New Charter will send the required notice within 1-year.

For residential customers with disabilities impairing their ability to install a backup battery (e.g. sight or physical disabilities), New Charter will provide a backup battery at cost for any new installation. This requirement shall remain in effect for 3-years measured from the date of the closing of the Transaction. Additionally, battery backup power units shall include a visible indicator light(s) that allow for customer maintenance when the batteries require replacement. Information on the cost and availability of replacement batteries must be provided to customers and assistance should be provided at the time of installation for any residential customer who is unable to change the battery without assistance. For those customers ordering a backup battery, a question regarding whether such assistance is required should be part of any residential installation process, so that households that are not capable of maintaining their vital connection to emergency services are not left out.

**F. Conditions Related to Arbitration Clauses and Class Action Waivers.**

ORA also asks the Commission to require New Charter to "remove" arbitration clauses from consumers' contracts.<sup>433</sup> Such a condition is unjustified by any Transaction-specific harm, beyond the Commission's jurisdiction, is barred by federal law, and is unreasonable in any event.

*First*, ORA is wrong to maintain that "the use of mandatory arbitration clauses and class action waiver provisions" is the result of "lack of competition in the marketplace."<sup>434</sup> To the

---

<sup>433</sup> ORA Opening Br. at 48.

contrary, such clauses are ubiquitous in consumer contracts across the country, including in fiercely competitive segments such as among wireless carriers. In *AT&T Mobility LLC v. Concepcion*, for example, the Supreme Court addressed and fully endorsed a mandatory arbitration clause with a class-action waiver contained in an AT&T consumer contract.<sup>435</sup> ORA certainly offers no reason to think that the Transaction will make these provisions *more* common.

*Second*, prohibiting New Charter from using the contractual provisions at issue would violate federal law. The Federal Arbitration Act embodies a strong federal policy in favor of enforcing arbitration agreements—and courts accordingly have held that any state law effort to single out arbitration clauses for disfavored treatment, or to prohibit class action waivers in arbitration clauses, is preempted.<sup>436</sup> Indeed, in *Concepcion* itself, the Supreme Court held that a California doctrine that invalidated arbitration agreements with class action waivers was preempted by the Federal Arbitration Act. A condition that would impose the same result would plainly be preempted under *Concepcion*.

*Third*, compelling New Charter to cease using the contractual provisions at issue would be unduly discriminatory and commercially unreasonable. Such provisions are ubiquitous across

---

<sup>434</sup> *Id.* at 33.

<sup>435</sup> 563 U.S. 333, 346–47 (2011); *see also, e.g., Lombardi v. DirecTV, Inc.*, 549 F. App'x 617, 619 (9th Cir. 2013) (enforcing similar clause in consumer satellite television contract); *Cruz v. Cingular Wireless, LLC*, 648 F.3d 1205, 1215 (11th Cir. 2011) (same, in consumer telecommunications contract).

<sup>436</sup> *See, e.g., Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (“By enacting [FAA] § 2, . . . Congress precluded States from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed upon the same footing as other contracts.” (internal quotation marks omitted)); *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987) (“A state-law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not comport with [FAA] § 2.”); *AT&T Mobility*, 563 U.S. at 341 (upholding mandatory arbitration clause with class action waiver, notwithstanding contrary state law, and stating that “[w]hen state law prohibits outright the arbitration of a particular type of claim, . . . [t]he conflicting rule is displaced by the FAA”).



multiple industries. And despite ORA's statement that they "are onerous and prevent consumers from seeking recourse against illegal or anticompetitive actions,"<sup>437</sup> the Supreme Court has concluded the exact opposite.<sup>438</sup> It would be unduly discriminatory for the Commission to deprive New Charter of the right to employ arbitration and class action waiver provisions in the same manner as its competitors and peer companies nationwide, particularly in the absence of any allegation, much less showing, of a specific reason to single out New Charter for disparate treatment. And in any event, by regulating the terms and conditions of service over which the Commission does not have statutory jurisdiction, it is beyond the proper scope of this proceeding.

**G. Accessibility of Communications to Persons with Disabilities.**

Charter has a strong track record of accommodating the needs of people with disabilities. Charter takes numerous measures to ensure that its print and online materials are accessible to people with disabilities.<sup>439</sup> Charter makes all residential billing statements available in Spanish, Braille and Large Print to requesting customers. In addition, as of mid-November 2015, residential customer billing statements are also available in Spanish Braille and Spanish Large Print. Charter also makes its billing statements available electronically, in PDF format and online, to all

---

<sup>437</sup> ORA Opening Br. at 33.

<sup>438</sup> See *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 220 (1985) (explaining that "the costliness and delays of litigation . . . can be largely eliminated by agreements for arbitration" (quotation marks omitted)); *AT&T Mobility*, 563 U.S. at 352 (observing that that consumers were often "*better off* under their arbitration agreement with [AT&T Mobility] than they would have been as participants in a class action, which could take months, if not years, and which may merely yield an opportunity to submit a claim for recovery of a small percentage of a few dollars" (emphasis in original) (internal quotation marks omitted)); *Am. Exp. Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2310–11 (2013) (holding that mandatory, non-class arbitration is an effective means for vindicating federal antitrust rights, because "[t]he class-action waiver . . . no more eliminates [the] parties' right to pursue their [antitrust] statutory remed[ies] than did federal law before its adoption of the class action for legal relief in 1938").

<sup>439</sup> Sanders Rebuttal, JA-9 at 8:13–12:5.

subscribers. The electronic versions of the billing statements can be enlarged electronically to facilitate legibility by persons with limited vision. Charter similarly makes its user guides available online in electronic format, which likewise can be electronically enlarged. Additionally, Charter makes support available on [www.charter.net](http://www.charter.net) in the form of electronic content and captioned videos.<sup>440</sup> New Charter will continue these efforts and, indeed, will continue to improve its service to people with disabilities.<sup>441</sup>

CforAT does not contend (nor could it) that Charter fails to comply with any laws or requirements with respect to the accessibility of its communications with people with disabilities. Indeed, CforAT “appreciates the attention” that Charter has given to the accessibility of its web portal, about which it has no complaints.<sup>442</sup>

Nonetheless, CforAT would like New Charter to do even more to make its materials accessible. Specifically, CforAT believes that New Charter should make “all customer communications” (not just the materials described above) available in alternative formats; that “key information” summarizing the content of customer communications should be provided in Large Print; and that, notwithstanding CforAT’s lack of complaints about Charter’s web site, that the Commission should require New Charter to report on its web site compliance and practices.<sup>443</sup>

As an initial matter, Charter is already engaged in ongoing efforts to make even more of its communications available in alternative formats. Specifically, as the record shows, **[begin CONFIDENTIAL information:**

---

<sup>440</sup> *Id.* at 10:6–10:17.

