

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

Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CC0, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and and Bright House Networks Information Services (California), LLC (U6955C) for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C), to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C).

Application No. A.15-07-009
(filed July 2, 2015)

**OPENING COMMENTS OF THE GREENLINING INSTITUTE AND WRITERS
GUILD OF AMERICA, WEST, INC. ON THE PROPOSED DECISION GRANTING
CONTROL SUBJECT TO CONDITIONS**

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I. INTRODUCTION

Pursuant to Rule 14.3, The Greenlining Institute (Greenlining) and Writers Guild of America, West, Inc. (WGAW) file these comments on the Proposed Decision Granting Control Subject to Conditions issued April 12, 2015. Greenlining and WGAW applaud the Assigned Commissioner, Administrative Law Judge and Commission staff for a thorough analysis of the record, and support the Proposed Decision’s findings of serious harms that would result from the proposed transaction. However, the Proposed Decision errs in concluding that Applicants’ commitments in Memoranda of Understanding (MOU) with the California Emerging Technology Fund (CETF) and the National Diversity Coalition (NDC) are sufficient to constitute public interest benefits. As a result, the proposed transaction’s public interest harms outweigh any purported public interest benefits, and the Commission should deny the proposed transaction. However, if the Commission does not deny the proposed transaction, it should

significantly strengthen the Proposed Decision's current mitigation measures to protect consumers and the public interest.

Greenlining and WGAW generally support the mitigation measures in the Proposed Decision. However, while the proposed mitigation measures in the Proposed Decision will help obviate some of the public interest harms created by the proposed transaction, the Proposed Decision errs in concluding that those mitigation measures will be sufficient to make the proposed transaction in the public interest. Several of the mitigation measures could benefit from clarifying language to ensure that those mitigation measures are robust and avoid confusion. Additionally, the Commission should add conditions allowing existing Time Warner Cable and Bright House Networks to keep their current plans, and ensuring that California obtains the same benefits from conditions that Charter has assented to in other states.

II. ANALYSIS

A. Applicants' Commitments in Memoranda of Understanding with the California Emerging Technology Fund and the National Diversity Coalition Are Insufficient to Constitute Public Interest Benefits.

The Proposed Decision summarizes two Memoranda of Understanding (MOU)--one between New Charter and the California Emerging Technology Fund (CETF), and one between New Charter and the National Diversity Coalition (NDC)--and concludes that the agreements in those Memoranda are public interest benefits.¹ However, those agreements are insufficiently robust to constitute public interest benefits. Much of the data that the expanded Charter will under the MOUs will be shared subject to non-disclosure agreements, and therefore will not be available to the public. Additionally, agreements in the MOUs regarding broadband deployment and diversity are too weak and/or vague.

¹ Proposed Decision Granting Control Subject to Conditions at 56, 65 (April 12, 2016) (hereafter, Proposed Decision).

1. Data Sharing Commitments in the MOUs Are Insufficient to Constitute Public Interest Benefits Because The Shared Data Will Not Be Publicly Available.

The CETF and NDC Memoranda contain a number of agreements involving the expanded Charter's sharing data regarding customer enrollment,² workforce demographics,³ supplier diversity,⁴ programming diversity,⁵ and community investments.⁶ However, Charter will only provide this data under signed non-disclosure agreements.⁷ The public availability of this data is critical, both to evaluate the expanded Charter's efforts (for example, to determine whether the company's supplier diversity efforts are actually resulting in increased supplier diversity) and to hold the expanded Charter accountable to its commitments. Even if Charter's above-listed commitments actually constitute public interest benefits, the impact of those benefits will be significantly diluted by the fact that the public will not have access to the data, and that CETF and NDC will be unable to publicly praise or criticize the expanded Charter's performance in those areas.

2. The Terms In The CETF MOU Are Insufficient To Constitute Public Interest Benefits.

The Proposed Decision concludes that the terms in the CETF MOU are sufficient to constitute public interest benefits.⁸ Greenlining and WGAW respectfully disagree with that

² Joint Motion of Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC (U6878C) And The California Emerging Technology Fund To Modify Positions In Proceeding To Reflect Memorandum of Understanding Between the Parties, Attachment A at 4 (hereafter, CETF MOU).

³ Joint Motion of Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC (U6878C) And The National Diversity Coalition To Modify Positions In Proceeding To Reflect Memorandum of Understanding Between the Parties, Attachment A at 7 (hereafter, NDC MOU).

⁴ *Id.* at 9.

⁵ *Id.* at 11.

