

**BEFORE THE  
NEW YORK PUBLIC SERVICE COMMISSION**

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Joint Petition of	)	
	)	
CHARTER COMMUNICATIONS, INC.	)	
	)	
and	)	Case 15-M-0388
	)	
TIME WARNER CABLE INC.	)	
	)	
For Approval of a Transfer of Control of	)	
Subsidiaries and Franchises; for Approval of	)	
a Pro Forma Reorganization; for Approval of	)	
Assignment of 16 Franchises; and for Approval	)	
of Certain Financing Arrangements	)	
_____	)	

**REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.  
AND TIME WARNER CABLE INC.**

Dated: September 30, 2015

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**REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.  
AND TIME WARNER CABLE INC.**

Charter Communications, Inc. (“Charter”), and Time Warner Cable Inc. (“TWC”) (collectively, “Petitioners”) respectfully submit this reply to comments filed in the above-captioned proceeding. The Joint Petition filed by Charter and TWC on July 2, 2015 requested the Commission approve the transfer of control of Time Warner Cable Information Services (New York), LLC; Time Warner Cable Business LLC; Time Warner Cable Northeast LLC; and Time Warner Cable New York City LLC (together the “TWC Subsidiaries”) to Charter. The Joint Petition also sought approval for the *pro forma* reorganization of Charter, the internal reassignment of certain Charter franchises, and certain financing arrangements.<sup>1</sup>

The record in this matter unequivocally shows that the merger of TWC with Charter, together with Charter’s concomitant acquisition of Bright House Networks (“BHN”) (the

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<sup>1</sup> Case 15-M-0388, Joint Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of a Transfer of Control of Subsidiaries and Franchises; for Approval of a Pro Forma Reorganization; for Approval of Assignment of 16 Franchises; and for Approval of Certain Financing Arrangements, at 1 (Jul. 2, 2015) (“Joint Petition”).

“Transaction”),<sup>2</sup> will deliver substantial public interest benefits to New York residents. Charter’s plans to invest in and offer high quality services at competitive prices, while improving customer service, will produce tangible benefits throughout the combined “New Charter” entity’s service area in New York.<sup>3</sup> The benefits of this Transaction include:

- Competing more effectively with large communications companies throughout New York and providing enterprise customers with new choices and new service offerings;
- Facilitating the deployment of new technology and advanced infrastructure;
- Investing in U.S. workers to improve the customer experience;
- Building on each company’s commitments to good corporate citizenship, including by expanding TWC’s commitment to diversity and inclusion and BHN’s initiatives to increase broadband adoption and close the digital divide;
- Making Charter’s customer- and Online Video Distributor (“OVD”)-friendly broadband offerings available throughout the Charter/TWC service area footprint in New York and improving those offerings through additional investment;
- Accelerating investment to achieve all-digital systems in the TWC footprint and completing the digitization of these systems within 30 months of closing, resulting in increased broadband speeds and expanded high definition (“HD”) and video on-demand (“VOD”) programming choices;
- Upgrading Charter’s Chatham system so that subscribers served by that system will receive the same benefits of all-digital systems that New Charter intends to bring to all other Charter and TWC customers in the State;

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<sup>2</sup> While Petitioners use the term “Transaction” to refer to the merger of TWC with Charter together with Charter’s acquisition of BHN, requests by Petitioners for approval of the Transaction denote a request that the Commission approve, pursuant to §§ 99, 100, 101 and 222, the transfers of the TWC Subsidiaries – and attendant financing arrangements – described in the Joint Petition, as well as the *pro forma* reorganization of Charter and the internal reassignment of 16 Charter franchises described therein.

<sup>3</sup> Certain of the subjects and benefits discussed in this filing pertain to non-jurisdictional products and services. While those items are included herein in order to provide a comprehensive view of the public interest benefits of the proposed Transaction, Petitioners respectfully reserve all rights relating to the inclusion of or reference to such information, including without limitation their legal and equitable rights relating to jurisdiction, filing, disclosure, relevancy, due process, review, and appeal. The inclusion of or reference to non-jurisdictional information may not be construed as a waiver of any rights or objections otherwise available to Petitioners in this or any other proceeding, and may not be deemed an admission of relevancy, materiality, or admissibility generally or with specific regard to the Commission’s actual public interest standard under applicable law.

- Enhancing the value of broadband offerings available to many existing TWC customers by offering faster base broadband speeds at lower prices than comparable offerings from TWC throughout Upstate New York, and without imposing separate, additional charges like modem fees; and
- Continuing Charter’s open Internet policies, including not blocking or throttling Internet traffic or engaging in paid prioritization.

The Transaction will benefit New Yorkers by expanding the scale and scope of Charter’s growth-oriented investment strategy, subscriber-friendly pricing, packaging and practices, and focus on improving customer care and delivering highly valued services – all without creating any adverse effects on competition.

To obtain approval under the Public Service Law, the Transaction must be shown to be in the public interest. Petitioners have shown that the Transaction will generate substantial benefits for consumers by making Charter’s diverse service offerings, customer-friendly practices, and advanced features and capabilities available to them over the networks operated by New Charter.<sup>4</sup> In addition, the Transaction also will have benefits for enterprise and business customers, for investment and innovation across all services, and for employment and community services in the markets New Charter will serve. These benefits will represent hundreds of millions of dollars of investment, innovation and value for New York residents served by New Charter’s footprint.

Notably, significant stakeholders, including municipalities and organizations that are impacted by the innovative programs and services provided by the Petitioners, filed comments in this proceeding supporting Petitioners’ request for approval of the Transaction, echoing the view that the deal will provide substantial benefits to the public. Notably, no party or individual that filed comments has offered a credible basis for concluding that Charter does not possess the

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<sup>4</sup> Joint Petition at 23-34.

requisite legal, financial and technical ability to operate the Time Warner Cable systems in New York in a safe and reliable manner.

The diverse range of organizations and parties from around the State filing in support of the Transaction highlight the breadth and variety of the benefits associated with the proposed merger.<sup>5</sup>

- The Rochester Business Alliance notes that the Charter, TWC, and BHN “combination offers attractive benefits to business and residential consumers, as well as creating much-needed jobs for the region,” and that “expanded coverage, lower costs, job creation and improved service are why we believe this merger will be good for Rochester and the Finger Lakes Region.”<sup>6</sup>
- The Business Council of New York State, Inc. (“Business Council”), whose members employ more than 1.2 million New York residents, states that New Charter “will deliver superior communications services to residential customers in its service area” and “boost job growth in construction and downstream employment.”<sup>7</sup>
- Girls Incorporated of the Greater Capital Region states that New Charter would “contribute new benefits to our organization and our community through an expanded

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<sup>5</sup> Parties from New York submitting written comments or testimony to the Commission or the FCC in support of the Transaction include the Adirondack Regional Chamber of Commerce; Advanced Communications Law & Policy Institute at New York Law School; Ali Forney Center; Amber Charter School – East Harlem; Cheektowaga Chamber of Commerce; Amherst Chamber of Commerce; Ballston Spa Central School District; Black Rock Forest Consortium; Brooklyn Chamber of Commerce; Buffalo Niagara Partnership; Business Council of New York State; Capital Region Chamber; CenterState Corp. for Economic Opportunity; Cohoes City Council President Ralph Signoracci; Community Association of Progressive Dominicans; Digital Divide Partners; Dominican Women’s Development Center; Dutchess County Executive, Marcus Molinaro; Girls Incorporated of the Greater Capital Region; Greater New York Chamber of Commerce; Greater Ridgewood Youth Council, Inc.; Manhattan Chamber of Commerce; Mohawk Valley Economic Development Growth Enterprises Corporation; Museum of Science and Innovation; Museum of the Moving Image; New York City Hispanic Chamber of Commerce; New York State Snowmobile Association; Niagara USA Chamber of Commerce; Northern Manhattan Arts Alliance; Olympusat, Inc.; Orange County Chamber; Partnership for NYC; Queens Public Television; Randall T. Douglas, Town of Jay Supervisor/Essex County Board of Supervisor’s Chairman; Regional Food Bank of Northeastern New York; Rev. Jacques Andre DeGraff, One Hundred Black Men, Inc.; Rochester Business Alliance; Salvadori Center; The Retail Council of New York State; Tompkins County Chamber of Commerce; Town Supervisor, Town of Poestenkill; Ulster County Chamber of Commerce; and the Yates County Chamber of Commerce.

<sup>6</sup> Comments of the Rochester Business Alliance (“Rochester Business Comments”) at 1 (Jul. 13, 2015). All comments referenced herein were filed in this Docket 15-M-0388, unless otherwise noted.

<sup>7</sup> Comments of The Business Council of New York State, Inc. (“Business Council Comments”) at 2 (Jul. 24, 2015).



national reach and a renewed commitment to local programs” and that it is “particularly impressed with” New Charter’s “commitment to low-income consumers.”<sup>8</sup>

- The Amherst Chamber of Commerce avers that the Transaction “would provide our members with better products at lower rates than what is currently offered in our market.”<sup>9</sup>
- The Black Rock Forest Consortium, which offers nature and science programs to thousands of urban youths each year, enthusiastically supports the merger, stating that New Charter “will serve as a prominent community partner in New York.”<sup>10</sup>
- The Partnership for New York City, which represents New York City’s largest private sector employers, investors and leading entrepreneurs, states that the Transaction “will accelerate development of needed broadband infrastructure in New York” and give New Yorkers “faster, more reliable broadband connection[s]” that “will spur job creation.”<sup>11</sup>
- The Advanced Communications Law and Policy Institute (“ACLP”) at New York Law School notes that the unique benefits of the Transaction “constitute a compelling value proposition for approving the merger” and that “approval will trigger new investment, the deployment of new services, the creation of new jobs, and the emergence of new opportunities for consumers to reap the benefits of more advanced services.”<sup>12</sup>
- The Manhattan Chamber of Commerce, representing more than 10,000 members, supports the Transaction because it “would provide the diverse Manhattan business community with a variety of flexible services and flat rate pricing” and New Charter will “benefit all business that utilize technology.”<sup>13</sup>

In addition, a key provider of over-the-top programming video, as well as a variety of community groups and diversity programmers, have filed comments with the Federal Communications Commission (“FCC”) and the Commission in support of the Transaction:

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<sup>8</sup> Comments of Girls Inc. of the Greater Capital Region (“Girls Inc. Comments”) at 1 (Sep. 16, 2015).

<sup>9</sup> Comments of the Amherst Chamber of Commerce (“Amherst Chamber Comments”) at 1 (Aug. 17, 2015).

<sup>10</sup> Comments of Black Rock Forest Consortium (“Black Rock Forest Comments”) at 1 (Sep. 17, 2015).

<sup>11</sup> Comments of the Partnership for New York City (“Partnership Comments”) at 1 (Sep. 21, 2015).

<sup>12</sup> Comments of the Advanced Communications Law & Policy Institute, New York Law School (“ACLP Comments”) at 2 (Sep. 10, 2015).

<sup>13</sup> Comments of the Manhattan Chamber of Commerce (“Manhattan Chamber Comments”) at 1 (Sep. 21, 2015).

- Netflix, which strongly opposed the proposed Comcast/TWC merger last year, supports the Transaction because of Charter’s “welcome and significant departure from the efforts of some ISPs to collect tolls on the Internet,” which New Charter will continue after the close of the Transaction.<sup>14</sup>
- The New York City Hispanic Chamber of Commerce supports the Transaction because New Charter will “adopt and expand [TWC’s] award-winning diversity and inclusion initiatives” and notes that if the deal is approved, New Charter would offer “diverse programming [that] would benefit many in the Hispanic Community.”<sup>15</sup>
- Reverend Jacques Andre DeGraff, a leading advocate in the African American community who works with One Hundred Black Men, Inc., notes that New Charter’s proposed discounted, low-income broadband program “would be a huge relief for many individuals who have long been priced out of the market” for such services.<sup>16</sup>
- Olympusat, Inc., an independent owner and distributor of Spanish language networks and programming, credits Charter’s commitment to offering programming of interest to Hispanic audiences and notes that New Charter will continue to serve minority consumers well by expanding this commitment to TWC and BHN territories.<sup>17</sup>

The comments submitted by the Department of Public Service staff (“Staff”) also acknowledge the potential benefits of the Transaction for New York residents and businesses,<sup>18</sup> while setting forth some recommendations for additional commitments.<sup>19</sup> Likewise, a handful of other commenters also proffer suggestions for additional public interest guarantees. While Charter recognizes that a transaction of this sort inevitably will give rise to questions about its effect on consumers, competition, and the communities served by the merging parties, the impact of the deal will be a net positive in each of these areas. Charter is certainly committed to

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<sup>14</sup> *Ex Parte* Letter from Christopher D. Libertelli to Marlene Dortch (“Netflix *Ex Parte* Letter”) at 1, FCC MB Docket No. 15-149 (Jul. 15, 2015) (avail. at <http://apps.fcc.gov/ecfs/document/view?id=60001115480>).

<sup>15</sup> Letter from Nick Lugo to FCC Chairman Tom Wheeler (“Hispanic Chamber Comments”) at 1, FCC MB Docket No. 15-149. A copy of this letter is attached to these reply comments.

<sup>16</sup> Letter from Rev. Jacques Andre DeGraff to FCC Chairman Tom Wheeler (“DeGraff Comments”) at 1, FCC MB Docket No. 15-149. A copy of this letter is attached to these reply comments.

<sup>17</sup> Comments of Olympusat, Inc. (“Olympusat Comments”) at 1-2 (Sep. 2, 2105).

<sup>18</sup> Comments of the New York State Department of Public Service Staff (“Staff Comments”) at 24-35 (Sep. 16, 2015).

<sup>19</sup> *Id.* at 48-60.

working in a constructive and cooperative fashion with the Commission and its staff to address any concerns that it may have, as well as concerns raised herein by other parties.