<sup>441</sup> *Id.* at 8:17–8:18.

<sup>442</sup> CforAT Opening Br. at 13.

<sup>443</sup> *Id.* at 13–16.

These efforts will go a long way towards addressing the concerns raised by CforAT.

Furthermore, New Charter is willing and able to make the following additional commitments to enhance the accessibility of its materials:

Charter has engaged a consultant to audit, advise and recommend actions to bring Charter's customer-facing charter.net web pages in compliance with the applicable WCAG 2.0AA standards. Following the close of the Transaction, New Charter will develop a plan for improving compliance with WCAG 2.0AA standards and will provide a plan to CforAT. In addition, New Charter will appoint a lead person for customer-oriented content included at www.charter.net who will become familiar with and remain current on WCAG 2.0 AA standards and advise New Charter's Web Content team in meeting such standards. Beginning 180 days after closing, all new California residential customer-oriented pages created by New Charter for the www.charter.net website will meet Web Access Standards, except where technical dependencies limit the ability of new web pages to meet these standards. If there are any such technical limitations, New Charter will document these dependencies and report this information, upon request, to CforAT, subject to standard confidentiality restrictions.

New Charter will make available Braille billing, Large Print billing, Spanish Braille billing and Spanish Large Print billing, if requested, to residential customers who previously requested these alternative formats. Residential customers who request to receive bills in alternative formats shall receive other billing and existing customer communications from New Charter in the same format. New Charter's customer bills will contain information about the availability of alternative formats and information on how such material can be requested. Within 180 days after closing, New Charter will, upon request, consult 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, to enhance important service information communications.

---

<sup>444</sup> Sanders Rebuttal, JA-9 at 10:20–10:24.

<sup>445</sup> *Id.* at 10:18–10:24.

By July 1, 2017, New Charter will prepare and distribute one or more training modules to educate California employees on important accessibility issues. New Charter will engage a consultant with expertise in consumer accessibility issues to assist in preparation of the training materials. This training will, among other things, address the placement and location of communications equipment at the customer premises (e.g., MTA and battery) to prevent mobility access issues. For three years from the date of the first distribution on or before July 1, 2017, New Charter will redistribute this training module annually to its California employees and will provide a copy of the training materials, upon request and in advance, subject to standard confidentiality restrictions, to CforAT for comments and recommendations in preparing the training materials before the training is communicated to California employees.

These commitments address the core of CforAT's concerns and nothing else should be required. The additional requirements requested by CforAT involve more significant commercial challenges, and there is no sound basis for imposing such new requirements in connection with this proceeding. Not only does Charter comply with requirements related to the accessibility of its customer communications, but there is nothing Transaction-specific about any of CforAT's concerns. The accessibility of materials for disabled customers is an issue that affects customers of all service providers. To the extent the Commission believes that customers with disabilities need to receive an even greater array of communications from their service providers in accessible formats, then all service providers—not just New Charter—should be subject to the same requirements. If accessibility for disabled customers is a concern, then it can be addressed through the legislative or rule-making processes. But this proceeding focused solely on New Charter is not the appropriate forum in which to establish new industry-wide accessibility requirements.<sup>446</sup>

---

<sup>446</sup> Decision Denying Petition by Verizon Wireless to Review the Assessment of Surcharges for the Commission's Public Purpose Programs with Respect to Wireless Services at 5, D.10-07-028 (July 30, 2010); Opinion at 10, 18, *CPN Pipeline Co. v. Pacific Gas & Elec. Co.*, D.01-05-086 (May 24, 2001).

## **H. Enforcement.**

Finally, ORA proposes that both the Commission staff and ORA should be granted authority “to audit and verify New Charter’s compliance with all conditions set forth herein,” and that New Charter should be required to “provide all data necessary and requested by the Commission and ORA to conduct the audit and verification.”<sup>447</sup> The Joint Applicants have no issue with providing the Commission with authority to audit and verify New Charter’s compliance with any commitments or conditions during the term of those conditions. ORA’s request for unfettered auditing authority over New Charter’s broadband and interconnected VoIP operations, however, is contrary to the California Legislature’s decision in § 710(a) to exempt broadband and VoIP providers from intrusive oversight. Accordingly, the Joint Applicants believe that auditing and enforcement authority for the Commission, supplemented by the regular reporting requirements for specific commitments discussed above, represents a more reasonable and workable means of enforcement. New Charter therefore makes the following commitment:

Commission staff has the authority to audit and verify New Charter’s compliance with all conditions set forth herein. New Charter must provide all data requested by the Commission to conduct the audit and verification. If New Charter fails to perform and comply with the set forth conditions, the Commission will pursue appropriate enforcement remedies, including the imposition of fines.

In return, Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of CPUC staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.

## **CONCLUSION**

For the reasons stated, the Joint Applicants respectfully request that the Joint Application be granted.

---

<sup>447</sup> ORA Opening Br. at 52.

Respectfully submitted March 11, 2016 at San Francisco, California.

Suzanne Toller  
Alan Galloway  
Davis Wright Tremaine, LLP  
Phone: (415) 276-6536  
505 Montgomery Street, Suite 800  
San Francisco, California 94111  
Email: [suzannetoller@dwt.com](mailto:suzannetoller@dwt.com)  
Email: [alangalloway@dwt.com](mailto:alangalloway@dwt.com)

Attorneys for Advance/Newhouse Partnership,  
Bright House Networks, LLC, and Bright House  
Networks Information Services (California),  
LLC

James W. McTarnaghan  
Anne B. Beaumont  
Perkins Coie LLP  
Phone: (415) 344-7007  
505 Howard Street, Suite 1000  
San Francisco, CA 94105-3204  
Email: [jmctarnaghan@perkinscoie.com](mailto:jmctarnaghan@perkinscoie.com)  
Email: [abeaumont@perkinscoie.com](mailto:abeaumont@perkinscoie.com)

Attorneys for Time Warner Cable Inc. and  
Time Warner Cable Information Services  
(California), LLC