⁶ *Id.* at 12.

⁷ CETF NOU at 4; NDC MOU at 7, 9, 11, 12.

⁸ Proposed Decision at 12-13.

conclusion. While Greenlining and WGAW applaud the intent behind the MOU, the terms of the MOU are insufficiently robust to ensure public interest benefits.

a. The Terms In The CETF MOU Regarding Broadband Deployment Are Insufficient To Constitute Public Interest Benefits.

For example, the CETF MOU requires the expanded Charter to build far fewer line extensions in California than the New York Public Service Commission requires the expanded Charter to build in New York. While the CETF MOU contains a commitment by Charter to build new line extensions to 80,000 homes and businesses within the expanded Charter's service territory,⁹ New Charter will be required to build at least 145,000 new line extensions **outside** of New Charter's existing service territory in New York, and will be required to "bid for Broadband 4 All Program funding to provide line extensions to any remaining unserved and underserved premises in its New York service territory."¹⁰ When compared to New York's requirement, the commitment in the CETF MOU is simply too small to constitute a public interest benefit. Similarly, Greenlining and WGAW assert that Charter's commitment in the CETF MOU to deploy at least 25,000 wireless hotspots¹¹ is likewise too low. Greenlining and WGAW respectfully request that the Commission add the following ordering paragraphs:

2(x). Within three years from the issuance of this Order, New Charter will provide service to new broadband passings for at least 150,000 homes outside of its existing service territory, at least 50% of which must be in communities where more than 25% of households speak a language other than English at home.

2(x). Within three years from the issuance of this Order, New Charter will deploy at least 30,000 out-of-home wireless hotspots within its California service

⁹ CETF MOU at 4-5 (Commitment 7(b)).

¹⁰ New York Public Services Commission, Order Granting Joint Petition Subject to Conditions, Appendix A at p. 1 (Jan. 8, 2016), available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=48513> (last accessed Jan. 15, 2016) (hereafter NYPSC Order).

¹¹ CETF MOU at 5 (Commitment 7(c)).

territory, at least 50% of which must be in communities where more than 25% of households speak a language other than English at home.

b. The Terms In The CETF MOU Regarding Low-Cost Broadband Are Insufficient To Constitute Public Interest Benefits.

CETF estimates that there will be approximately 2.3 million low-income households in the expanded Charter's service territory.¹² CETF further estimates that less than 45 percent of those households will be eligible for the expanded Charter's low-income broadband offering, because that program's requirements only accept enrollees whose households include at least one child on the National School Lunch Program or who are over the age of 65 and receive Supplemental Security Income.¹³ As indicated by CETF's estimates, this excludes an enormous number of low-income households in the expanded Charter's service territory. Additionally, there may be even more households that should be eligible but that the expanded Charter will reject from the program because they are already customers of one of the Applicants (or have been customers within sixty days of attempting to enroll in the low-income program), or who have outstanding debt with one of the applicants.¹⁴ Based on these unnecessarily restrictive eligibility requirements, Greenlining and WGAW respectfully submit that the proposed low-income program is insufficient to constitute a public interest benefit.

3. The Terms In The NDC MOU Are Insufficient To Constitute Public Interest Benefits.

The Proposed Decision concludes that diversity agreements in the MOU between Charter and the National Diversity Council are sufficient to constitute public interest benefits.

Greenlining and WGAW respectfully disagree with that conclusion.

¹² NDC MOU at 4.

¹³ *Id.*

¹⁴ *Id.*

a. The Terms In The NDC MOU Regarding Supplier Diversity Are Insufficient To Constitute Public Interest Benefits.

Greenlining and WGAW appreciate the fact that the expanded Charter will commit to reporting its supplier diversity numbers under General Order 156.¹⁵ However, when setting goals for its minority procurement, Charter has committed set “aspirational” goals which are far too low. Under the terms of MOU, Charter will set aspirational goals consistent with “other similarly situated cable operators’ supplier diversity spend in the state.”¹⁶ To Greenlining and WGAW’s knowledge, the only other similarly situated cable operator in terms of scope and service territory would be Comcast, whose diversity spending has not exceeded 10% in the past five years and has the second-lowest spend percentage of any large reporting energy or telecommunications company.¹⁷ Similarly, while the NDC MOU contains a list of planned supplier diversity outreach efforts, that list lacks a great deal of detail which would allow the Commission to determine that those efforts would serve the public interest.¹⁸

b. The Terms In The NDC MOU Regarding Workforce Diversity Are Insufficient To Constitute Public Interest Benefits.