Upon approval of the Transaction, New Yorkers can expect increased technological capabilities, faster and more widely available Internet service, a robust commitment to customer service and community initiatives, and enhanced competition for communications services in the enterprise market. Charter has committed to convert Time Warner Cable's systems in Upstate New York to all-digital within 30 months of the close of the Transaction, and the result of this investment will be to raise TWC's base broadband speeds to 60 Mbps, which is faster than TWC's current highest speed offering in those areas. The Transaction does not result in any loss of competition in the multichannel video programming distribution (MVPD) marketplace, and Charter's customer-friendly broadband practices and net neutrality commitments will benefit burgeoning over-the-top (OTT) video platforms. New Charter will be led by an experienced management team with a solid track record of investment and innovation, thereby ensuring that the merged entity will possess the legal, technical and financial ability to operate the acquired systems in a manner that meets the public interest. Accordingly, under the Commission's traditional and well-established principles for assessing transactions in competitive markets such as communications, the proposed Transaction satisfies the public interest.<sup>20</sup> Petitioners respectfully request that the Commission approve the Transaction.

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<sup>20</sup> As set forth below in Section III, while Charter recognizes that the standard for assessing this transaction under New York law is whether or not it meets the public interest, neither State nor Federal law support Staff's contention that the amendments to Section 222 of the Public Service Law were designed to establish the utility-based "net benefits test" as the formula for determining whether – and how – a merger of cable television companies satisfies the public interest. *See infra* at Section III.

**I. THE RECORD DEMONSTRATES THAT THERE ARE SUBSTANTIAL BENEFITS ARISING FROM THE TRANSACTION.**

**A. Video Benefits**

The Transaction will generate substantial benefits for New York consumers of video services, creating a number of public interest benefits for video subscribers in New York. These benefits include the conversion of TWC systems to all-digital networks on an accelerated timetable, the introduction of a number of innovative new product offerings, and increasing opportunities for customers to take their video programming with them to view on their own schedules and on a variety of smart devices. The video benefits afforded by the Transaction are the product of substantial investment, and will provide concrete improvements to the customer experience and the breadth, quality, and diversity of services and capabilities available to New York subscribers.

1. *Conversion of TWC Systems to All-Digital Networks.*

As Staff recognizes, upgrading to all-digital networks frees up bandwidth for additional services and faster Internet speeds.<sup>21</sup> Charter agrees, based on its own experience moving to an all-digital platform across almost its entire existing service footprint. Digitization will have a tangible positive impact on TWC broadband and video customers, as New Charter will be able to provide faster broadband speeds and significantly more high definition and on-demand channels with better quality and reliability. Conversion to an all-digital platform improves network monitoring capabilities and provides an opportunity to help prevent or minimize service disruptions. Conversion of systems to all-digital also allows for the deployment of a superior set-top box communications protocol – D OCSIS Set-top Gateway (“DSG”) – and improved communications between the set-top box and the support infrastructure. DSG provides each set-

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<sup>21</sup> Staff Comments at 28.

top with the capability to deliver statistical information that enables Charter to proactively monitor network issues before they become noticeable by customers.

TWC's systems are all-digital within New York City and a small part of Westchester County, but not the rest of the State. While prior to the Transaction TWC may have stated a general intention to eventually upgrade its systems to all-digital, it has yet to do so in Upstate New York and has not provided a timetable for completing the conversion.<sup>22</sup> Meanwhile instead, Charter has transitioned virtually all of its customers to all-digital networks, and New Charter has committed to doing the same for current TWC subscribers within 30-months of the close of the Transaction. Charter's 30-month commitment to convert the TWC systems to all-digital therefore represents a significant public interest benefit to New York residents and businesses,<sup>23</sup> and will also come with capital investment in infrastructure, which amounts to a further public interest benefit to the State's economy as a whole.<sup>24</sup>

2. *New Charter Will Bring Innovative New Products And Services To Its Video Offering.*

Charter is a leader in the creation of new video technology, another concrete benefit New Yorkers will experience from the Transaction. Charter's innovative, on-screen Spectrum Guide offers a customizable interactive experience that allows customers to find video content more easily across cable TV and on-demand channels. New Charter has committed to deploying the

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<sup>22</sup> *Id.* at 28.

<sup>23</sup> Thus, Staff's suggestion that the increased broadband speeds that will result from this transaction cannot "truly be considered a benefit" unless Petitioners show that such increases will occur on a faster timeframe than TWC would have attained on its own is misplaced. *See* Staff Comments at 28. As Staff acknowledges, TWC never provided a timetable, and the bulk of its Upstate systems have not been converted. By contrast, Charter has a track record of completing a company-wide conversion to all-digital, and has provided a specific timetable here. The certainty provided by Charter – in terms of completion of the conversion and the timetable for doing it – is clearly a benefit over the status quo.

<sup>24</sup> As noted in the Joint Petition, it is possible that systems serving fewer than 1% of homes may not be taken all-digital due to the challenges in interconnecting to the remaining New Charter network, Joint Petition at n. 8, but Charter does not believe that any of those areas will be in New York State.

Spectrum Guide quickly across its merged markets, including within the New York communities currently served by TWC.

Because the Spectrum Guide uses cloud-based technology, it is compatible with customers' existing two-way set-top boxes. In other words, customers can enjoy the benefit of the innovative Spectrum Guide without going through the time and expense of replacing their current equipment. Further, an application version of Spectrum Guide will soon be able to work with innovative third-party retail devices such as Roku.

Upon completion of the conversion of acquired TWC systems to an all-digital format, New Charter will also begin to deploy its new Worldbox customer premise equipment system. This will enhance the customer experience by providing new and improved set-top box capabilities. In addition, Worldbox utilizes a downloadable conditional access system and digital rights management platform, which will enable New Charter to source set-top boxes at a lower cost from virtually any manufacturer.

Staff acknowledges that the Spectrum Guide and Worldbox will benefit New York subscribers.<sup>25</sup> While expressing some concern that these initiatives might result in increased costs to consumers,<sup>26</sup> Staff offers no evidentiary support for reaching such a conclusion. To the contrary, the Spectrum Guide will be furnished as an enhancement to TWC customers' existing service, without any incremental charge. Indeed, the Spectrum Guide is a benefit designed to be compatible with existing set-top boxes and other consumer premises equipment, such as Roku, thereby enabling customers to avoid the cost and hassle associated with obtaining new equipment in order to receive advanced network features. As the Business Council notes, "[e]xisting [TWC] customers, including local businesses, would also benefit from hassle-free

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<sup>25</sup> Staff Comments at 26-27.

<sup>26</sup> *Id.* at 26.

updates to digitization, Charter’s cloud-based guide and its Worldbox CPE system set-top box.”<sup>27</sup>

With respect to the Worldbox, a key purpose behind the product’s design is to enable New Charter to pick from a wider variety of set-top box manufacturers—creating a more competitive market for the boxes that should reduce the company’s set-top box costs, not increase them. Furthermore, Worldbox is designed to comply with the Environmental Protection Agency’s ENERGY STAR 3.0 efficiency levels, which will help contribute to annual residential electricity savings. In addition, the downloadable security solutions available with the Worldbox can give customers a greater degree of flexibility to take their equipment with them when they move. The downloadable security solution also supports the development of devices manufactured by third parties and available for retail purchase by subscribers, thereby potentially further expanding their options for set-top devices.

### 3. *Mobile TV App*

After the Transaction, New Charter will expand the capabilities of customers to watch video programming when and where they want, a significant added benefit to those customers. The merged company will deploy an advanced mobile video application that combines the best features and functionality of each company’s existing apps. This new app will combine the Spectrum Guide user interface (described above) and Charter’s existing on-demand and “download-to-go” functionality with the nearly 300 live channels currently available currently through TWC’s mobile application. Thus, customers in current Charter areas in New York will enjoy far more channels, while customers in TWC areas in the State will benefit from a more user-friendly and interoperable interface.

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<sup>27</sup> Business Council Comments at 1.

#### 4. *Increased Diversity of Programming*

Charter offers a wide range of video services. In most of its service areas, where Charter has transitioned to a digital network, the company has grown its HD channel line-up from fewer than 70 channels in 2011 to a present selection of over 200 and has grown its VOD library to thousands of choices. In Upstate New York, where TWC is not all-digital, customers enjoy far fewer programming choices. Charter is committed to ensuring customers have access to independent and diverse programming. Charter offers its customers access to more than 100 minority focused networks including BET, Bounce TV, TV One, Nuvo, El Ray and Fuse. (TV One is carried on Charter's most widely subscribed tier.)

Charter provides one of the most robust Spanish language program offerings in the industry, with approximately 70 Spanish speaking channels in its "Latino View" package. Olympusat, Inc., one of the largest independent owners and distributors of Spanish language networks and programming, notes that Charter has taken the lead in the video industry with respect to offering programming of interest to Hispanic audiences.<sup>28</sup> This includes the fact that Charter is one of just two large MVPDs that make Spanish language HD programming available to consumers.<sup>29</sup> New Charter will continue Charter's strong commitment to ensuring that customers have access to independent and diverse programming, including "the largest tier of Hispanic channels on the market."<sup>30</sup> New Charter will offer this same Spanish language and other diverse programming throughout its entire service territory. This commitment represents a

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<sup>28</sup> Olympusat Comments at 1-2.

<sup>29</sup> *Id.* at 2. The Hispanic Leadership Alliance has echoed Olympusat's views, noting Charter's commitment to serving "underserved and diverse communities" in comments to the FCC supporting the Transaction. Comments of Hispanic Leadership Alliance, MB Docket No. 15-149 (Aug. 28, 2015) (avail. at <http://apps.fcc.gov/ecfs/document/view?id=60001124016/>).

<sup>30</sup> Comments of the Community Association of Progressive Dominicans at 1 (Sep. 21, 2015).



significant public benefit in New York, a State with vibrant, diverse communities with wide-ranging programming interests.

**B. Voice Benefits**

The record unequivocally demonstrates that the Transaction will benefit the voice services market for New Yorkers by conferring measureable benefits on voice telephony customers, particularly in the enterprise market. Neither Staff nor any other commenter has disputed or questioned Petitioners' assertion that the Transaction will allow the companies to integrate the best features of their respective voice offerings, resulting in improved service for residential and business customers.

Charter provides voice service to over 2.4 million residential customers via Voice over Internet Protocol (VoIP) technology. The company's voice services include offering unlimited long distance calling in the United States and to other countries and territories, as well as features such as voicemail, call waiting, caller ID, call forwarding and more at no additional charge. For customers with video service, caller ID on the TV is available in most areas for free.

Charter also offers a wide range of voice and data services to businesses, including traditional telephony and VoIP products, wholesale data delivery over the last mile, and Metro Ethernet. As a result of the Transaction, New Charter will incorporate TWC's high-capacity transmission and cell tower backhaul services, along with hosting and cloud services provided through TWC's NaviSite offerings. Also, by combining existing Charter, TWC, and BHN service areas, New Charter will provide a competitive nationwide service option that is particularly beneficial for regional and national businesses, which will face fewer gaps in coverage areas.

The Transaction will be seamless for customers. As Staff recognizes, customers will benefit from "retain[ing] the same digital phone number they had with" TWC and keeping the

“same billing account information.”<sup>31</sup> Further, Petitioners are “not seeking authority for the transfer of customers or for any changes in rates, terms or conditions of service” at this time.<sup>32</sup>

Importantly, Staff agrees that “[t]here appears to be little danger of the increased exercise of market power in this case and therefore no detriment exists” in regard to impact on competition.<sup>33</sup> TWC and Charter do not compete directly with one another in New York because there is virtually no overlap of their service areas. Post-Transaction, residential and business customers will therefore continue to have numerous competitive alternatives for telephone service and high-capacity business services, such as Incumbent Local Exchange Carriers (“ILECs”) and Competitive Local Exchange Carriers (“CLECs”), providers of fixed and nomadic VoIP services (including Vonage and many others), and wireless providers. One commenter has noted the addition of “much needed competition in the commercial sector” as a benefit of the Transaction, thereby potentially “lowering business costs in New York.”<sup>34</sup>

Accordingly, in the voice services market, the Transaction presents numerous concrete improvements and benefits – with no downsides.

### **C. Broadband Benefits<sup>35</sup>**

New York residents will reap significant benefits from New Charter’s commitments to deploying faster base broadband services for residential and small business customers – without separate, additional modem fees – and expanding Charter’s existing consumer-friendly terms to TWC customers. New Charter will also build upon and expand BHN’s low-income broadband

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<sup>31</sup> Staff Comments at 34.

<sup>32</sup> *Id.* at 34.

<sup>33</sup> *Id.* at 47.

<sup>34</sup> Comments of Buffalo Niagara Partnership (“Buffalo Niagara Comment”) at 1 (Jul. 21, 2015).

<sup>35</sup> Discussion of non-jurisdictional products and services in this section is not intended as a waiver or concession of the Commission’s jurisdiction beyond the scope of the Petitioners’ regulated telecommunications and cable video services. *See supra* note 3.

program and offer it throughout its entire service footprint, including in New York. These initiatives – made possible by virtue of the Transaction – will confer considerable public benefits on residents and businesses throughout New York.

1. *Increased Broadband Speeds with Better Pricing*

Charter’s network investments over the past three-and-a-half years have enabled it to offer base download speeds of 60 Mbps as the minimum speeds it sells in almost all service areas. This represents a 10 Mbps increase over the base speeds TWC offers in areas where Maxx service is available (*i.e.*, the New York City area), and a fourfold increase from TWC’s standard speeds throughout the remainder of the state. The Amherst Chamber of Commerce notes that the price of Charter’s 60 Mbps offering “is among the lowest in the industry despite being the fastest” base speed available.<sup>36</sup> Charter’s exceptionally fast base broadband speeds allows several people in a household to stream HD video, while others are surfing the web at the same time, a benefit recognized by the Business Council.<sup>37</sup> In addition, New Charter will continue to support TWC’s higher tier speeds of up to 300 Mbps in Maxx markets, including TWC’s New York City service area.

Multiple commenters have noted that “New Charter’s slowest broadband tier would be 60 Mbps, still less expensive than TWC’s current base tier package.”<sup>38</sup> Indeed, Charter’s price for its 60 Mbps base tier of high-speed Internet is substantially lower than TWC’s comparable

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<sup>36</sup> Amherst Chamber of Commerce Comments at 1.

<sup>37</sup> Business Council Comments at 1 (“[Charter’s] slowest broadband tier of 60 Mbps would be cheaper than comparable offerings from [TWC], allowing several people in the same house to stream high-definition video at the same time.”).