John L. Clark  
Michael B. Day  
Goodin, MacBride, Squeri, & Day, LLP  
505 Sansome Street, Suite 900  
San Francisco, California 94111  
Email: [jclark@goodinmacbride.com](mailto:jclark@goodinmacbride.com)

By /s/ John L. Clark  
John L. Clark

Attorneys for Charter Communications, Inc.  
and Charter Fiberlink CA-CCO, LLC

# Appendix A

**PUBLIC - PURSUANT TO GENERAL ORDER 66-C**

## APPENDIX A: Requested Conditions and the Joint Applicants' Responses<sup>1</sup>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
<b>Broadband Speed</b>		
1	The Commission should require that New Charter offer speeds of at least 100 Mbps in 100% of its service territory in California. WGAW at 55.	<b>Accepted with Modification:</b>  Charter commits to deliver broadband speeds of at least 100 Mbps within 3 years of closing the Transaction to all homes passed within its service area, subject to completion of the commitment contained in condition #7 below, under which New Charter will deploy 70,000 new broadband passings to current analog-only cable service areas in Kern, Kings, Modoc, Monterey, San Bernardino, and Tulare counties. Reply Br. Part V.A.2.
2	New Charter must offer broadband Internet Service with speeds of at least 300 Mbps download to all households with current broadband availability from New Charter in its California network by December 31, 2019. ORA at 45.	<b>Accepted.</b> Reply Br. Part V.A.2.
3	On December 31, 2016, and every year thereafter until December 31, 2019, New Charter shall submit a progress report to the Commission and ORA identifying progress made. ORA at 45.	<b>Accepted.</b> Reply Br. Part V.A.2.
<b>Broadband Pricing</b>		
4	New Charter must honor TWC's existing pricing and service offerings, without material changes for three years following the close of the transaction. ORA at 53.	<b>Accepted with Modification:</b>  New Charter will allow existing Time Warner Cable and Bright House Networks customers to retain, without material changes that have the intent to discourage, the broadband services they subscribe to at the close of the Transaction for three years from the date of the closing. Reply Br. at Part V.A.2.

<sup>1</sup> The Joint Applicants have attempted to capture every proposed condition from the other parties' Opening Briefs, paraphrasing or summarizing where possible for the Assigned ALJ's convenience.



#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>										
5	New Charter must offer a standalone broadband product for \$30 per month for ten years, with a speed of at least 25 Mbps. The speed should increase based on any modifications to the FCC's threshold for "advanced telecommunications services" or Commission discretion. ORA at 54.	<b>Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; and lacks any nexus to Transaction-specific harm. Reply Br. Part V.A.2.; Opening Br. at 78–79.										
<b>Broadband Deployment</b>												
6	<p>New Charter must expand broadband availability [<i>i.e.</i>, provider can provision new requests for broadband service within 10 business days] to no less than 98% of households within each census block within the New Charter California franchise and operating service areas by end of year 2019 at speeds of no less than 25 Mbps download and 3 Mbps upload without imposing line extension charges to customers. New Charter is required to provide the Commission and ORA, within 60 days of the close of the transaction, an updated spreadsheet listing all census blocks within New Charter's California franchise territory and operating service area with the number of households in each of those census blocks with current broadband availability from New Charter, and an updated number of households in each of those census blocks that currently lack broadband availability from New Charter.</p> <p>The following broadband deployment targets are reasonable and attainable within the specified timeframe:</p> <p>Broadband Deployment Targets:</p> <table><tr><th>Year</th><th>% complete of households with Broadband Availability w/in each Census Block</th></tr><tr><td>Dec. 31, 2016</td><td>-</td></tr><tr><td>Dec. 31, 2017</td><td>96%</td></tr><tr><td>Dec. 31, 2018</td><td>97%</td></tr><tr><td>Dec. 31, 2019</td><td>98%</td></tr></table> <p>On July 1, 2016, and every year thereafter until July 1, 2019, New Charter shall submit a progress report to the Commission and ORA identifying the progress made for deployment of broadband availability and the work completed to meet the interim deployment milestones set forth above. At minimum, the report</p>	Year	% complete of households with Broadband Availability w/in each Census Block	Dec. 31, 2016	-	Dec. 31, 2017	96%	Dec. 31, 2018	97%	Dec. 31, 2019	98%	<p><b>Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; commercially unreasonable; lacks any nexus to Transaction-specific harm; and is impractical as New Charter does not even serve all areas in some census blocks. Reply Br. Part V.A.1; Opening Br. at 80–81.</p> <p><b>Addressed via Alternative Commitments:</b> <i>See Row 7, infra.</i></p>
Year	% complete of households with Broadband Availability w/in each Census Block											
Dec. 31, 2016	-											
Dec. 31, 2017	96%											
Dec. 31, 2018	97%											
Dec. 31, 2019	98%											

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
	<p>shall identify the number of households within New Charter's California franchise territory and operating area, by census block, with New Charter Broadband Availability; the number of new households in each of those census blocks with new deployment of broadband availability from New Charter at speeds of no less than 25 Mbps download and 3 Mbps upload. On December 31, 2017, and every year thereafter until December 31, 2019, New Charter shall submit a progress report certifying that it is meeting the percentage of households identified in the deployment milestones set forth above. ORA at 46.</p>	
7	<p>The Commission should require that New Charter build at least 150,000 of its promised one million line extensions in the state of California. WGAW at 55–56.</p>	<p><b><i>Accepted with Additional Commitments.</i></b></p> <p>Within three years following the Transaction's close, New Charter will provide service to new broadband passings for approximately 70,000 homes and businesses within its service area that currently are capable of receiving analog-only cable television services within the following counties within the New Charter service area: Kern, Kings, Modoc, Monterey, San Bernardino, and Tulare Counties. The vast majority of these new broadband passings will be in communities where more than twenty-five percent (25%) of households speak a language other than English in the home, according to United States Census data from the period 2010 to 2014.</p> <p>New Charter will deploy new broadband passings for 80,000 additional homes and businesses within its California service area within four years following the close of the Transaction. At least fifty percent (50%) of those new broadband passings will likewise be in communities where more than twenty-five percent (25%) of households speak a language other than English at home, according to United States Census data from the period 2010 to 2014.</p> <p>New Charter will deploy at least 25,000 out-of-home wireless broadband hotspots within its California service area within 4-years of the close of the Transaction. At least fifty percent (50%) of those wireless hotspots will be in communities where more than twenty-five percent (25%) of households speak a language other than English at home, according to United States Census data from the period 2010 to 2014.</p> <p>Reply Br. Part V.A.1; Opening Br. at 9.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
8	The Commission should require New Charter to deploy high-speed broadband into priority unserved or underserved areas in, adjacent to, or near its service areas, particularly in areas designated relating to the California Advanced Services Fund broadband infrastructure program. CETF at 6–7, 34–36.	<b>Accepted.</b> See Row 7. New Charter will provide service to new broadband passings for approximately 70,000 homes and businesses within portions of the following counties within the New Charter service area: Kern County, King County, Modoc County, Monterey County, San Bernardino County, and Tulare County. These counties include portions of the following unserved or underserved communities: Monterey County, City of Gonzales, City of Soledad, City of Greenfield, City of King City, Alturas, City of Porterville, City of Farmersville, City of Woodlake, Boron, Yucaipa, Phelan/Wrightwood, City of Lindsay, and City of Adelanto. <sup>2</sup>
9	The Commission should require New Charter to identify and select ten unserved or underserved California areas with significant population and require these areas be built out with broadband of adequate speeds compatible with the rest of the New Charter network. New Charter should be required to provide plans detailing proposed construction, speeds, and timetables, and coordinate efforts with Commission broadband policy and analysis branch. CETF at 6–7, 34–36.	<b>Accepted.</b> See Row 7.
10	The Commission should require upgrades to New Charter's broadband network now and periodically to meet service and performance requirements set by regulatory agencies to support prevalent consumer applications. CETF at 6–7, 34–36.	<b>Should Not Be Required:</b> Vague; preempted by federal law as service quality regulation of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm. Reply Br. Part V.A.1.
11	CETF encourages collaboration with FirstNet to assist the nation with emergency response capabilities and to explore opportunities to coordinate deployment projects with statewide networks, such as CENIC, K-12 High-Speed Network, CalREN, and the California Telehealth Network. CETF at 6–7, 34–36.	<b>Accepted.</b> Reply Br. Part V.A.1.

<sup>2</sup> New Charter expects there to be additional service areas as well.

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
<b>Open Internet</b>		
12	<p>New Charter will not impose any data caps or usage-based-pricing/billing on its broadband service until the Commission determines that effective competition of fixed-wireline broadband at speeds no less than 25 Mbps download and 3 Mbps upload is present for at least 80% of households in Southern California (10 counties). ORA at 47.</p> <ul style="list-style-type: none"> <li>New Charter should be required to extend its commitment to an Open Internet by committing to adhere to the entirety of the rules for a period of ten years. WGAW at 54.</li> </ul>	<p><b>Should Not Be Required:</b> Preempted by federal law as rate regulation of rates and terms of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm; and subject to a national commitment made at the FCC. Reply Br. Part V.A.4; Opening Br. at 85–86. <i>But see</i> Opening Br. at 11–12 (setting forth Joint Applicants' 3-year, affirmative Open Internet Commitments to FCC).</p>
<b>Unbundling CPE</b>		
13	<p>New Charter shall unbundle its Customer Premise Equipment (CPE) for all of its customers, including cable modems and cable set-top boxes, affording customers the choice of buying or renting their equipment and benefitting from competition in the manufacture and retailing of such devices. New Charter shall not pass through the price of CPE (i.e. by increasing prices of voice, broadband, and video services) to consumers who choose to buy or rent their equipment from a third-party vendor. ORA at 47–48</p>	<p><b>Should Not Be Required:</b> Preempted by federal law; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; and lacks nexus to Transaction-specific harm. Reply Br. Part V.B.</p>
<b>Platform Neutrality</b>		
14	<p>The Commission should require that New Charter maintain neutrality on its set-top boxes and user interface, and commit not to prioritize any specific OVD services through those mechanisms. WGAW at 56</p>	<p><b>Should Not Be Required:</b> Preempted by federal law; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; and lacks nexus to Transaction-specific harm. Reply Br. Part V.B.</p>
<b>Arbitration and Class Action Waivers</b>		
15	<p>New Charter shall discontinue the inclusion of mandatory arbitration/class action waiver provisions in its consumer agreements. Within 90 days from closing, New Charter shall provide all of its customers a written notice detailing out the discontinuance of arbitration/class action waiver provisions. The written notice shall be available in multiple languages to New Charter multilingual customers. New Charter shall provide the Commission and ORA a copy of the customer notice within 90 days from the time of closing</p>	<p><b>Should Not Be Required:</b> Violates Supremacy Clause and federal policy in favor of arbitration; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; and lacks nexus to Transaction-specific harm. Reply Br. Part V.F.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
	of the transaction. In addition, New Charter shall include a letter from one of its officers certifying compliance with this condition. ORA at 48	
<b>LifeLine</b>		
16	<p>New Charter shall offer Lifeline discounts to all eligible households within the service territory. Within 60 days from the close and semiannually thereafter, for a period of no less than three years, Charter shall provide to the Commission and ORA detailed plans on how it informs new consumers about LifeLine service and its terms and conditions, including specific information pertaining to the form, quantity, distribution method and content of information. New Charter shall also report to the Commission and ORA with the number of new customers signing up for the Lifeline program. ORA at 48; <i>see also</i> CforAT at 20;</p>	<p><b>Addressed via Alternative Commitment:</b></p> <p>Within 180 days after close and extending for five years after closing, New Charter will offer its fully-featured standard residential voice service, at discounted rates equal to those available under the California LifeLine program, to residential customers meeting California LifeLine eligibility requirements within New Charter's legacy Charter and Bright House Networks service areas. The rates shall not exceed the amount charged to customers for the lowest priced service available under the California LifeLine program (e.g. currently, metered-rate service at \$3.66). New Charter will annually notify its voice customers of the availability of this discount, as well as advertise the availability of this discount on New Charter's website and in its direct mail and mass media marketing materials. New Charter will inform its customers about how to establish eligibility for the discount, and will retroactively credit such discounts to new customers up to 90 days upon the customer's establishing eligibility. New Charter will provide such discounts at its own cost, without seeking reimbursement from the California LifeLine Fund, and will report annually the number of customers receiving this service on a county-by-county basis.</p> <p>Additionally, although not immediately applicable to legacy Time Warner Cable service areas in California, should New Charter apply for and receive authority to discontinue California Lifeline from the Commission within the five-year time frame after close, New Charter shall offer the same terms in legacy Time Warner Cable service areas as specified herein and applicable to legacy Charter and Bright House Networks service areas. Reply Br. Part V.D; Opening Br. at 75--77.</p>
<b>Low-Income Broadband: Adoption</b>		
17	New Charter should extend eligibility for its low-income broadband offering program to include all low-income households in the New Charter California franchise area and operating service area and enroll no less than 45% of eligible	<b>Should Not Be Required:</b> Preempted by federal law as regulation of rates and terms of broadband service; exceeds scope of Scoping Ruling and Commission jurisdiction; commercially unreasonable and burdensome; and