<sup>38</sup> Comments of Capital Region Chamber (“Capital Chamber Comments”) at (Jul. 29, 2015); *see also* Comments of Tompkins County Chamber of Commerce (“Tompkins Chamber Comments”) at 1 (Sep. 14, 2015) (“New Charter has also indicated that they will offer their slowest broadband tier of 60 Mbps to Time Warner’s current customers at a better price than Time Warner’s current basement offering”); Adirondack Regional Chamber of Commerce Comment (“Adirondack Chamber Comments”) at 1 (Jul. 21, 2015) (stating same).

offerings throughout Upstate New York, which is illustrated below, taken from TWC’s published rates cards for systems in and around Albany, Rochester, Syracuse and Buffalo.<sup>39</sup>

<b>Service</b>	<b>Speed</b>	<b>Standard Cost</b>
TWC Standard	15 Mbps	\$57.99 per month plus \$8.00 modem fee
TWC Top Speed	50 Mbps	\$107.99 per month plus \$8.00 modem fee
Charter Standard	60 Mbps	\$59.99 per month with no modem fee

The TWC 50 Mbps service with a modem lease is almost double the cost of Charter’s 60 Mbps offering. Further, after layering in additional taxes and fees that are not included in Charter’s standard offering, the final cost to the consumer may be even higher. Customers taking the most closely comparable Upstate New York broadband offering from TWC compared to Charter’s pricing for a service that is 10 Mbps faster can save more than \$650 per year. Given that there are more than one million TWC broadband subscribers in Upstate New York, customers have the potential to get faster service and save hundreds of millions of dollars per year. Further, even in Maxx areas where TWC offers a 50 Mbps base offering for \$57.99 plus an \$8 monthly modem fee, the standard Charter 60 Mbps service is faster and less expensive for customers that lease their modems. The Partnership for New York City touts New Charter’s plan to make “the fastest entry level bandwidth speed available at a low cost” as an important benefit for New Yorkers.<sup>40</sup> Moreover, by eliminating TWC’s \$8.00 per month cable modem rental fee, New Charter will save TWC broadband subscribers throughout the State tens of millions of dollars annually.

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<sup>39</sup> See Petitioners’ Response to Discovery Request DPS-8, Exhibit 8 (TWC rate cards).

<sup>40</sup> Partnership Comments at 1.

2. *Commitment to An Open Internet and Reasonable Usage Policies.*

New Charter has promised to abide by the strongest net neutrality protections in the industry.<sup>41</sup> Charter has long practiced network neutrality and has never blocked or slowed down connection speeds to streaming services. It has also consistently invested in interconnection capacity to avoid network congestion. New Charter will continue these commitments after the Transaction closes. The Digital Divide Partnership, which works to bring digital equity to underserved communities in New York City, notes that “New Charter’s commitment to settlement-free peering and open interconnection is refreshing and to be applauded.”<sup>42</sup> While some commenters suggest that Petitioners might have “a willingness to sacrifice net neutrality in order to squeeze additional payment out of content providers, such as Netflix,”<sup>43</sup> that concern is unfounded here due to the commitments already made by Charter. Indeed, Netflix, which opposed the Comcast-TWC merger due to concerns about network management and interconnection policies, publicly supports this Transaction.<sup>44</sup>

New Charter’s broadband offerings will come without any data caps, usage-based pricing, early termination fees or separate, additional modem fees. Several commenters have acknowledged New Charter’s commitment to retaining these usage policies, such as Charter’s policy of imposing “no modem and early termination fees [and] no extra charges for heavy Internet usage” as a significant benefit for New York businesses and residents.<sup>45</sup>

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<sup>41</sup> See Joint Petition at 32-33.

<sup>42</sup> Testimony of Digital Divide Partnership at 2 (Sept. 21, 2015).

<sup>43</sup> Comments of City of New York Comptroller Scott M. Stringer (“Comptroller Comments”) at 7 (Sep. 21, 2015).

<sup>44</sup> See Netflix *Ex Parte* Letter at 1.

<sup>45</sup> Buffalo Niagara Comments at 1; see also Rochester Business Comments at 1 (identifying “[s]traightforward, nationally uniform pricing with no data caps, no usage-based pricing, no modem fees, no early termination fees, and no federal or state Universal Service Fund (USF) fees” as a benefit for businesses and residential consumers); Comments of Retail Council of New York State (“Retail Council

### 3. *Low-Cost Broadband Program for Low-Income Customers*

Petitioners have committed that New Charter will introduce, within six months after the Transaction closes, a new low-cost broadband service offered to low-income residents that builds upon BHN's successful Connect2Compete program. New Charter will enhance the speed of and expand the eligibility for the broadband service and make it available within three years of closing across the entire merged entity's footprint. This program will provide a robust broadband offering to eligible households at a significantly reduced rate, enabling many more families and children access to the tools they need to succeed in today's digital world. Given that neither Charter nor TWC have a comparable offering today, this is a significant public interest benefit to customers and responds to the interests of many commenters that want to see efforts to make broadband more affordable to economically disadvantaged households.

BHN currently offers its Connect2Compete program to families with children who receive free or reduced-price meals through the National School Lunch Program. During the 2013-2014 school year, more than 1.2 million students in New York schools received free or reduced-price lunches through this program.<sup>46</sup> Thus, even if New Charter were to do no more than retain BHN's existing eligibility criteria (and Charter intends to expand those criteria), the program would create a new and previously unavailable benefit for hundreds of thousands of New York State families valued at [tens of] millions of dollars annually.

Numerous commenters agree that such a program will provide a significant benefit to New York residents. Girls, Inc. of the Greater Capital Region, an organization that works with low-income families, states that it is "particularly pleased by New Charter's plans to reach out to

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Comments) at 1 (Jul. 23, 2015) ("[i]n addition. New Charter is dedicated to network neutrality and will not charge customers based on data usage").

<sup>46</sup> See <http://frac.org/wp-content/uploads/2010/07/ny.pdf>.

underserved communities.”<sup>47</sup> Similarly, the Executive Director of the Amber Charter School of East Harlem, the first Latino-led charter school in the State, states that the New Charter proposed low-income broadband program would make a “critical connection for children whose learning would benefit from having online access at home.”<sup>48</sup> ACLP states that this “kind of program is essential to addressing perhaps the most vexing technology challenge facing stakeholders in New York state: ensuring that as many people as possible have equal opportunity to benefit from the universe of service enabled by a high-speed Internet connection.”<sup>49</sup> The Museum of Innovation & Science (miSci) in Schenectady has told the FCC that New Charter’s proposed low-income broadband program will “allow students of all backgrounds to take advantage of advanced technology and learn more about science and innovation.”<sup>50</sup>

#### **D. Customer Care Benefits**

New Charter is committed to increasing its customer care capacity, and will do so through investment and in-sourced jobs in the United States. New Charter will bring thousands of overseas jobs back to the United States, adding thousands of employees to the American economy. New Charter will bring many of these jobs in-house, where it will provide significant training, benefits, and opportunities for advancement, adding to the skill level and economic fabric of local communities, while developing its own highly skilled, well-paid workforce devoted to delivering improved customer service across the country, including in New York.

Charter already has a track record of creating jobs. For instance, since 2012 Charter has added more than 7,000 new jobs—representing an increase of 43 percent in the company’s entire

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<sup>47</sup> Girls, Inc. Comments at 1.

<sup>48</sup> Comments of Amber Charter School (“Amber School Comments”) at 1 (Sep. 22, 2015).

<sup>49</sup> ACLP Comments at 2.

<sup>50</sup> Comments of the Museum of Innovation and Science at 1, MB Docket No. 15-149 (Sep. 15, 2015) (avail. at <http://apps.fcc.gov/ecfs/document/view?id=60001324079>).

workforce. Most of those jobs have been in the customer service fields. Charter has already brought overseas jobs back home and opened new customer call centers, bringing the number of customer call centers to 11 across the United States. Charter believes these in-sourced workers are better trained, better equipped, and more properly incentivized to maximize performance. New York businesses can expect more “streamlined assistance” as a result of having call center workers based domestically.<sup>51</sup>

Staff contends that “New Charter will inevitably have less of a focus on New York” and thus may seek to reduce its New York employee totals from TWC’s current levels.<sup>52</sup> However, Charter currently has only a minimal workforce in New York and would need many TWC employees to service New Charter’s customers across the State. Given that New Charter will be bringing jobs back from overseas and in-sourcing more employment, and that some of these jobs will almost certainly need to be in New York due to the size and importance of the New York market, the job and employment situations are a net benefit for the Transaction.

Indeed, many of the commenters that represent important business interests and whose focus is on employment and economic growth have reviewed the Transaction and concluded that these approaches of returning overseas jobs and in-sourcing more functions will positively impact the local economy.<sup>53</sup>

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<sup>51</sup> Retail Council Comments at 1.

<sup>52</sup> Staff Comments at 44-45.

<sup>53</sup> CenterState Corporation for Economic Opportunity (“CenterState Comments”) at 1 (Jul. 27, 2015) (“we are hopeful for the potential for new jobs in our area as Charter fulfills its promise to restore more jobs to the U.S., including in New York State); ACLP Comments at 3; Retail Council Comments at 1.



## **E. Infrastructure and Investment Benefits**

Commenters recognize that the “merged entity . . . will have greater capacity to invest in advanced networks and services across New York.”<sup>54</sup> In connection with the Transaction, New Charter has stated that it will build out one-million line extensions to unserved homes in its franchise areas within four years of the Transaction closing. In addition, the company has committed to spend an additional \$2.5 billion in the build-out of networks into commercial areas within its national footprint beyond where Charter, TWC and BHN currently operate. In addition New Charter is committed to finding constructive ways to address rural system expansion. Charter has already participated in the State’s ConnectNY program in Jay, New York and New Charter would be willing to consider participation in future programs that help spur rural expansion. The Transaction therefore presents a real opportunity to benefit New Yorkers tangibly by extending digital video and broadband network facilities into new areas of the State that previously lacked access.

New Charter is also committed to expanding availability of mobile data service through the addition of more than 300,000 out-of-home WiFi access points across its footprint, including in New York, building upon TWC’s deployment of WiFi hotspots in the State.

### *1. Expansion of New Charter Network*

New Charter’s network expansion efforts will build on successful experiences of TWC and Charter in New York. Former Town of Jay Supervisor and Essex County Board of Supervisors’ Chairman Randall Douglas describes in his comments a successful collaboration between the Town, Essex County Officials and Governor Cuomo’s Connect NY program “to bring high speed internet and cable television services to much needed and underserved areas in

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<sup>54</sup> ACLP Comments at 2.

the Town of Jay and neighboring Essex County towns where physical construction is currently underway.”<sup>55</sup> Upon the completion of this line extension project at the end of 2015, Charter will serve an additional 420 New York households. The Supervisor of the Town of Poestenkill, a community currently served by TWC, expresses support for the Transaction based in part on New Charter’s commitment to infrastructure expansion and the Town’s interest in expanding service to the eastern portion of the Town.<sup>56</sup>

New Charter’s broader commitment to extend its network to unserved residences and commercial locations offers a substantial public benefit to businesses and residents in New York, as reflected in the comments filed in this docket. The Retail Council of New York State emphasizes that high-speed Internet service “is no longer a luxury, but a crucial component to remaining competitive in the 21<sup>st</sup> Century.”<sup>57</sup> Another commenter notes the importance of Charter’s commitment to line extensions and commercial area network buildouts because “increased broadband infrastructure enables families and business to connect to the Internet and keep up in our 21<sup>st</sup> century society.”<sup>58</sup> Several Chambers of Commerce representing a wide range of business interests throughout New York identify New Charter’s commitment to buildout service to residential and commercial areas as critical to “provid[ing] reliable internet service to rural communities and other underserved areas” and “increas[ing] competition in New York” through “lower business costs for companies.”<sup>59</sup>

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<sup>55</sup> Comments of Randall T. Douglas (“Douglas Comments”) at 1 (Aug. 28, 2015).

<sup>56</sup> Comments of Town of Poestenkill Supervisor Dominic J. Jacangelo at 1 (Sep. 23, 2015). This letter is addressed to FCC Chairman Tom Wheeler but was posted in the Commission’s transaction docket.

<sup>57</sup> Retail Council Comments at 1.

<sup>58</sup> Comments of the Salvatori Center (“Salvatori Comments”) at 1 (Sep. 14, 2014).

<sup>59</sup> Comments of the Niagara USA Chamber of Commerce (“Niagara USA Comments”) at 1 (Aug. 3, 2015); *see also* Adirondack Chamber Comments at 1 (describing network buildout commitments as “vital to our continued economic growth in the region”); Capital Chamber Comments at 1.

While Petitioners do not know today exactly how many of those line extensions or commercial build out projects will be constructed in New York, upon closing the Transaction New Charter is committed to evaluating each of the New York systems to determine where they are appropriate. But, given the size and scope of the New York service area, investment will occur in New York and therefore, notwithstanding a lack of statewide specificity, New Charter's commitment will present a net positive benefit for New York.

Petitioners also believe strongly that areas in need of build out and/or upgrades are far better positioned to get services and enhancement as a result of the Transaction. By spreading fixed-cost investments over a larger customer base, New Charter will compete more effectively with the ILECs both in New York and throughout the country, which could lead to increased and faster investment in the future.

2. *Increased Mobile Broadband Capability Through WiFi Hotspot Deployment*

New Charter is committed to expanding mobile broadband options. TWC has already deployed WiFi access points in the State, and New Charter will deploy at least 300,000 additional out-of-home WiFi access points nationwide within four years of the Transaction closing. While Charter does not know currently how many of these access points will be in New York, it can say that New Charter will include many New York locations and that it will evaluate the needs of each local system as it develops its deployment strategy. New Charter also has no plans to change TWC's current free WiFi service offers to New York City residents who are not customers.

Increased availability of public WiFi access points confers significant benefits on New York residents. As Staff recognizes, "deployment of new WiFi hotspots will provide . . . users

greater mobility and ease of access to their video, voice and data services away from home.”<sup>60</sup>

In addition, increased availability of WiFi hotspots will increase wireless competition by allowing New Charter customers to reduce their reliance on costly data plans with their wireless providers. Expansion of WiFi outside of the State also benefits existing TWC customers in New York as they travel to cities around the country and see more WiFi deployment and expansion as a result of New Charter’s commitment; it will also benefit Charter’s existing customers in New York that currently do not have access to cable WiFi services either within their own communities or in other parts of New York State or the nation.

In short, the four-year commitment to continue aggressive expansion is a tangible positive benefit that will provide New Yorkers access to more WiFi hotspots as a result of the Transaction.

#### **F. Community Involvement Benefits**

New Charter will recognize the vital importance of promoting diversity and inclusion strongly rooted in the communities it serves. New Charter intends to incorporate and build upon TWC’s partnerships with educational institutions and nonprofits – including Women in Cable Telecommunications, the National Association for Multi-Ethnicity in Communications, and the Betsy Magness Leadership Institute – and more recently with the veterans and disability communities, to recruit and retain a diverse workforce. New Charter also will include a cross-cultural mentoring program, which provides employees significant opportunities to build skills and knowledge and to achieve professional goals.

New Charter is also committed to increasing engagement with minority-, women-, veteran-, and disabled-owned suppliers and businesses by engaging in supplier diversity events,

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<sup>60</sup> Staff Comments at 30.

outreach to minority business organizations, and free webinars. Commenters have strongly supported the Transaction because of Charter’s demonstrated commitment to inclusive practices. The New York City Hispanic Chamber of Commerce, which testified in favor of approval of the Transaction, has filed comments at the FCC applauding New Charter’s plans to retain and expand TWC’s diversity and inclusion initiatives.<sup>61</sup> The Amherst Chamber of Commerce states that New Charter would be a “leading example” for other corporations because of its adoption of TWC’s “diversity and inclusion programs that include hiring, workforce, and supply chain development.”<sup>62</sup> An Upstate New York leadership and economic development organization notes that “[d]iversity and inclusion in hiring and purchasing will be important initiatives to benefit our minority-owned businesses and their employers.”<sup>63</sup> The Dominican Women’s Development Center explains that by retaining TWC’s diversity initiatives, New Charter “will ensure that more women and minorities are given opportunities not only at New Charter, but in the broader cable/internet supply chain.”<sup>64</sup>

While Common Cause asserts that the Transaction will not help “achieve diversity goals” beyond what the individual companies would have obtained on their own,<sup>65</sup> Petitioners disagree. New Charter will be able to implement more quickly, and across a broader geographic scale, diversity programs with a proven track record that might otherwise take years to develop and refine. The Digital Divide Partnership notes that “New Charter’s embrace of new diversity

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<sup>61</sup> Hispanic Chamber Comments at 1.

<sup>62</sup> Amherst Chamber Comments at 1 [Add Black Chamber or Hispanic Chamber].

<sup>63</sup> CenterState Comments at 1.

<sup>64</sup> Comments of the Dominican Women’s Development Center at 1 (Sep. 21, 2015).

<sup>65</sup> Common Cause Comments at 2.

opportunities in New York City sends the message that it understands how a corporate citizen can accrue value for its community-based efforts.”<sup>66</sup>

In addition to its diversity initiatives, New Charter strongly believes in being a responsible corporate citizen, as shown by its “Charter our Community” program, which ensures critical home repairs, accessibility modifications, and energy-efficient upgrades in low-income communities. The Niagara USA Chamber of Commerce correctly notes that New Charter’s “commitment to community service” – including Charter our Community – shows that the company “is addressing the needs of the communities it seeks to represent.”<sup>67</sup> For example, a consortium that offers science camps for urban youths strongly supports the Transaction because “New Charter may well be able to expand on each of the three company’s commitments to community service, positively impacting ours and many other local communities.”<sup>68</sup> These sentiments were echoed by Girls Inc., which believes that “New Charter would contribute new benefits to our organization and our community through an expanded national reach and a renewed commitment to local programs.”<sup>69</sup>

Significant public benefits will inure to New Yorkers as a result of New Charter’s nationwide diversity and charitable programs, and these benefits strongly militate in favor of concluding that the Transaction is in the public interest.<sup>70</sup>

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<sup>66</sup> Testimony of Digital Divide Partnership at 2 ; *see also* De Graff Comments at 1 (stating that “the creation of New Charter” will “present an opportunity to encourage inclusion through ongoing community partnerships and on a community advisory level”).

<sup>67</sup> Niagara USA Comments at 1.

<sup>68</sup> Black Rock Forest Comments at 1.

<sup>69</sup> Girls, Inc. Comments at 1; *See also* Salvadori Comments at 1 (“The merger between Charter Communications, Time Warner Cable and Bright House Networks would be very beneficial for our community.”).

<sup>70</sup> These diversity and charitable initiatives are in addition to New Charter’s expansion of BHN’s low-income broadband option (Connect2Compete) and New Charter’s commitment to continuing TWC’s low-cost \$14.99 internet plan, which are discussed above in Part I.C.

## **II. THE CONCERNS RAISED BY COMMENTERS NEITHER WARRANT DENIAL OF THE TRANSACTION NOR REQUIRE THE IMPOSITION OF BURDENSOME CONDITIONS.**

### **A. Infrastructure Deployment and Expansion**

#### *1. Line Extensions and Commercial Area Buildout*

Staff expresses concerns that Petitioners have not committed to ensuring that operational savings resulting from the merger will be used to improve cable systems in the state, as opposed to being allocated to other states or back to shareholders.<sup>71</sup> Although supporting New Charter's proposals concerning broadband deployment and expansion<sup>72</sup> the Public Utility Law Project of New York ("PULP") seeks specific commitments to build to particular areas in New York State.<sup>73</sup> Staff and PULP both suggest that Petitioners should develop a strategic implementation plan to build out the all-digital network to unserved and underserved franchise areas in New York.<sup>74</sup>

These proposed conditions overlook the fact that the scale of the Transaction, as well as the commitments New Charter already has made to broadband infrastructure deployment, will spur new investment. As ACLP notes, as a result of the Transaction, "New Charter will be able to leverage its larger national footprint in ways that will allow it to channel additional investment into New York, which will be one of its largest service areas."<sup>75</sup> Staff's concern that New Charter has not made "concrete commitments"<sup>76</sup> is misplaced in light of New Charter's express pledge to build out one-million line extensions to reach unserved homes, spend \$2.5 billion on

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<sup>71</sup> Staff Comments at 47-48.

<sup>72</sup> Comments of the Public Utility Law Project of New York ("PULP Comments") at 9 (Sep. 16, 2015).

<sup>73</sup> PULP Comments at 9.

<sup>74</sup> Staff Comments at 50-51; PULP Comments at 9.

<sup>75</sup> ACLP Comments at 2.

<sup>76</sup> Staff Comments at 48.

network buildout in commercial areas throughout its franchise areas, and deploy 300,000 new WiFi hotspots across its service area, including in New York State. Further, Charter's pledge to upgrade all New York systems to all-digital carries with it a specific investment commitment that provides a concrete timetable for delivering advanced services and capabilities to Upstate New York residents.<sup>77</sup>

Imposing a strict "implementation plan" for the deployment of broadband in New York would be counterproductive,<sup>78</sup> unnecessarily constraining Charter's business judgment and potentially diminishing the company's flexibility to work with communities on partnership programs, such as the Town of Jay line extension project described above. In addition, requiring New Charter to commit to a specific plan just 60 days after the Transaction closes would take away the company's flexibility to deploy investment capital where it would be of most benefit to New York residents based upon a complete understanding of TWC's systems and operations – which is not fully possible until after closing and integration of the cable systems. Further, such a condition would constrain New Charter's ability to adapt its plans to meet changing needs in New York as new technologies, grant programs, or other opportunities become available in the State.

One commenter, the Lexington Broadband Initiative ("LBI") even goes further, requesting that the Commission withhold approval of the Transaction unless Petitioners commit "to build down to 10-12 residents averaged over the covered area of a given unserved or underserved community."<sup>79</sup> Such a buildout requirement would go well beyond the buildout

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<sup>77</sup> While Staff asserts that upgrades to all-digital "come with potentially higher video price-tags," Staff Comments at 28, it offers no evidence to support this assertion.

<sup>78</sup> *Id.* at 51.

<sup>79</sup> Comments of the Lexington Broadband Initiative ("LBI Comments") at 1 (Sep. 10, 2015).



requirements and density thresholds in the Commission’s cable rules,<sup>80</sup> as well as the requirements of Petitioners’ cable franchises. The Commission should not circumvent municipal authority to negotiate buildout commitments in franchises, or its own rulemaking process, by adopting a buildout requirement that exceeds existing requirements in the State.

## 2. *System Upgrades to Increase Broadband Speeds*

Staff suggests that the Commission consider a requirement that New Charter deploy network infrastructure capable of 100 Mbps within 30 months, 300 Mbps within 42 months, and 1 Gbps service in the five largest TWC markets by 2020.<sup>81</sup> Setting aside any arguments concerning whether the Commission has the legal authority to impose requirements with respect to the speed or technology used by a cable or broadband provider to offer service,<sup>82</sup> New Charter believes there is no reason for the Commission to condition approval of the Transaction on these types of requirements. Charter is already committing to make the investment and take the steps necessary to raise TWC’s base broadband speeds to 60 Mbps, which is faster than TWC’s current highest speed in Upstate markets. In addition, competitive forces, such as broadband services offered by ILECs and wireless providers, as well as industry developments, such as the DOCSIS 3.1 standard identified by Staff,<sup>83</sup> will ensure that New Charter will remain on the cutting edge of technological innovation in order to deliver high-quality services to its New York customers. This is evidenced by the fact that Charter already offers 100 Mbps service in its all-digital areas, and has committed to convert TWC systems to all-digital within 30 months so those

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<sup>80</sup> 16 NYCRR § 895.5.

<sup>81</sup> Staff Comments at 56.

<sup>82</sup> Federal law preempts “any provision of law of any State, political subdivision, or agency thereof, or franchising authority . . . which is inconsistent with” the Federal Cable Act. 47 U.S.C. § 556(c). Further, Section 624(e) of the Cable Act establishes that “[n]o State or franchising authority may prohibit, condition, or restrict a cable system’s use of any type of subscriber equipment or any transmission technology.” 47 U.S.C. § 544(e).

<sup>83</sup> Staff Comments at 56.

areas may also enjoy higher speed service. Given Staff's acknowledgement that Petitioners' plans already meet Governor Cuomo's broadband goals,<sup>84</sup> there is no reason for the Commission to take the unprecedented step of conditioning its approval of this Transaction on the provision of certain minimum broadband speeds.

### 3. *The Chatham System*

Petitioners also acknowledge Staff's request that New Charter develop a plan to upgrade the Chatham system.<sup>85</sup> Petitioners have explained to Staff previously that the Chatham system is part of a small number of Charter systems – representing fewer than 1% of Charter's overall subscribers – where technical challenges have hampered Charter's objective of converting those systems to all-digital.<sup>86</sup> If the Transaction is approved, New Charter would be able to utilize TWC's system resources near the Chatham area to facilitate the task of upgrading and converting the Chatham system to all-digital.

In comments, Staff requests that Charter commit to upgrade the Chatham system within 30 months of closing.<sup>87</sup> Charter is willing to commit to an even faster timetable and complete the upgrade of the Chatham system within 24 months of closing, subject to the timely receipt of all necessary permits and prompt completion of pole attachment make ready work by utility owners in the area.<sup>88</sup> Charter appreciates the Staff's offer and willingness to help address any permit or make-ready issues that would impact the timing.

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<sup>84</sup> *Id.* at 54

<sup>85</sup> *Id.* at 51.

<sup>86</sup> Petitioners' Responses to Discovery Requests DPS-8 and -13.

<sup>87</sup> Staff Comments at 50.

<sup>88</sup> Petitioners appreciate Staff's awareness that there may be some "operational issues" associated with this make ready work, and will call upon Staff for assistance if necessary. Staff Comments at 50.

Upon completion of this upgrade, New Charter will be able to offer Chatham system customers the same suite of services offered to the more than 99% of Charter customers who are currently served by all-digital systems. As Staff itself recognizes, this commitment will “substantially improve wireline telecommunications services to thousands of residents, businesses, and community anchor institutions in Columbia County.”<sup>89</sup>

#### 4. *WiFi Deployment*

Staff proposes requiring New Charter to deploy a number of WiFi hotspots equal to the proportion of broadband subscribers in New York State compared to the nationwide number of New Charter broadband subscribers.<sup>90</sup> As previously stated, New Charter is committed to deploy, within four years of Transaction closing, more than 300,000 out-of-home WiFi access points nationwide. This will include WiFi hotspots in New York State. However, an unprecedented requirement such as a rigid requirement to deploy a specific number of hotspots in any one particular place is not practical, as it removes New Charter’s ability to make decisions as to how to best place WiFi access points to maximize use and availability and is unreasonable until New Charter has an opportunity to fully review current WiFi deployment and integrate the TWC systems into the larger enterprise. Given the sheer size and scope of New Charter’s footprint in the New York market, a number of these new access points will be located in the State, thereby expanding WiFi access in the State beyond what would have existed absent the Transaction.<sup>91</sup>

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<sup>89</sup> *Id.* at 50.

<sup>90</sup> *Id.* at 31.

<sup>91</sup> Staff’s suggests that the current ability of TWC customers to “request a hotspot,” See Staff Comments at 31, is somehow on par with Charter’s specific commitment upon closing of the Transaction to deploy 2.5 million more WiFi access points, but the latter represents a concrete pledge to invest and deploy, while the former offers no guarantee that any access point will actually be constructed.

Petitioners also acknowledge the City of New York's suggestions concerning WiFi hotspots in the City, which includes expanding access to WiFi hotspots for participants in the low-cost broadband program and increasing speeds.<sup>92</sup> New Charter will continue to support TWC's current free offerings to non-customers in the City and maintain WiFi hotspots deployed by TWC in New York City parks. It will also evaluate suggestions as it further develops its plans for WiFi deployment.

**B. Broadband Affordability and Offerings for Low- and Middle-Income Customers**

Some commenters express concerns about the potential impact of the Transaction on broadband affordability in New York, suggesting that existing affordable options for TWC customers might be discontinued or that more options for low-income should be available. These concerns are misplaced. Subscribers that currently receive TWC's \$14.99 will continue to be able to do so after the transaction, and New Charter will make available a robust new offering specifically geared for low-income customers. In addition, upon converting the Upstate TWC systems to all-digital, Charter will be offering TWC subscribers significantly faster base broadband speeds at rates that are lower than what they currently pay.