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
	<p>households within each census block within the New Charter California franchise area and operating service area within three years from the close. CETF at 5, 25.</p> <ul style="list-style-type: none"> <li>• The Commission should establish a long-term goal of 80% broadband subscription in low income neighborhoods in “major service areas” of New Charter. CETF at 5, 25.</li> <li>• New Charter shall extend its low-income broadband offering program to include all low-income households in California and enroll no less than 45% of eligible households within each census block with New Charter California franchise area and operating service area within three years from the close of the Transaction. ORA at 49.</li> <li>• New Charter should achieve a 40% enrollment benchmark within two years of close of the Transaction. WGAW at 55.</li> <li>• The Commission should adopt a “standard for enrollment.” CforAT at 20.</li> </ul>	<p>lacks any nexus to Transaction-specific harm.</p> <p><b>Addressed via Alternative Commitment:</b></p> <p>As an aspirational goal, New Charter agrees that over a period of four (4) years, it will seek to enroll 200,000 broadband customers which, the company will endeavor in good faith to achieve. Reply Br. Part V.A.3.b; Opening Br. at 81–83.</p>
<b>Low-Income Broadband: Reporting</b>		
18	CforAT proposes annual reports for four years following commencement, identifying number of households enrolled. CforAT at 20.	<p><b>Accepted.</b></p> <p>Reply Br. Part V.A.3.b; Opening Br. at 81–83.</p>
19	Beginning on June 30, 2016 and December 31 of, 2016, and every year thereafter until December 31, 2018, New Charter shall submit a progress report to the Commission and ORA identifying the progress made in reaching 45% adoption of eligible households within each census block or portions thereof within the New Charter California franchise area and operating service area of New Charter's low-income broadband offering program. ORA at 49.	<p><b>Addressed via Alternative Commitments:</b></p> <p><i>See Rows 17, 18, supra.</i></p>
<b>Low-Income Broadband: Funding and Support</b>		
20	The Commission should require New Charter to capitalize an independently-managed fund of \$285 million. The funds administrator should be selected by the Commission or other State agency through an open competitive	<p><b>Should Not Be Required:</b> Commercially unreasonable and burdensome; prejudicial and unfair to impose on Charter and not other providers; and lacks any nexus to Transaction-specific harm.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
	<p>process. New Charter should support digital literacy programs through performance-based grants to CBOs as “trusted messengers” who are familiar with cultural issues of unconnected families. CETF at 5–6, 26–27.</p>	<p><b>Addressed via Alternative Commitments:</b></p> <p>New Charter will commit \$10 million, over four years following the launch of the offering, to organizations to support public-private partnerships and technology initiatives to help promote broadband adoption in low-income communities within its service area.</p> <p>New Charter will provide free broadband to at least 75 anchor institutions within its service territory in California, including but not limited to schools, libraries, community centers, senior centers or religious institutions. At least sixty percent (60%) of those anchor institutions will be in communities where, according to the United States Census for the period 2010-2014, more than twenty-five percent of households speak a language other than English at home. Reply Br. Part V.A.3.c; Opening Br. at 83–84.</p>
<b>Low-Income Broadband: Eligibility</b>		
21	<ul style="list-style-type: none"> <li>• The low-income broadband offering should be available to all customers eligible for Lifeline. ORA at 48-49; CforAT at 19.</li> <li>• The program should be designed so that individuals with income lower than 300% of the federal poverty level or persons with disabilities are eligible to enroll. WGAW at 54.</li> <li>• At minimum, if eligibility is not so extended, the program should include all participants in SSDI to address disabilities. CforAT at 19.</li> </ul>	<p><b>Addressed via Alternative Commitment:</b></p> <p>New Charter will launch its low-income broadband offering within 6 months of the close of the Transaction, and will roll out the offering to its full California footprint that receives broadband service within 15 months of closing. Enrollment will be available to households with students in the National Student Lunch Program and to seniors 65 and older who receive SSI benefits, providing discounted 30/4 Mbps broadband service at an initial price of \$14.99, including a modem, subject to program rules discussed below. New Charter will offer its low-income broadband program for at least four years after the program is launched. Reply Br. Part V.A.3.a; Opening Br. at 78–79.</p> <p><b>Further Conditions Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm; and would not conform to uniform rules of national low-income broadband program announced by New Charter and intended to be rolled out uniformly across the New Charter service area.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
<b>Low-Income Broadband: Business Rules</b>		
22	New Charter should provide a free wireless router. CforAT at 19; CETF at 20–21.	<p><b>Addressed via Alternative Commitment:</b></p> <p>New Charter's low-income broadband offering will be subject to the following program rules:</p> <ul style="list-style-type: none"> <li>• No exclusion of current cable or voice customers.</li> <li>• No credit check</li> <li>• Not eligible if New Charter (Charter, TWC, or BHN) broadband customer within the past 60 days</li> <li>• Subscribers must clear any bad debt to New Charter.</li> <li>• No long-term contracts.</li> <li>• No modem lease fees.</li> <li>• Free self-installation.<sup>3</sup></li> </ul> <p>Reply Br. Part V.A.3.a; Opening Br. at 78–79.</p> <p><b>Further Conditions Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm; would not conform to uniform rules of national low-income broadband program announced by New Charter and intended to be rolled out uniformly across the New Charter service area.</p>
23	<p>New Charter should:</p> <ul style="list-style-type: none"> <li>• Remove the 60-day exclusionary period for current broadband customers;</li> <li>• Remove or reduce the bad debt exclusion or consider debt forgiveness;</li> <li>• Include an avenue for registration without use of social security number.</li> </ul> <p>WGAW at 55.</p>	<p><b>Addressed via Alternative Commitments.</b> <i>See</i> Row 22. No social security number is needed <i>today</i> to participate in the NSLP so that would not change as a result of Charter's program. Households with students that participate in the program are eligible already even if they do not have social security numbers. Reply Br. Part V.A.3.a.</p> <p><b>Further Conditions Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm; would not conform to uniform rules of national</p>

<sup>3</sup> To the extent the FCC's review and possible approval of the Transaction results in modifications to New Charter's national offering, Joint Applicants would also adopt those same changes in California.