Staff acknowledges Charter's base broadband speeds are faster than TWC's, while also noting that the rates for Charter's standard broadband offering are higher than TWC's \$14.99 Everyday Low Price service.<sup>93</sup> A few individual commenters also express their desire to remain in this \$14.99 package.<sup>94</sup> But the \$14.99 offering (which is actually \$22.99 for customers that

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<sup>92</sup> NYC Comments at 6.

<sup>93</sup> Staff Comments at 43.

<sup>94</sup> Comments of Philip Zenowich at 1 (Aug. 13, 2015); Comments of Michael Hawkins at 1 (Aug. 10, 2015). Petitioners note that the FCC recently made clear that States cannot regulate broadband rates, and thus any condition that mandates a particular price for a broadband offering would be impermissible *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and

lease a modem) only provides speeds of 2-3 Mbps, approximately 20-30 times slower than Charter's base broadband speed. Notwithstanding these limitations, New Charter does intend to allow existing TWC customers that subscribe to the \$14.99 offering to continue to receive it.

Staff recognizes that New Charter's proposed low-cost broadband offering is "a positive program to introduce broadband service" to low income households, while also contending that the program's enrollment eligibility criteria should be expanded.<sup>95</sup> New Charter has already said that the enrollment eligibility criteria for the program will be expanded, and the speeds offered through the program will be significantly faster than those available via the TWC Everyday Low Price offering (without separate, additional modem fees). As Petitioners develop more details of the program, they will share them with Staff and the Commission. Further, Charter agrees with staff that formation of a "working group of interested stakeholders to develop outreach and other strategies to improve Lifeline adoption rates and bridge the digital divide in New York" would be a constructive undertaking, and New Charter would be willing to participate in such an initiative.<sup>96</sup>

The New Charter low-income proposal is voluntary<sup>97</sup> and provides a substantial new benefit not being offered by TWC and Charter in New York currently.<sup>98</sup> As ACLP notes, "the merging companies have committed to creating a robust low-income broadband offering" that

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Order, GN Docket No. 14-28, at ¶ 433 (rel. Mar. 12, 2015) ("should a state elect to . . . regulate the rates of broadband Internet access service through tariffs or otherwise, we expect that we would preempt such state regulation as in conflict with our regulations").

<sup>95</sup> Staff Comments at 29, 51-52; *see also* NYC Comments at 2-3 (stating that offering should provide download speeds sufficient to allow use of multiple devices at the same time).

<sup>96</sup> *Id.* at 52.

<sup>97</sup> *Id.* at 29.

<sup>98</sup> Common Cause suggests that New Charter's low income broadband program is not "merger-specific" and presumably should be discounted as a public interest benefit on this basis. Common Cause Comments at 4. As the program is currently offered in BHN's territories, and Petitioners' intention to offer the program is tied to the completion of the Transaction, Common Cause's assertion is incorrect.

“will be a substantial boon to millions of consumers who might otherwise remain unconnected.”<sup>99</sup> Girls Inc. describes the Bright House Networks Connect2Compete offering (which will be the basis for the New Charter program) as a “successful low-income broadband program . . . to bring online households and students that have long been priced out of the market.”<sup>100</sup>

Petitioners also note PULP’s concern as to whether New Charter intends to make available a stand-alone broadband service “without inclusion of a modem rental fee.”<sup>101</sup> New Charter does intend to make available its 60 Mbps and 100 Mbps services on a standalone basis, without any additional modem rental fee. Charter also sells standalone video and voice services, so there is no need to condition approval of the Transaction on the offering of such service.

In short, Charter is taking several significant measures toward addressing broadband affordability by providing faster base broadband speeds for lower prices to Upstate TWC customers, instituting a new low-cost broadband program for low-income residents, preserving current low-price options for existing customers, and making high-speed broadband service available on a standalone basis.

Lastly, Staff incorrectly suggests that “Charter lacks offerings that may be desirable to low- and middle-income customers.”<sup>102</sup> As demonstrated above, New Charter will be providing a wide range of affordable broadband options for low- and middle-income customers. Further, Staff’s own chart purporting to support its assertion demonstrates that Charter’s prices for voice

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<sup>99</sup> ACLP Comments at 3.

<sup>100</sup> Girls Inc. Comments at 1.

<sup>101</sup> PULP Comments at 10.

<sup>102</sup> Staff Comments at 41.

service are significantly lower than TWC's.<sup>103</sup> In addition, Staff concedes that the video prices paid by Charter and TWC are "comparable," without offering any guidance regarding the composition of the packages being compared.<sup>104</sup> This is significant because the overwhelming majority of Charter customers are served by all-digital systems, and are therefore apt to have access to more HD and VOD programming choices than Upstate New York TWC subscribers. Moreover, there is no indication that Staff's comparison takes account of the fact that Charter's service offerings come without separate, additional charges such as modem fees and other fees common in the industry. In short, contrary to Staff's contention, the record demonstrates that Charter does offer a wide range of attractive offerings for low- and middle-income consumers.

### **C. Debt**

In its comments, Staff expresses concern about the fact that Charter expects to finance part of the Transaction with indebtedness of approximately \$24 billion, which would lead New Charter to have a debt/EBITDA ratio<sup>105</sup> of approximately 4.5x.<sup>106</sup> Staff argues that New Charter should take action post-Transaction to reduce its leverage and should be required to notify the PSC if TWC's or New Charter's credit ratings fell to "BB/Ba2" or lower.<sup>107</sup>

Respectfully, Staff's concerns about the Transaction's financing are misplaced. As Staff recognizes, a smaller debt/EBITDA ratio "is more supportive of credit quality than a larger number,"<sup>108</sup> and New Charter's expected debt/EBITDA ratio of 4.5x is lower than comparable ratios from a number of MVPDs. For example, at the end of 2014, WOW! had a ratio of 7.1x,

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<sup>103</sup> *Id.* at 42.

<sup>104</sup> *Id.* at 42.

<sup>105</sup> EBITDA stands for Earnings Before Interest, Taxes, Depreciation, and Amortizations. *Id.* at 38. It "measures a company's ability to pay back or service its debt." *Id.*

<sup>106</sup> *Id.* at 36-39.

<sup>107</sup> *Id.* at 56-58.

<sup>108</sup> *Id.* at 38.

Suddenlink was 5.8x, Cablevision was 5.3x, Mediacom BB was 5.3x, and DISH was 5.1x.<sup>109</sup>

Thus, New Charter's leverage is lower than and certainly within normal range for MVPDs.

Additionally, there is no evidence that these other companies' even-higher ratios have resulted in "cost cuts," "limit[ed] capital investment," or "a decline in general service quality."<sup>110</sup> Further, post-Transaction, New Charter expects to deleverage at ~0.5x per year through EBITDA and cash flow growth, as the operating business is expected to be cash flow positive at the day of close.

Additionally, Charter will have a \$3 billion revolving credit facility and anticipates it will be undrawn at closing to support day-to-day management of the business. Staff expressed concern that TWC's \$3.5 billion revolving line of credit could "eventually require refinancing if New Charter's debt/EBITDA ratio exceeds 5.0x."<sup>111</sup> However, TWC has stated that it will not need to "utilize[e] its \$3.5 billion revolving line of credit as that line of credit will be terminated upon completion of the Transaction."<sup>112</sup> Thus, there is no concern about New Charter's leverage having a negative impact on TWC's revolving line of credit.

In terms of investment quality and credit ratings, New Charter's debt situation is quite reasonable. New Charter's debt will have an expected interest rate of 5.5%, which is even lower than the interest on TWC's current debt portfolio, which Staff praises as being particularly well-rounded and manageable.<sup>113</sup> New Charter's debt will also be 85% fixed, which substantially eliminates the risk of rising interest rates. Pro forma New Charter (i.e., combined Charter + TWC+BHN) projects that by the end of 2015, it will have Adjusted EBITDA of \$13.8 billion, a

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<sup>109</sup> See Petitioner's Response to Discovery Request DPS-42.

<sup>110</sup> Staff Comments at 36.

<sup>111</sup> *Id.* at 38.

<sup>112</sup> Petitioners' Response to Discovery Request DPS-51.

<sup>113</sup> Petitioners' Response to Discovery Request DPS-51.



substantial increase from Charter's \$3.2 billion EBITDA in 2014. Moreover, pro forma New Charter's projected ratio of debt to EBITDA of 4.5x represents a reduction from Charter's current debt levels. Charter's Corporate Family Rating ("CFR") is also expected to increase upon closing: Moody's expected to increase the rating from Ba3 to Ba2<sup>114</sup>; S&P announced a potential two-notch increase from BB- to BB+<sup>115</sup>; and Fitch expected an increase of up to two notches, from BB- to BB+.<sup>116</sup> Further, TWC pays a fixed interest rate on its existing debt, and thus the amount of interest remains set over the life of the debt.<sup>117</sup>

Finally, New Charter has a built-in incentive to maintain fiscally responsible debt levels – it will have to answer to investors. New Charter's incentives and responsibilities to its shareholders are sufficiently strong to obviate the need for stringent oversight of the Transaction's financing by the Commission. Charter's bond offerings to date issued to raise proceeds to complete the Transaction have been well received by the market, reflecting that bond investors share shareholder's favorable view concerning New Charter's prospects.

Because New Charter's debt/EBITDA ratio and interest rates are well within norms for the industry, and New Charter has every incentive to maintain levels within those norms, there is no cause for concern that New Charter's debt will cause "difficulty maintaining the investments necessary to bring expanded products and provide good service quality" to New Yorkers.<sup>118</sup>

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<sup>114</sup> See *Moody's Places Charter's Ba3 CFR on Review for Upgrade Following TWC Merger Announcement*, Moody's Investor's Service (May 26, 2015).

<sup>115</sup> *S&P Keeps Charter Communications (CHTR) on CreditWatch Positive Amid Time Warner Cable (TWC) Deal*, Standard & Poor's Rating Services (May 26, 2015).

<sup>116</sup> *Charter Remains on Positive Watch on Time Warner Cable Merger*, Fitch Ratings (issued May 26, 2015).

<sup>117</sup> Petitioners' Response to Discovery Request DPS-51.

<sup>118</sup> Staff Comments at 39.

Accordingly, there is no need to impose any requirements that New Charter seek to reduce its leverage or send credit rating reports or plans to the Commission.

#### **D. Customer Service**

While finding no instance in which TWC or Charter's PSC Complaint Rate metric triggered substantial concern,<sup>119</sup> Staff nevertheless proposes that New Charter should be required to develop a plan to maintain service quality at or below PSC complaint rate thresholds and be subject to large financial penalties (\$5 million, which can be doubled for repeat failures) for failure to meet this standard.<sup>120</sup> New York City asks for New Charter to commit to improving TWC's customer service, including providing quarterly progress reports.<sup>121</sup>

Petitioners acknowledge New Charter's obligation to meet the Commission's comprehensive customer service standards, including the detailed annual customer service reporting requirements found in Sections 890.90(e) and 890.91(d) of the Commission's cable rules.<sup>122</sup> Nothing in the record suggests the need to develop plans or to impose reporting requirements above and beyond the existing Commission rules. Charter operates in thousands of communities across the country and applies the FCC's customer service standards as the general benchmark against which to measure performance across its service areas. Charter routinely meets or exceeds these metrics without material dispute.

As previously stated over the past three-and-a-half years, Charter has brought back jobs from overseas call centers and hired thousands of people in customer service and field technician

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<sup>119</sup> *Id.* at 40-41 (finding that TWC's video and TWC's and Charter's voice complaint rates fall below the Commission's established threshold, and that Charter's video service metrics were "inconclusive" due to Charter's small customer base).

<sup>120</sup> *Id.* at 58-59.

<sup>121</sup> NYC Comments at 4.

<sup>122</sup> 16 N.Y.C.R.R. §§ 890.90(e), 890.91(d).

operations in order to enhance its customer service capabilities. Since completing the upgrade of most of its systems to an all-digital platform in December of 2014, Charter's average call answering times have exceeded FCC and Commission requirements.<sup>123</sup>

Charter operates call centers throughout the United States to ensure customers have 24 hours per day/7 days per week access to customer service representatives, and it looks forward to incorporating TWC's operations - including New York call centers - into those operations. The customer experience is a top priority for Charter and improved customer service personnel training and service policies are important. Charter is committed to providing top quality customer care and provides extensive training to all of its field technicians and customer service personnel to achieve that objective. Charter also maintains a rigorous training program for its customer care agents. Initial classroom training covers multiple weeks and encompasses a host of discrete subject matter modules. Classroom training is followed by multiple weeks of "nesting" - where the customer care agent handles customer calls under the supervision of a training mentor. Additional training is provided on a weekly basis on both an individual and team basis. In addition, Charter administers quarterly knowledge assessments.

Because the record lacks evidence to support a conclusion that Charter's current approach is inadequate, there is no need for the Commission to impose conditions concerning customer service plans or additional reporting requirements on New Charter beyond those requirements already applicable by operation of law.

#### **E. Jobs**

Staff states that New Charter should make specific job commitments, including no net loss of customer-facing jobs for at least two years, job reductions for non-headquartered staff

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<sup>123</sup> See Petitioners' Response to Interrogatory Request DPS-16.

should be no lower than for nationwide job cuts, and a 90-day notice for any closing or relocation of an in-state call center.<sup>124</sup> New York City requests similar commitments for call centers in the city.<sup>125</sup> Common Cause asserts that lower programming costs might somehow lead to job losses in New York’s entertainment industry, but offers no evidence to support this contention.<sup>126</sup> Respectfully, any employment-related conditions are unnecessary because New Charter will need TWC employees to continue servicing customers in New York, and also because Charter has a track record of creating jobs, including on-shoring jobs from overseas.

Staff contends that “New Charter will inevitably have less of a focus on New York” and thus may seek to “gain operational efficiencies by moving/consolidating customer-facing jobs and other positions to out-of-state locations.”<sup>127</sup> Charter, however, has no intention of having “less of a focus on New York,” which would be contrary to its business interests and the company has never represented that the State would be less of a focus after the Transaction. Charter currently has a very small footprint in New York and will need many TWC employees to service New Charter’s customers across the State, who will still represent over 10% of New Charter’s national customer base.<sup>128</sup>

Further, Charter has demonstrated a steadfast commitment to job growth over the past three-and-a-half years. As previously stated, since current management took over the company, Charter has added more than 7,000 jobs. Based on this experience, and taking into account the size of TWC’s 55,000 employee base, New Charter believes it could create up to 20,000 new jobs over time through similar commitments and by extending its policy of insourcing jobs back

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<sup>124</sup> Staff Comments at 59-60.

<sup>125</sup> NYC Comments at 5.

<sup>126</sup> Common Cause Comments at 3.

<sup>127</sup> Staff Comments at 44-45.

<sup>128</sup> *Id.* at 45.

to the United States.<sup>129</sup> Charter’s past commitments, and New Charter’s forward looking plans, refute Common Cause’s claim that, absent the merger, TWC itself might in-source jobs.<sup>130</sup> What TWC theoretically could do on its own (and has not done to date) is substantially different than what Charter will do as a result of the merger.

New Charter’s commitment to returning jobs from overseas has prompted many New York-based commenters to support approval of the Transaction. For example, the Rochester Business Alliance expressed “strong support of the proposed merger” because it will result in a “return of jobs to the United States and the hiring [of] thousands of new employees for customer service call centers and field technician operations.”<sup>131</sup>

As a representative of leading New York City employers, investors and entrepreneurs notes, New Charter’s investment in broadband infrastructure and building out to businesses will “generate construction jobs and related downstream employment.”<sup>132</sup> Improved home Internet access and building out line extensions will enable more New Yorkers to work remotely as well.<sup>133</sup>

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<sup>129</sup> See First on CNBC: CNBC Transcript: Charter Communications CEO Tom Rutledge Speaks with CNBC’s David Faber on “Squawk on the Street” Today, <http://www.cnbc.com/2015/05/26/first-on-cnbc-cnbc-transcript-charter-communications-ceo-tom-rutledge-speaks-with-cnbc-david-faber-on-squawk-on-the-street-today.html>.

<sup>130</sup> Common Cause Comments at 2.

<sup>131</sup> Rochester Business Comments at 1; *see also* Niagara USA Comments at 1 (“Charter will be returning call center jobs back to the United States and will continue to create thousands of U.S.-based jobs ...”); CenterState Corporation for Economic Opportunity Comments. at 1 (“[W]e are hopeful for the potential for new jobs in our area ...”); Retail Council Comments at 1 (“By returning call center jobs from overseas, it is our understanding that retailers will also experience more streamlined assistance should they need it.”); Buffalo Niagara Partnership Comments at 1 (“New Charter has pledged to return call center jobs to the United States and will hire and train thousands of new employees for its customer service centers and field technician operations, including in New York”).

<sup>132</sup> Partnership Comments at 1; *see also* Business Council Comments at 2.

<sup>133</sup> Partnership Comments at 1.

Given Charter's track record and the necessity of TWC employees to continue servicing New York consumers, there is no need for the PSC to impose rigid hiring requirements on New Charter.

**F. Other Issues**

1. *Rate Transparency*

While acknowledging that the Commission cannot regulate rates, New York City asks the Commission to request that Charter commit to provide fully accurate rate information and explain discrepancies between advertised rates and actual charges customers incur.<sup>134</sup> In today's competitive video and broadband marketplace, providing accurate and timely rate information is key to winning and retaining customers. Further, New Charter will continue to comply with all applicable rate notice and rate disclosure requirements applicable to cable service under Federal and State law, as well as the FCC's broadband transparency rules. Under these circumstances, Petitioners submit that no additional requirements concerning rate transparency are necessary.

New Charter is already committed to launching its simple, uniform pricing and packaging models throughout its expanded footprint including in New York. New Charter's broadband offerings will, like Charter's existing offerings, come without any data caps, usage-based pricing, or early termination fees, and will include no separate, additional cable modems rental fees. These measures should minimize concerns that customers will receive unclear or unexplained charges on their monthly bills. New Charter customers can also expect that their broadband service will be delivered at advertised speeds. According to data provided by SamKnows, a contractor retained by the FCC to assist the agency with measuring and testing ISPs

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<sup>134</sup> NYC Comments at 4.

performance, customers who subscriber to Charter’s 60 Mbps service offering consistently receive download and upload speeds that meet or exceed 60 Mbps.<sup>135</sup>

## 2. *Coordination with First Responders*

New York City states that “Charter could make a powerful statement about its commitment to the public interest by, as other New York City operators already have, formally agreeing to cooperate with providers during natural disasters and emergencies.”<sup>136</sup> Charter recognizes the importance of coordinating with key government entities to ensure the resiliency of key communications facilities during emergencies and natural disasters. The company has a history of working in partnership with government agencies and other communications and utility providers on resilience measures and network restoration efforts in response to emergencies and natural disasters. New Charter looks forward to the opportunity to work with New York City and other key agencies on this critically important issue. In addition, Petitioners are well aware that WiFi networks can play an important role in helping with responses to natural disasters like Superstorm Sandy, and the expansion of WiFi networks throughout the New Charter footprint will help with communications during such events.

## 3. *Commitment to PEG Programming*

Both New York City and the City of Mount Vernon express concerns about TWC’s commitment to public, educational, and governmental (“PEG”) access programming and New Charter’s commitment to such programming on a going forward basis.<sup>137</sup> New Charter is

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<sup>135</sup> The SamKnows test data for Charter is available on its website at <https://www.charter.com/browse/content/network>. As the most recent round of testing was conducted in the first half of 2014, prior to completion of Charter’s all-digital conversion, it also includes results for Charter’s legacy 15 Mbps and 30 Mbps services. Both of those offerings also consistently performed in accordance with advertised speeds.

<sup>136</sup> NYC Comments at 6.

<sup>137</sup> NYC Comments at 7; Comments of City of Mount Vernon Mayor Ernest D. Davis at 2.

committed to fulfilling all of the obligations of TWC's franchises, including those applicable to PEG access and programming in New York City.

Charter has a long track record of providing and supporting PEG access programming in the communities it serves, and working effectively with PEG access organizations and local governments. Notably, Queens Public Television - one of the public access stations operating in New York City - has indicated that it "welcomes Charter and looks forward to a relationship as productive as presently exists with [TWC]."<sup>138</sup> Public Media Network, an agency representing a consortium of local franchising authorities in Kalamazoo County, Michigan, has told the FCC that its "experience with Charter . . . on PEG issues has been decidedly positive" and it has "been pleased" with Charter's handling of a number of issues, including channel migrations, transition to all digital, distribution of PEG programming, and adding PEG programming to Charter's channel guide.<sup>139</sup>

BRIC, the community access organization in Brooklyn, expresses concerns about Charter's commitment to PEG Access,<sup>140</sup> and asks the Commission to impose certain conditions on PEG channel placement and quality, as well as on financial support for PEG.<sup>141</sup> Such conditions are not necessary. New Charter has already committed to comply with all obligations of the current TWC franchise in New York City, including those addressing commitments to PEG. This includes very detailed funding, channel obligations, and other commitments to all applicable New York City community access organizations, including BRIC. In addition, the

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<sup>138</sup> Queens Public Television Comments at 2 (Sep. 21, 2015).

<sup>139</sup> Comments of Public Media Network, MB Docket No. 15-149 at 1-2 (Jul. 29, 2015). A copy of these comments are attached to these Reply Comments. Public Media Network commends Charter for "approach[ing] us proactively and with a willingness to find appropriate solutions" to these challenges. *Id.*

<sup>140</sup> Comments of BRIC Community Access Organization ("BRIC Comments") at 2-3 (Sep. 21, 2015).

<sup>141</sup> BRIC Comments at 6-7.



Charter-related claims in the Alliance for Community Media (“ACM”) report attached to BRIC’s comments are inaccurate or misplaced,<sup>142</sup> criticizing, for example, changes that were designed to improve service or standardize channel locations. ACM’s own comments in this proceeding express concerns that there are “many dark” PEG channels in New York,<sup>143</sup> which can be the result of franchise agreements that allocate an excess of PEG channels in relation to demand for their use. While asserting generally that TWC has not fulfilled its PEG obligations, ACM does not offer specifics. Many of the commitments ACM seeks – such as a commitment to create new PEG channels or to transmit PEG in HD<sup>144</sup> – are more appropriately addressed in individual franchise renewal negotiations, rather than in this proceeding.

In Mount Vernon, according to TWC it has met and even exceeded its PEG support obligations under its franchise, and will continue to engage with the City in discussions on franchise renewal terms, including PEG support, pending completion of the Transaction. Efforts to compel Charter to resolve TWC franchise disputes during the pendency of the Transaction are neither appropriate nor practical, given that TWC operates over 1100 franchises in the State and retains control of its systems until the Transaction closes. Further, the details of any particular franchise dispute do not constitute a transaction-specific basis for objecting to the proposed transfer. Notwithstanding the specifics of the City of Mount Vernon’s issues regarding PEG access, New Charter is open to working with the City or any other communities that are seeking franchise renewals, to address its concerns should they persist after the Transaction closes.

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<sup>142</sup> BRIC Comments at 8-13.

<sup>143</sup> ACM Comments at 1.

<sup>144</sup> *Id.* at 2-3.

#### 4. *Maintaining ETC Eligibility*

Comments from the Public Utility Law Project of New York (“PULP”) confirm Petitioners’ belief that “[u]niversal service is the cornerstone of the United States’ and New York’s public policy toward basic and advanced telephony.”<sup>145</sup> New Charter acknowledges that one aspect of universal service is the Lifeline service for low- and fixed-income customers. As Staff has recognized, the petition to the Commission confirms that New Charter has no current plans to change TWC’s ETC status in New York or to discontinue Lifeline Discounted Telephone Service (Lifeline).<sup>146</sup> In any event, public interest concerns relating to the Lifeline service need not be addressed in this proceeding, as any changes in TWC’s Lifeline service would be the focus of a separate proceeding where such changes could be evaluated in their own right.

Also noteworthy is that Charter supports the FCC’s recently announced proposal to transition the Lifeline program to support broadband in addition to voice services. Indeed, Charter supports allowing Lifeline customers to allocate their Lifeline discount to both bundled and unbundled services, to better allow low-income households to be treated the same way as other customers in the marketplace for voice and broadband services.<sup>147</sup> Charter also supports the FCC’s proposal to facilitate the ability of companies like Charter to participate in Lifeline by expanding the universe of providers who could be eligible to receive Lifeline funds in a fiscally sound and efficient manner.<sup>148</sup> This shows New Charter’s commitment to and interest in participating in the Lifeline program regardless of its ETC status.

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<sup>145</sup> PULP Comments at 6.

<sup>146</sup> See Staff Comments at 34.

<sup>147</sup> Comments of Charter Communications, Inc., WB Docket No. 11-42, *et. al.* at 3-4 (Aug. 31, 2015).

<sup>148</sup> *Id.* at 5.

### **III. THE TRANSFER SHOULD BE APPROVED BECAUSE PETITIONERS HAVE SHOWN THE TRANSACTION IS IN THE PUBLIC INTEREST**

The Commission should approve the Transaction because it satisfies the public interest test traditionally applied to similar types of transactions. Under New York law, the Commission's authority to review telephone corporation and cable television transfers is limited to a determination as to whether the transfer of the telephone corporation and/or cable television system is "in the public interest."<sup>149</sup>

#### **A. Review of Telephone Company Transfers Under PSL Section 100**

In the context of telephony transactions under PSL Section 100, the Commission has not imported the heightened "net benefits test" of PSL § 70—which pertains to mergers for electric and gas companies. Nor has Staff suggested that the Commission should apply Section 70's requirements to approval of telephony mergers under Sections 100 and 101.<sup>150</sup> In the Verizon-MCI merger, for example, the Commission conducted a limited inquiry, even though the transaction involved the acquisition by New York State's most dominant ILEC of one of the State's largest competitive providers.<sup>151</sup> There, the Commission did not impose synergy-sharing or investment-related requirements derived from electric and gas utility mergers; instead, the limited conditions imposed by the Commission related primarily to the merged company's provision of wholesale services.<sup>152</sup>

The Commission's and Staff's refusal to apply Section 70 to telephony transactions is primarily a result of the fact that telephone companies operate in a vastly more competitive

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<sup>149</sup> See N.Y. PSL §§ 99(2), 100(3), 101, 222(3)(b).

<sup>150</sup> See Staff Comments at 13-15.

<sup>151</sup> Case 05-C-0237, *Joint Petition of Verizon Communications Inc. and MCI, Inc.*, Order Asserting Jurisdiction and Approving Merger Subject to Conditions, at 56 (Nov. 22, 2005) ("*Verizon-MCI Order*").

<sup>152</sup> See generally *Verizon-MCI Order*.

market than do gas and electric companies, and thus mergers in the telephony context are significantly less likely to have any negative effects on competition.<sup>153</sup> The relationship between market competition and the stringency of the Commission’s review explains why New York’s regulatory framework has consistently distinguished competitive providers – like Charter and TWC – from ILECs, subjecting competitors to lighter regulatory oversight,<sup>154</sup> which Petitioners in this case easily satisfy. Indeed, the Commission itself has recognized that a company “providing telecommunications services on a competitive basis *does not require the degree of regulatory scrutiny that applies to monopoly public utilities.*”<sup>155</sup>

## **B. Review of Cable Company Transfers Under Section 222**

In the context of cable transactions, the Commission’s public interest inquiry historically has focused on the degree to which a proposed transaction will ensure continued provision of service to customers without any negative impact or changes outside the ordinary course of business, as well as whether the transferee possess the requisite qualifications to operate the systems.<sup>156</sup> The record in this proceeding shows that New Charter will possess the legal,

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<sup>153</sup> See Case 14-M-0183, *Joint Petition of Time Warner Cable Inc. and Comcast Corp. for Approval of a Holding Company Level Transfer of Control*, Comments of the N.Y. State Dep’t of Public Service Staff at 40 n.53 (Aug. 8, 2014) (“[S]ufficient competitive alternatives exist in much of New York’s residential telephone market.”).