#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
		low-income broadband program announced by New Charter and intended to be rolled out uniformly across the New Charter service area.
24	New Charter should not adopt long-term contracts, deposit requirements, credit check, install charges, or online registration. CETF at 20–21.	<b>Addressed via Alternative Commitments.</b> See Row 22.  <b>Further Conditions Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; exceeds scoping ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm; would not conform to uniform programs rules of national low-income broadband program announced by New Charter and intended to be rolled out uniformly across the New Charter service area.
<b>Low-Income Broadband: Term</b>		
25	New Charter should offer standalone rate of \$10-15 per month for at least 5 years from program launch and continue until 80% of the eligible households in the service areas are online with high-speed Internet access. CETF at 20.	<b>Accepted with Modification:</b>  New Charter will launch its low-income broadband program within 6 months of the close of the Transaction, and will roll out the program to its full California footprint subject to broadband availability, within 15 months of closing. New Charter will extend its low-income broadband program for at least four years after the program is launched. Reply Br. Part V.A.3.f; Opening Br. at 78–79.
<b>Low-Income Broadband: Strategic Plans and Oversight Committee</b>		
26	The Commission should require New Charter to collaborate with the Commission and other stakeholders to develop a written strategic plan by a date certain to achieve the 45% goal of broadband adoption. The strategic plan must be a public document open to input and comments. An independent oversight committee should be established to monitor New Charter's low-income broadband progress with required participation and engagement with Communications Division staff. The Commission should require New Charter to collaborate with its Communications Division staff to draft a strategic plan to close the Digital Divide as to broadband services for the state. CETF at 5-6, 26-33.	<b>Should Not Be Required:</b> Preempted by federal law as state regulation of rates and terms of broadband service; exceeds Scoping Ruling and Commission jurisdiction; commercially unreasonable; lacks nexus to Transaction-specific harm; and unfair and prejudicial to compel New Charter's participation but not other providers'.  <b>Addressed via Alternative Commitment:</b>  New Charter is willing to participate in a collaborative, industry-wide process involving all applicable providers and stakeholders. Reply Br. Part V.A.3.e; Opening Br. at 84–85.