<sup>154</sup> See Case 11-C-0425, *Joint Petition of PAETEC Holding Corp. et al.*, Order Authorizing Transfer, , at 13 (Nov. 11, 2011) (“*PAETEC-Windstream Order*”); Case 05-C-0616, *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Statement of Policy On Further Steps Toward Competition In the Intermodal Telecommunications Market And Order Allowing Rate Filings, at 36-37 (April 11, 2006) (“*PSC Intermodal Competition Order*”).

<sup>155</sup> *Paetec-Windstream Order* at 13 (emphasis added).

<sup>156</sup> Case 12-V-0368 , *See e.g. Joint Petition of Atlantic Broadband (Penn) LLC and Acquisitions Cogeco Cable II Inc. for Approval of Transfer of Control of Cable Television System Franchises, Certificates, and Facilities in Cattaraugus County, New York, Pursuant to Public Service Law § 222*, Order Approving Transfer at 3 (Nov. 30, 2012) (“Atlantic will continue to provide service to existing customers without change in rates, terms, or conditions outside of the ordinary course of business. Atlantic will continue to be operated by the same highly experienced, well-qualified management, operational and technical personnel”); Case 05-V-0771, *Joint Petition of Time Warner Cable Inc. and Adelphia Communications*

financial and technical ability to operate the TWC cable systems, and that subscribers to those systems will experience no diminution in services but will instead enjoy a number of considerable enhancements in terms of services offered and network capabilities.

The amendment to Section 222 did not alter the language of the public interest standard in Article 11, but did clarify – by shifting the burden – that the petitioner seeking approval of a proposed transfer must show that the transaction is in the public interest.<sup>157</sup> Indeed, the two cable transfers decided by the Commission in the wake of that amendment did not materially differ from previous applications of the public interest standard in the context of cable transactions. In the first decision, involving the transfer of two cable franchises from Haeefele TV to TWC, the Commission found that the proposed transaction met the public interest because TWC had committed to improving the overall performance of the acquired system, would offer

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*Corporation for the Approval of the Transfer of Certain Assets*, Order Approving Petitions (Nov. 7, 2005); Case 05-V-0747, *Joint Petition of Adelpia Communications Corporation, Comcast Corporation and Time Warner Cable, Inc. for Approval of the Transfer of Certain Assets*, at 4 (Nov. 7, 2005) (Noting in connection with approval of the transaction, petitioners’ contention that “the transaction will not have any harmful impact on the operation or the management of the cable systems, or any impairment of the financial, technical or other capabilities of these systems to provide services to the public and will comply with all applicable service and operational commitments”); Case 07-V-0525, *Petition of Time Warner Entertainment - Advance/Newhouse Partnership d/b/a Time Warner Cable to Purchase the Cable System of D.W.S. Construction Company, Inc. Serving the Town of Waverly, Located in Franklin County*, at 1-2 (Oct. 10, 2007) (Noting in connection with approval of the transaction petitioner’s contention that the transaction will not have a negative impact on the operation or management of the cable system, will not impair the financial, technical or other capabilities of this system to provide service to the public, and will comply with all applicable service and operational commitments. The Company also states that it possesses the financial capability to operate the system, to make all appropriate system investments, and to comply with all applicable federal, state and local system requirements”); Case 04-V-0860, *Petition of Time Warner Entertainment Advance/Newhouse Partnership (TWEAN) to Acquire Franchise Titles and Ownership Interests Held by its Subsidiary CAT Holdings, LLC in its System Serving ten Watertown, New York Area Municipalities*, Order Approving Transfer, at 2-3 (May 5, 2004); Case 04-V-0465, *Petition of Bath Television & Service Co., Inc. for Approval of the Transfer of Assets with Time Warner Entertainment-Advance/Newhouse Partnership (TWEAN) Involving the Transfer of the Village of Bath, Town of Bath and the Village of Savona Cable Television Franchises to Time Warner Entertainment-Advance/Newhouse Partnership pursuant to Public Service Law § 222*, Order Approving Transfer, at 2-3 (Dec. 7, 2004).

<sup>157</sup> Compare NY PSL § 222(3)(b)[effective until April 1, 2017] and NY PSL § 222(3)[effective April 1, 2017].

access to broader programming, and had a proven track record as “an experienced provider of advanced cable, Internet access and telecommunications services.”<sup>158</sup> The Commission also noted that the “proposed transfer is expected to result in the continuation of the existing operations, terms, and conditions in place for the provision of cable service” by the companies being transferred.<sup>159</sup> Earlier this year, the Commission approved a second cable transfer under amended Section 222, applying a similar analysis.<sup>160</sup>

The instant Transaction clearly satisfies the post-amendment applications of the public interest test in the *Time Warner Cable/Haeefe* and *Adams CATV/ Oquaga Lake* approval orders. The record clearly shows that Charter possesses the requisite legal, financial and technical capabilities to operate the systems.<sup>161</sup> Further, Charter has committed to improving the overall performance of the Time Warner Cable systems by accelerating the upgrade to all-digital, offering enhanced broadband speeds and new technical features and capabilities such the Spectrum Guide, WorldBox, and an improved mobile TV app. Charter also will be making new infrastructure investments that will expand and enhance network performance, and taking steps to improve customer service. Charter’s track record in boosting the performance and capabilities of its systems in connection with the company’s transition to all-digital across nearly its entire footprint highlights its status as “an experienced provider of advanced cable, Internet access and

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<sup>158</sup> Case 14-V-0023, *Application of Time Warner Cable Northeast LLC in Connection with the Acquisition of Certain Cable Television Facilities and Franchises in the Towns of Greene and Smithville from Haeefe TV, Inc.*, Order Approving Transfers, at 7-8 (Apr. 29, 2014)(“*Time Warner Cable/Haeefe*”).

<sup>159</sup> *Id.*

<sup>160</sup> Case 15-V-0090, *Joint Petition of Adams CATV, Inc. and Oquaga Lake Cable, Inc. for Approval of Transfer of Control of Cable Television System Franchise, Certificates and Facilities in Broome County*, Order Approving Transfer, at 5-6 (May 21, 2015).

<sup>161</sup> While some commenters argue for additional public interest conditions to be imposed on the Transaction, there is no evidence in the record that casts doubt on Charter’s legal, technical, and financial qualifications to operate the systems.

telecommunications services, with significant resources.”<sup>162</sup> Thus, under the criteria applied by the Commission in connection with recent reviews of cable transfers following the amendment to Section 222, this Transaction should be approved.

Staff contends that in amending Section 222 in 2014, the legislature intended to subject cable television transfers to the “net benefits test” applied “in Commission decisions regarding utility acquisitions and mergers.”<sup>163</sup> Staff, however, cites no language or legislative history of the amendment to support this view. As noted above, the 2014 amendment did nothing more than make clear that the applicant seeking approval of a requested transfer held the burden of showing the transaction at issue was in the public interest. But a mere shift in the burden of

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<sup>162</sup> *Time Warner Cable/Haeefe* at 6.

<sup>163</sup> See Staff Comments at 2, 16-17. Staff’s suggestion that Section 706 of the Communications Act, 47 U.S.C. § 1302(a) endows it with authority to examine the impact on broadband service of a proposed cable television transfer is without merit. Staff Comments at 12-13. As a threshold matter, the D.C. Circuit’s opinion in *Verizon v. Federal Communications Commission*, 740 F. 3d 623 (D.C. Cir. 2014), did not actually rule on whether Section 706 constitutes an affirmative and independent grant of authority over broadband to State Commissions, because that issue was not at stake in the case. Instead, the Court simply held that the reference to State Commissions in Section 706(a) offered no support for Verizon’s claim that the provision lacked a grant of authority to the FCC. In any event, the court also made clear that any action taken under Section 706(a) is valid only if it furthers the objectives of that provision. See 740 F.3d at 642-49. There is no basis for concluding that reading Section 706(a) to empower 50 different State Commissions to assert regulatory authority over broadband service in connection with any transfer affecting broadband facilities would further the statute’s goals of encouraging removing barriers to infrastructure or encouraging deployment of advanced telecommunications capability. To the contrary, such a circumstance would be flatly inconsistent with the Federal scheme of broadband regulation reaffirmed by the FCC in the *Open Internet Order* adopted in the wake of the D.C. Circuit’s decision. *Protecting the Open Internet*, 30 FCC Rcd 5601 (2015). In that Order, the FCC reiterated that broadband Internet access is still a jurisdictionally interstate service for regulatory purposes and that the Commission will preempt States that impose “obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme.” *Id.* at ¶ 431. The D.C. Circuit made clear that whatever authority may be imparted under Section 706(a) may not be exercised in a manner inconsistent with the Communications Act, 740 F.3d at 649, and a State Commission’s assertion of authority over an interstate service would do just that. Further, the Order notes that, pre-reclassification, Commission precedent consistently treated broadband as an interstate service that should be insulated against potentially conflicting State-level obligations and requirements, and that reclassification of broadband provided no basis for deviating from that precedent. *Open Internet Order* at ¶ 433. The prospect of 50 different State Commissions regulating broadband service via transfer authority creates precisely the type of conflicting regulatory patchwork the FCC sought to avoid, and would clearly deviate from Federal policies aimed at establishing a comprehensive national framework for broadband service.

proof is much different from codifying into Section 222 a utility-based, quantitatively-driven formula applicable to non-competitive markets.<sup>164</sup> In addition, Staff's position also is belied by the fact that neither of the two cable transfer decisions issued by the Commission in the wake of the amendment to Section 222 proposed to apply the utility net benefits test.<sup>165</sup>

Indeed, there are good reasons why cable companies should be treated differently from electric and gas utilities under State law, given the different markets in which they operate. Cable companies operate in a competitive marketplace, subject to competition from DBS providers, telephone companies offering video, broadband and telephony services, mobile broadband companies, and a growing array of over-the-top video providers. Unlike utility markets, merger transactions in competitive and dynamic markets such as communications are the product of, and subject to, market forces and consumer preferences, and therefore warrant consideration under a different standard than the utility net benefits test.

Further, State law offers little support for the view that the amendment to Section 222 was designed to adopt the utility net benefits test. To the contrary, a more reasonable reading of the provision is that it was designed to align Section 222 with the burden of proof in the standard of review under Section 100 of the Public Service Law, which also places it on the applicant.<sup>166</sup> As noted above, that provision has not been held to apply the utility net benefits test, and

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<sup>164</sup> See *supra* at 156.

<sup>165</sup> See *supra* at text accompanying notes 158-160. Indeed, any decision now to reverse course and depart from PSC precedent by applying the utility net benefits test to a cable transfer request – particularly after declining to do so in two post-amendment mergers – would face scrutiny under the State Administrative Procedure Act. *In re Charles A. Field Delivery Serv.*, 66 N.Y.2d 516, 516-517 (1985) (“A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.”); see also *Long Is. Light. Co. v. Public Service Com.*, 137 A.D.2d 205, 212 (3d Dep’t 1988) (annulling the PSC’s decision because it departed from prior precedent without explanation); *National Fuel Gas Distribution Corp. v. Public Service Com.*, 154 A.D.2d 31, 36-37 (3d Dep’t 1990) (finding the PSC’s decision arbitrary and capricious because it departed from prior policy without a sufficient explanation).

<sup>166</sup> See NY PSL § 100(3).



decisions thereunder have expressly taken account of the growth and impact of competition in communications services.

**C. Even If Section 70 Did Address the Appropriate Standard of Review in Connection with the Transaction, The Utility Net Benefits Test Would Still Be Inapposite**

Even *assuming arguendo* that the amendment to Section 222 did incorporate the standard of review for mergers of electric and gas companies under Section 70, that still would not support a conclusion that the net benefits test should apply. A significant number of transactions approved under Section 70 involving competitive electric generators and merchant transmission companies have been decided under a lighter public interest standard than the net benefits test applied to utility providers. Since 1991, in its landmark *Wallkill* ruling,<sup>167</sup> the Commission has analyzed upstream transactions of these companies under a public interest standard that only requires a showing that a transaction will not result in undue market power.<sup>168</sup> The Commission has consistently recognized that these companies participate in competitive industries and that their investment decisions do not put captive ratepayers at risk.

The characteristics of cable companies are much more closely aligned to those of competitive electricity generators and merchant transmission owners than to regulated utilities. As noted above, cable companies, like competitive electricity owners, operate in an intensely competitive market from wireline and wireless providers as well as online video distributors such as Netflix and Hulu. Their investment decisions involve private capital and do not put captive

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<sup>167</sup> Case 91-E-0350, *Wallkill Generating Company L.P. – Petition For a Declaratory Ruling That the public Service Law is Inapplicable, or That Further Regulation Thereunder is Unnecessary, or in the Alternative, That Light-Handed Regulation be Applied*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (Aug. 21, 1991) (“*Wallkill*”).

<sup>168</sup> Case 15-E-0208, *Saranac Power Partners – Petition for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest or in the Alternative, an Order Approving the Transfer*, Order Approving a Transfer Transaction and Making Other Findings (Aug. 17, 2015).

ratepayers at risk. Indeed, like competitive electric providers, they have no captive ratepayers. As such, the public interest standard that is utilized in Section 222 should be the same public interest standard in section 70 that is applied to competitive electricity providers. Indeed, throughout the *Wallkill* ruling the Commission likened competitive generators to telecommunications providers, concluding that “lightened regulation, analogous to that imposed on telecommunications service providers who operate in a competitive environment, is appropriate.”<sup>169</sup> The Commission has consistently reviewed transfers of competitive electricity providers in this light and applied the *Wallkill* presumption to upstream transfers that do not create market power or harm to the interests of captive ratepayers.<sup>170</sup> If an analysis is required, the evaluation is generally limited to issues regarding market power and impacts on captive ratepayers, without regard to the net public benefits standard recently applied to heavily regulated gas and electric utilities.<sup>171</sup> Here, Staff has already recognized that the Transaction poses “no detriment” in terms of market power or anti-competitive effects.<sup>172</sup>

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<sup>169</sup> *Wallkill*, at 8

<sup>170</sup> Case 15-E-0243, *Joint Petition of Cross-Sound Cable Company et al for an Order Approving the Transfer, an Order Approving the Financing, and for a Declaratory Ruling Regarding Regulation*, Order Approving a Transfer Transaction and a Financing and Making Other Findings, (August 17, 2015) at 7; Case 15-E-0177, *Joint Petition of Competitive Power Ventures Holdings, LLC et al for a Declaratory Ruling that Public Service Law Section 70 Does Not Apply to Proposed Transactions*, Declaratory Ruling on Review of a Transfer Transaction, (May 19, 2015) at 5.

<sup>171</sup> Where an entity owns a controlling interest in only one facility and is not affiliated with ownership of any other generation facility in that market, increasing the size of the controlling interest does not affect the market power analysis. Case 15-E-0208, *Saranac Power Partners – Petition for a Declaratory Ruling Disclaiming the Need to Review a Transfer of a 5% Ownership Interest or in the Alternative, an Order Approving the Transfer*, Order Approving a Transfer Transaction and Making Other Findings, (Aug. 17, 2015).

<sup>172</sup> DPS Staff Comments at 47 (“Petitioners argue that the transaction will not have a negative impact on competition. Staff generally agrees with this assertion. There appears to be little danger of the increased exercise of market power in this case and therefore no detriment exists in this regard”).

#### **D. Federal Law Precludes Application of the Utility Net Benefits Test**

Federal law also militates against reading the amendment to Section 222 as enacting the utility “net benefits test.” Article 11 expressly provides that New York cable law should be construed in accordance with Federal law.<sup>173</sup> The Federal Cable Act likewise requires fidelity to the constraints on State and local authority imposed by Title VI of the Cable Act.<sup>174</sup> Under the FCC’s rules implementing Section 617 of the Cable Act, the scope of transfer review authority is confined to issues related to a transferee’s financial, legal and technical ability to operate the cable systems proposed to be transferred.<sup>175</sup> Further, the prohibition in Section 621(c) against subjecting cable operators providing cable service to common carrier or utility regulation,<sup>176</sup> precludes reading Section 222 as having adopted the utility benefits test.

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<sup>173</sup> NY PSL §§ 211, 215.

<sup>174</sup> 47 U.S.C. § 556(c) (“Any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this Act shall be deemed to be preempted and superseded”); *Liberty Cablevision of Puerto Rico, Inc. v. Municipality of Caguas*, 417 F.3d 216, 221 (1st Cir. 2005)(“Congress has made it unmistakably clear that the Cable Act will preempt any inconsistent state or local law”); H. Rep. No. 98-934, 98<sup>th</sup> Cong., 2d Sess., (1984) at 19 (The Cable Act “defin[es] and limit[s] the authority that a franchising authority may exercise through the franchise process”).

<sup>175</sup> *In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection & Competition Act of 1992*, First Report and Order, 8 FCC Rcd 6828, ¶¶ 85-86 (1993) (Noting that the Form 394 transfer form established in response to the enactment of Section 617 was designed to include “the information necessary to establish the legal, technical and financial qualifications of the proposed transferee” and to “ensure that the franchise authorities are provided with sufficient information to evaluate and render prompt decisions with respect to such transfer requests”).

<sup>176</sup> 47 U.S.C. § 541(c).

**E. Even If the Utility Net Benefits Test Were Applicable, the Transaction Would Satisfy It Without Need for Additional Conditions**

Finally, even if the amendment to Section 222 could be construed to have adopted the utility net benefits test, Petitioners have met the test. As a threshold matter, Staff overstates the amount of synergy savings that should be attributable to customers in several respects.<sup>177</sup>

First, Staff fails to compute the net present value of the \$402 million in synergy savings it claims should be reaped by New York subscribers over the first ten years of the Transaction, thereby overstating the quantitative amount of benefits to be delivered under the test.<sup>178</sup> The net present value computation utilized by Staff in its analysis of the Comcast/Time Warner Cable transaction reduced the amount of customer synergy savings by nearly 40%, from \$530 million over 10 years to \$303 million.<sup>179</sup> A comparable computation and reduction should be applied here, which would bring the overall number to \$241 million instead of \$402 million.

Second, in capital intensive and technologically dynamic businesses such as cable, broadband and telephony, it is more reasonable to assume that a substantial portion of synergy savings will be re-invested in network infrastructure and new technologies – including research and development associated with such investment – than simply returned to customers or

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<sup>177</sup> This is especially true when one considers any purportedly “negative” attributes of this Transaction against which the benefits are ostensibly netted against under the regulated utility net benefits test. As thoroughly discussed above and supported by most commenters, the ‘negatives’ enumerated by Staff are actually positives when examined in more detail in light of Charter’s commitments in this case. Even the post-merger financial issues described by Staff are at worst “neutrals” in this calculation as explained above. Thus, when determining what additional conditions are required to balance the negatives of the Transaction, the instant benefits of the merger are more than sufficient to significantly outweigh the *de minimis* negatives.

<sup>178</sup> The net present value computation utilized by Staff in its analysis of the Comcast/Time Warner Cable transaction reduced the amount of customer synergy savings by nearly 40%, from \$530 million over 10 years to \$303 million.

<sup>179</sup> *Joint Petition of Time Warner Cable, Inc. and Comcast Corporation for Approval of a Holding Company Level Transfer of Control*, Case 14-M-0183, Comments of the New York State Department of Public Service Staff, August 8, 2014, at 18.

shareholders.<sup>180</sup> Staff's calculation of expected net benefits makes no adjustment to account for this, however, even though such investment inherently inures to the benefit of subscribers.

Third, Staff assumes that synergy savings will be uniformly reaped in each geographic area served by the merging entities in proportion to that area's share of the combined company's total subscriber base. But each synergy may not have the same effect across the merged entity's footprint. Further, other benefits from the merger that are not reflected in cost synergies but still tangibly affect subscribers – such as the absence of separate, additional modem fees or lower broadband pricing – have a particularly strong and beneficial impact in areas where Time Warner Cable subscribers are overrepresented relative to Charter.

But even if the \$402 million in synergy savings Staff assumes should flow to New York subscribers were not overstated, the Transaction clearly provides that amount of benefits – and more. Indeed, the ability of Time Warner Cable subscribers in New York to obtain faster base broadband speeds at comparable or lower prices than they currently pay and without separate, additional modem fees represents tens of millions of dollars in potential value and costs savings for subscribers per year. Further, Charter already has indicated that New Yorkers will benefit from Charter's commitment to invest \$2.5 billion nationwide to reach previously unserved enterprise and business customers, to construct one million additional line extensions across the merged company's footprint to reach previously unserved areas, and to deploy 300,000 new out-of-home WiFi access points across its footprint within four years. New Charter has also committed to upgrading Charter's Chatham System on a timetable faster than requested by Staff.

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<sup>180</sup> See Case 14-C-0370, *In re: Study on the State of Telecommunications in New York State*, Staff Assessment of Telecommunications Services, at 75, 79 (Jun. 23, 2015) (noting that New York communications companies “are reinvesting in their businesses at strong rates” and that “cable television companies have invested in modern network infrastructure, including head-end equipment, coaxial and fiber optic outside plant cabling; subscriber devices, such as energy efficient set-top boxes; and advanced software to provide consumers with the latest in technology and services”).

Each of these commitments will provide substantial benefits and considerable value for New Yorkers. Charter also will be making investments in customer service, making available new technologies and capabilities that will improve the customer experience such as Spectrum Guide, WorldBox, and a mobile TV app, enhancing competition in voice telephony and the enterprise market, and making available a low-cost broadband offering to eligible subscribers. These undertakings will provide residents with additional value and benefits that “will be important for the average New Yorker in the new company’s service area.”<sup>181</sup> Thus, even under the net benefits metrics set forth under the problematic standard proposed in Staff’s comments, the Transaction satisfies the public interest.

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<sup>181</sup> Business Council Comments at 1.

## CONCLUSION

The record shows that approval of the Transaction will enable New York residents and businesses to enjoy the benefit of improved technological capabilities and more advanced video and voice services, faster and more widely available broadband Internet service, enhanced competition for business services, and Charter's robust commitment to customer service and community initiatives. Petitioners respectfully request that the Transaction be approved without conditions.

Respectfully Submitted,

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**EXHIBITS TO THE**  
**REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.**  
**AND TIME WARNER CABLE INC.**



**Letter from Nick Lugo to FCC Chairman Tom Wheeler  
("Hispanic Chamber Comments") FCC MB Docket No. 15-149**



*“Leading the  
Way to  
Economic  
Development”*

**RE:** MB Docket No. 15-149

Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Wheeler,

We are writing in support of the merger of Charter Communications, Time Warner Cable and Bright House Networks into New Charter. At the New York City Hispanic Chamber of Commerce, we are devoted to advocacy, economic development and community involvement. Our work reflects the vibrancy of Hispanic businesses in the city, and we are constantly striving to bring benefits to our members. New Charter's commitment to diversity and inclusion would offer valuable opportunities to our members and improve broadband services.

New Charter would adopt and expand Time Warner's award-winning diversity and inclusion initiatives. These include a range of programs aimed at improving workplace diversity, engaging in mutually beneficial relationships and providing diverse programming. Time Warner's programs for minority, women, veteran and disabled-owned businesses have been especially beneficial to many of our members. It offers free web-based seminars to entrepreneurs interested in joining the broadband supply chain. The programs provide our members with an avenue into the industry that would otherwise be difficult to break through.

New Charter's diverse programming would also benefit many in the Hispanic community. New Charter would offer Charter's current range of diverse programming that provides the largest tier of Hispanic channels, including El Rey, Fusion, Fuse, NBC Universo, and One World Sports.

We are impressed with New Charter's commitment to diversity and inclusion. We ask that you review the impact of these programs and support the merger.

Sincerely,

Nick Lugo  
The New York City Hispanic Chamber of Commerce

**Letter from Rev. Jacques Andre DeGraff to FCC Chairman Tom Wheeler  
("DeGraff Comments") FCC MB Docket No. 15-149.**

# REV. JACQUES ANDRE DEGRAFF

RE: MB Docket No. 15-149

Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Wheeler,

I am writing to you regarding the potential merger of Charter Communications, Time Warner Cable, and Bright House Networks into New Charter. I am considering the merger as a proponent of education, economic development, and wealth building for African Americans. Through its early commitments to diversity and inclusion, I believe New Charter would be a positive change in the cable broadband industry.

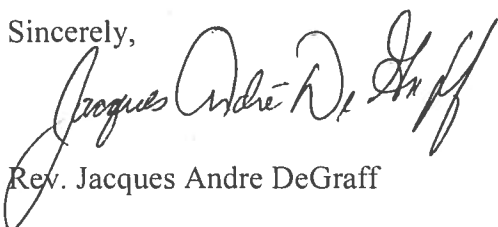
I have advocated for economic empowerment in the African American community for decades, and worked with groups like One Hundred Black Men, Inc., and The Minority Business Leadership Council, to strengthen African American owned businesses through mentoring and advocacy. My work has been focused on expanding opportunities for M/WBE firms and ensuring diversity in the workplace. I understand that movements in the industry, such as the creation of New Charter, present an opportunity to encourage inclusion through ongoing community partnerships and on a community advisory level.

Like much of corporate America, the cable broadband industry struggles with both workforce diversity and inclusive community partnerships. New Charter would address these deficiencies from the very beginning by bringing together different initiatives of the merging companies and expanding them across its entire new footprint. For example, New Charter would adopt Time Warner's award-winning diversity program, including its partnerships with educational institutions and nonprofits. It would also continue free seminars for minority-owned businesses in order to increase participation in New Charter's supply chain. Connecting small African American businesses with a national company would open doors for many entrepreneurs who otherwise would not have the same opportunity.

New Charter would also commit to expanding Bright House Network's low-income program. Through this initiative, low-income customers could access high-quality broadband at a discounted rate. These consumers suffer without broadband, unable to communicate with potential employers or connect with family and friends. The program would be a huge relief for many individuals who have long been priced out of the market.

I am excited about New Charter, and believe it would be a great asset to the community I serve. I hope you will consider the benefits of the merger and extend your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacques Andre DeGraff". The signature is written in a cursive, flowing style with some loops and flourishes.

Rev. Jacques Andre DeGraff

**Comments of Public Media Network, MB Docket No. 15-149 (Jul. 29, 2015).**



July 29, 2015

Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Proceeding No. 15-149

Dear Chairman Wheeler:

On behalf of the Board of Directors of Public Media Network (PMN), an inter-governmental agency created by a consortium of Local Franchising Authorities (LFA's) to operate Public, Education, and Government (PEG) cable access channels and services in Kalamazoo County, Michigan, I'd like to submit comments related to Proceeding No. 15-149 (Charter Communications Inc., Time Warner Cable Inc., Bright House Networks LLC merger/acquisition).

We are confident that the Federal Communications Commission (FCC) will act diligently in its review of this proposed merger/acquisition, with plenty of scrutiny applied to key dynamics such as broadband penetration and management, infrastructure deployment, programming acquisition, customer service commitments, and the potential impact of the merger/acquisition in existing and created markets. However, I would like to focus my comments on a specific public interest component: the impact of the merger/acquisition on existing (and future) Public, Education, and Government community media organizations in the markets served by these three corporate entities.

First and foremost, we would expect the FCC to require that the resulting entity of this merger/acquisition proposal completely and efficiently fulfill all PEG-related cable franchise obligations in the markets served by the new entity. This expectation should be applied regardless of whether the new entities are operating directly under "federal – local" or "federal – state – local" regulatory structures.

Our experience with Charter Communications Inc. on PEG issues has been decidedly positive. PMN operates five (5) community channels on the Charter system serving the greater Kalamazoo, MI market, thus we have one of the largest community channel "footprints" in any existing Charter system. This has presented significant challenges as the system has evolved.

We have been pleased with both the technical and administrative response from Charter management when dealing with a myriad of issues. Specifically, we have cooperatively managed multiple channel migrations, a transition to the existing all digital platform, distribution of PMN's channels onto the Western Michigan University campus cable system, and the inclusion of PMN programming into the electronic channel guide system. In each instance, Charter approached us proactively and with a willingness to find appropriate solutions. I would expect that approach to continue in our system, and extend to the systems managed by the new entity.

Thank you for considering our comments. We look forward to following the FCC's proceeding on this matter very closely.

Sincerely,



Harry S. Haasch  
Executive Director, PMN