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
<b>Service Quality Reporting</b>		
27	<p>For a period of three years, commencing 60 days from the close of the transaction, New Charter will report to the Commission and ORA, on a quarterly basis, on the below service quality metrics for New Charter voice services in California, including VoIP services, consistent with the reports under G.O. 133 (C) (or subsequent updated rules. Within 1 year from the close of the transaction, and for subsequent years thereafter, New Charter will meet all service quality standards of G.O. 133 (C) (or subsequent updated rules) for VoIP services (or equivalent voice service):</p> <ul style="list-style-type: none"> <li>a. Installation Intervals (5 business days)</li> <li>b. Installation Commitment (95% of commitments met)</li> <li>c. Customer Trouble Report (less than 6 per 100 working lines)</li> <li>d. Out of Service Report (90% w/in 24 hours)</li> <li>e. Answer Time (80% of calls in less than 60 seconds)</li> </ul> <p>ORA at 49–50</p>	<p><b>Accepted with Modification:</b></p> <p>For a period of three years, commencing 180 days from the close of the Transaction, New Charter will report to the Commission and ORA on a quarterly basis, on the service quality metrics for New Charter's voice services in California, including VoIP services, consistent with the reports under G.O. 133-C (or subsequent updated rules), in the manner in which G.O. 133-C (or a subsequent updated General Order 133) applies to facilities-based URF carriers with 5000 or more customers:</p> <ul style="list-style-type: none"> <li>a. Customer Trouble Report (less than 6 per 100 working lines)</li> <li>b. Out of Service Report (90% w/in 24 hours)</li> <li>c. Answer Time (80% of calls in less than 60 seconds)</li> </ul> <p><b>Confidentiality Request:</b></p> <p>In exchange, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of Commission staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.</p> <p>Reply Br. Part V.C.; Opening Br. at 86–88.</p> <p><b>Should Not Be Required:</b> Installation Intervals and Installation Commitments apply to only GRC ILECs under the terms of G.O. 133-C. See Part V.C.</p>
28	<p>Within two years from the time of close of the transaction, New Charter shall decrease the quantity and severity (as measured by duration and number of customers affected) of voice and broadband service outages. Charter will provide the Commission and ORA, beginning June 30, 2016, with semiannual reports containing monthly service reliability data and outage information for a period of no less than three years. The report shall include the following data</p>	<p><b>Accepted with Modification:</b></p> <p>Charter will provide the Commission and ORA, beginning June 30, 2016, with semiannual reports containing monthly service reliability data and outage information for a period of no less than three years. The report shall include the following data elements:</p> <ul style="list-style-type: none"> <li>i. Service Type (VoIP, Broadband, or Both VoIP and Broadband)</li> </ul>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
	<p>elements:</p> <ul style="list-style-type: none"> <li>i. Service Type (VoIP, Broadband, or Both VoIP and Broadband)</li> <li>ii. Number of customers affected</li> <li>iii. Number of residential customers affected</li> <li>iv. Number of Small Business customers affected</li> <li>v. Number of Large Business customers affected</li> <li>vi. Outage Start Date and Time</li> <li>vii. Service Restoration Date and Time</li> <li>viii. Duration of outage in total minutes</li> <li>ix. Location of outage</li> <li>x. Description of the Cause</li> <li>xi. Description of the Root Cause</li> <li>xii. Description of the Incident</li> <li>xiii. Description of the equipment that failed (if any) and location within the network that was impacted</li> <li>xiv. Methods used to restore the outage (Resolution Method)</li> <li>xv. Steps taken to prevent the outage from re-occurring</li> </ul> <p>ORA at 50.</p>	<ul style="list-style-type: none"> <li>ii. Number of customers affected</li> <li>iii. Number of residential customers affected</li> <li>iv. Number of Small Business customers affected</li> <li>v. Number of Large Business customers affected</li> <li>vi. Outage Start Date and Time</li> <li>vii. Service Restoration Date and Time</li> <li>viii. Duration of outage in total minutes</li> <li>ix. Location of outage</li> <li>x. Description of the Cause</li> <li>xi. Description of the Root Cause</li> <li>xii. Description of the Incident</li> <li>xiii. Description of the equipment that failed (if any) and location within the network that was impacted</li> <li>xiv. Methods used to restore the outage (Resolution Method)</li> </ul> <p><b>Confidentiality Request:</b> In return, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of Commission staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard. Reply Br. Part V.C; Opening Br. at 86–88.</p>
29	<p>New Charter will provide a copy of Federal Communications Commission (FCC) Network Outage Reporting System (NORS) reports for New Charter's California VoIP services to the Commission and ORA within three business days after such filing with the FCC. ORA at 50.</p>	<p><b>Accepted with Modification</b> (Term of 3 years):</p> <p>New Charter will provide a copy of Federal Communications Commission (FCC) Network Outage Reporting System (NORS) reports for New Charter's California VoIP services to the Commission and ORA within three business days after such filing with the FCC.</p> <p><b>Confidentiality Request:</b> In return, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of Commission staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard. Reply Br. Part V.C.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
30	<p>No later than 180 days from the closing and in consultation with ORA select and retain an independent expert Survey Consultant ("Survey Consultant") that has not have previously provided any services or contract work with Charter, TWC, or BHN in California and shall act independently to develop the survey design and questions for a multi-lingual customer satisfaction survey in the California service area. The Survey Consultant will solicit input from stakeholders, including Commission staff, New Charter, ORA and other consumer groups in jointly held meetings facilitated by the Survey Consultant. The survey design and questions must be finalized no later than nine months from closing. The survey design must also include customers identified as having limited English proficiency, and must include some customers who speak at least the top three languages spoken in New Charter service territory. The survey must measure customer satisfaction for broadband and voice services (including VoIP), and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages and the necessity for maintaining battery back-up. New Charter shall cooperate with all reasonable requests from the Survey Consultant, including supply the Survey Consultant on a monthly basis the list of existing customers, closed and/or completed installation orders, and closed/completed trouble report tickets from which the Survey Consultant will generate its survey sample. The Survey Consultant shall solicit input, through meetings with Commission staff, New Charter, and ORA to design the structure and content of its reports containing the survey results on an ongoing basis. The surveys will commence 12 months from the closing and will continue for two years. The Survey Consultant shall issue a survey Report to the Commission, New Charter, ORA and other consumer groups that participated in the planning process containing the results of the survey every quarter. The final report shall be submitted 24 months from the commencement of the surveys. ORA at 51.</p>	<p><b>Accepted with Modification:</b></p> <p>No later than 180 days from the closing of the Transaction, New Charter, in consultation with ORA shall select and retain an independent expert Survey Consultant ("Survey Consultant"), subject to standard confidentiality provisions. This Survey Consultant will not have previously provided any customer satisfaction services or contract work with Charter, Time Warner Cable, or Bright House Networks in California and shall act independently to develop the survey design and survey questions for a multi-lingual customer satisfaction survey in the New Charter California service area. The Survey Consultant will solicit input from stakeholders, including Commission staff, New Charter, ORA and other consumer groups in jointly held meetings facilitated by the Survey Consultant. The survey design and questions must be finalized no later than nine months from the closing of the Transaction. In addition to English proficient customers, the survey design must also include Spanish speaking customers. The survey must measure customer satisfaction for broadband and voice services (including VoIP), and the effectiveness of efforts to educate customers on the limitations of VoIP during power outages and the necessity for maintaining battery back-up. New Charter shall cooperate with all reasonable requests from the Survey Consultant, including supply the Survey Consultant on a monthly basis the list of existing customers, closed and/or completed installation orders, and closed/completed trouble report tickets from which the Survey Consultant will generate its survey sample. The Survey Consultant shall solicit input, through virtual or in person meetings with Commission staff, New Charter, and ORA to design the structure and content of its reports containing the survey results on an ongoing basis. The surveys will commence 12 months from the closing the transaction and will continue for two years. The Survey Consultant shall issue a survey Report on a confidential basis to the Commission, New Charter, ORA and other consumer groups that participated in the planning process containing the results of the survey every quarter. The final report shall be submitted 24 months from the commencement of the surveys.</p> <p><b>Confidentiality Request:</b></p> <p>In connection with this commitment, the Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of Commission staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
		Reply Br. Part V.C.
<b>Education re Battery Backup Systems</b>		
31	<p>New Charter shall comply with the guidelines for customer education programs regarding customer backup power systems adopted by this Commission in Decision (D.) 10-01-026. Customer education will be made available in multiple language versions as well as in accessible formats for visually impaired customers. New Charter shall work with staff of the Commission's Communications Division to develop the form and language of such notices. The customer education will be communicated to all customers of New Charter no later than 180 days following the effective date of the transaction and annually thereafter.</p> <p>ORA at 52; <i>see also</i> CforAT at 9.</p>	<p><b>Accepted with Modification:</b></p> <p>New Charter shall comply with the guidelines for customer education programs regarding customer backup power systems adopted by the Commission in Decision (D.) 10-01-026. Customer education notices shall be made available to all residential customers in English and Spanish, including Braille and Large Print in both languages, as requested by customers. New Charter will work with staff of the Commission's Communications Division to develop the form and language of such notices. The customer education notices will be communicated to all customers of New Charter no later than 180 days following the effective date of the Transaction, unless the 2016 notice has already been sent to customers, in which case New Charter will send the required notice within 1-year.</p> <p>Reply Br. Part V.E; Opening Br. at 111-12.</p>
<b>Public Safety</b>		
32	<p>For vulnerable customers public safety would be better protected by requiring the merged entity to provide battery backup power for all customers. For low-income and vulnerable customers, the Commission should require backup power units to be provided at a discount, with installment payments available. Battery backup power units must include effective indicators that allow for customer maintenance. This includes clear requirements that battery units be positioned somewhere where the battery indicator is visible. Additionally (and particularly if a household includes someone who is blind/low vision or if visible</p>	<p><b>Accepted with Modification:</b></p> <p>For residential customers with disabilities impairing their ability to install a backup battery (e.g., sight or physical disabilities), New Charter will provide a backup battery at cost for any new installation. This requirement shall remain in effect for 3-years measured from the date of the closing of the Transaction. Additionally, battery backup power units shall include a visible indicator light(s) that allow for customer maintenance when the batteries require replacement. Information on the cost and availability of replacement batteries must be provided to customers and assistance should be provided at the time of installation for any residential customer who is</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
	<p>placement of a voice modem is not possible) low-battery indicators should include audible alerts. Finally, the provider should include alternative methods of alerting customers.</p> <p>Charter must provide effective information on battery replacement and service. Information on the cost and availability of replacement batteries must be provided and assistance should be provided for 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, so that households that are not capable of maintaining their vital connection to emergency services are not left out. CforAT at 9–11.</p>	<p>unable to change the battery without assistance. For those customers ordering a backup battery, a question regarding whether such assistance is required should be part of any residential installation process, so that households that are not capable of maintaining their vital connection to emergency services are not left out.</p> <p>Reply Br. Part V.E; Opening Br. at 111–13.</p>
33	<p>Information must be provided that telecommunications services will only work in a power outage with appropriate backup power; this information must be provided at the time of sale—not installation. CforAT at 9–10.</p>	<p><b>Should Not Be Required: “Time of sale” requirement:</b> Exceeds existing Commission requirements set forth in industry-wide decision; commercially unreasonable and unfair to New Charter vis-à-vis other providers; and lacks nexus to Transaction-specific harm.</p> <p>Reply Br. Part V.E; Opening Br. at 111–13.</p> <p><i>But see</i> Row 31 (committing to other customer education measures).</p>
<b>Accessible Communications</b>		
34	<p>It would be appropriate for the Commission to establish a clear timeline for bringing both the material on Charter.net and any mobile apps into full compliance with web access standards as a condition of the merger, and to include reporting and monitoring efforts to ensure compliance. The merged entity should be required to provide a report on progress toward incorporating best practices into its website within six month of approval and to certify compliance with web accessibility requirements for the website and any mobile apps within one year of approval. CforAT at 16.</p>	<p><b>Accepted with Modification and Additional Commitments:</b></p> <p>Charter has engaged a consultant to audit, advise and recommend actions to bring Charter’s customer-facing charter.net web pages in compliance with the applicable WCAG 2.0AA standards. Following the close of the Transaction, New Charter will develop a plan for improving compliance with WCAG 2.0AA standards and will provide a plan to CforAT. In addition, New Charter will appoint a lead person for customer-oriented content included at <a href="http://www.charter.net">www.charter.net</a> who will become familiar with and remain current on WCAG 2.0 AA standards and advise New Charter’s Web Content team in meeting such standards. Beginning 180 days after closing, all new California residential customer-oriented pages created by New Charter for the <a href="http://www.charter.net">www.charter.net</a> website will meet Web Access Standards, except where technical dependencies limit the ability of new web pages to meet these standards. If there are any such technical limitations, New Charter will document these dependencies and report this information, upon</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
		request, to CforAT, subject to standard confidentiality restrictions. Reply Br. Part V.G; Opening Br. at 111–13.
35	<p>The Commission should require a mitigation measure of improved efforts to ensure that all customer communications from the merged carrier are accessible to customers with disabilities in a range of alternative formats. As noted above, appropriate formats include large print, Braille, electronic format and audio format. Any customer who has requested to receive bills in an alternative format should automatically receive all direct communications in the same format, while standard print materials and materials provided for broad distribution (such as advertising) should include key information in large print, including information about the availability of alternative formats and information on how such material can be requested. Of course, alternative format versions of all printed material should be provided promptly upon request by any customer. All information about any low-cost broadband program that is authorized must be readily available in alternative formats, and key information must be provided in large print as part of any outreach or enrollment material concerning such program.</p> <p>All standard-print mailers developed for a new merged entity incorporate key information in large print, and that other material developed for distribution in standard print, such as advertising, also include such information. In particular, as noted above, all outreach and enrollment materials regarding low-income broadband should also provide key information in large print. Additionally, the new entity should be required to report on its use of key information in large print within six months of approval of the merger to ensure that this obligation is being met and that any concerns about the incorporation of large print information can be addressed. CforAT at 14–15.</p>	<p><b>Accepted with Modification and Additional Commitments:</b></p> <p>New Charter will make available Braille billing, Large Print billing, Spanish Braille billing and Spanish Large Print billing, if requested, to residential customers who previously requested these alternative formats. Residential customers who request to receive bills in alternative formats shall receive other billing and existing customer communications from New Charter in the same format. New Charter's customer bills will contain information about the availability of alternative formats and information on how such material can be requested. Within 180 days after closing, New Charter will, upon request, consult 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, to enhance important service information communications.</p> <p>By July 1, 2017, New Charter will prepare and distribute one or more training modules to educate California employees on important accessibility issues. New Charter will engage a consultant with expertise in consumer accessibility issues to assist in preparation of the training materials. This training will, among other things, address the placement and location of communications equipment at the customer premises (<i>e.g.</i>, MTA and battery) to prevent mobility access issues. For three years from the date of the first distribution on or before July 1, 2017, New Charter will redistribute this training module annually to its California employees and will provide a copy of the training materials, upon request and in advance, subject to standard confidentiality restrictions, to CforAT for comments and recommendations in preparing the training materials before the training is communicated to California employees. Reply Br. Part V.G; Opening Br. at 111–13.</p>

#	<u>Requested Conditions</u>	<u>The Joint Applicants' Response</u>
<b>Enforcement</b>		
36	<p>Commission staff and ORA have the authority to audit and verify New Charter's compliance with all conditions set forth herein. New Charter must provide all data requested by the Commission and ORA to conduct the audit and verification. If New Charter fails to perform and comply with the set forth conditions, the Commission will pursue appropriate enforcement remedies, including the imposition of fines.</p> <p>ORA at 52.</p> <ul style="list-style-type: none"> <li>New Charter should furnish annual, public reports to the Commission regarding its compliance with conditions ordered in this proceeding, and should make such reports available online. WGAW at 53.</li> </ul>	<p><b>Accepted with Modification:</b></p> <p>Commission staff has the authority to audit and verify New Charter's compliance with all conditions set forth herein. New Charter must provide all data requested by the Commission to conduct the audit and verification. If New Charter fails to perform and comply with the set forth conditions, the Commission will pursue appropriate enforcement remedies, including the imposition of fines.</p> <p><b>Confidentiality Request:</b></p> <p>In return, Joint Applicants request that the Commission issue an order prohibiting the release of this confidential information, outside of Commission staff or ORA, to any person or entity, except upon prior notice to New Charter and an opportunity to be heard.</p> <p>Reply Br. Part V.H.</p>