The NDC MOU indicates that the expanded Charter plans to create “at least 10,000 field technician and customer service jobs”¹⁹ as a result of the proposed transaction. However, the MOU contains no commitments regarding diversifying Charter’s workforce, with the exception of a commitment to create ten internships.²⁰ Additionally, as discussed above, while the

¹⁵ *Id.* at 9.

¹⁶ NDC MOU at 9.

¹⁷ The Greenlining Institute, Supplier Diversity Report Card: Total Spending Remains High, But Progress Has Stalled 5 (July 2015).

¹⁸ For example, the MOU indicates that the expanded Charter will be working with a number of national chambers of commerce, but does not list any national Asian American Chamber of Commerce, raising serious concerns whether Asian Americans will have a seat at the table. NDC MOU at 8.

¹⁹ *Id.* at 7.

²⁰ *Id.*

expanded Charter will provide NDC with data regarding the company's workplace diversity numbers, that data will not be publicly available.²¹ As discussed above, the lack of availability of this data will making it significantly more difficult to track the expanded Charter's efforts and hold the company accountable. Accordingly, Greenlining and WGAW do not believe that the NDC MOU's workplace diversity commitments are sufficient to constitute a public interest benefit.

c. The Terms In The NDC MOU Regarding Programming Diversity Are Insufficient To Constitute Public Interest Benefits.

The NDC MOU claims to make a number of commitments to expand the diversity of programming that will be offered to the expanded Charter's customers.²² However, those commitments do not bind the expanded Charter to any significant efforts to increase programming diversity. For example, when discussing African-American focused programming networks, the MOU only requires the expanded Charter to "agree to at least one programming agreement extension with existing African-American focused programming networks."²³ The MOU further states that the expanded Charter will expand its carriage of Latino targeted programming by no less than six million subscribers post-transaction.²⁴ However, this six million numbers includes "subscribers added by Charter, TWC, and BHN since the transaction was announced."²⁵ Finally, the MOU's commitment regarding Asian American programming is so vague as to be meaningless, stating only that "New Charter commits to **explore opportunities** to expand its programming offerings to serve [Asian-American] communities."²⁶

²¹ *Id.*

²² *Id.* at 9-11.

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* (emphasis added).

Greenlining and WGAW believe that the programming diversity commitments in the NDC MOU are too vague and weak to constitute public interest benefits. As an ex parte filed by the National Association of African American-Owned Media (NAAOM) and Entertainment Studio Networks, Inc. (ESN) notes, Comcast made similar commitments in the Comcast/NBCU merger, and those commitments failed to lead to increased diversity programming.²⁷ Greenlining and WGAW are especially concerned about the lack of strong programming diversity commitments by Charter in California because it appears that the forthcoming FCC Order approving the proposed transaction with conditions will not include conditions regarding programming diversity.²⁸ According to NAAOM and ESN, the proposed order circulated by Chairman Wheeler does not include “specific, clear, enforceable merger conditions designed to increase minority-owned independent programming sources.”²⁹

The Proposed Decision notes that because Applicants have raised the issue of broadband benefits in their application, Applicants cannot object to the Commission’s examining broadband impacts as part of the Commission’s analysis of the proposed transaction.³⁰ Similarly, because Applicants have raised the issue of programming diversity in its MOU with NDC, and subsequently filed that MOU with the Commission, Applicants should not be able to object to the Commission’s examining the effects of the proposed transaction on programming diversity. Given that the FCC is apparently not going to include conditions specific to programming diversity, it is imperative that the Commission, consistent with Public Utilities Code section 854,

²⁷ Letter from David R. Goodfriend, Esq. to Marlene H. Dortch, Secretary, Federal Communications Commission re: Ex Parte Presentation in MB Docket No. 15-149 at 3, Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 15-149 (April 27, 2016), *available at* <http://apps.fcc.gov/ecfs/document/view?id=60001710054> (last accessed May 2, 2016)

²⁸ *Id.*

²⁹ *Id.* at 2.

³⁰ Proposed Decision at 20.

subdivision (c), review the impacts of the proposed transaction on programming diversity and impose any mitigation measures that would help obviate harms to programming diversity.

B. The Commission Should Clarify Several Of The Conditions in the Proposed Decision.

Greenlining and WGAW generally support the mitigation measures in the proposed decision. For example, Greenlining and WGAW particularly appreciate the conditions that (1) all Applicants must comply with the certification requirements that the Commission imposed in D.13-05-035,³¹ and (2) the expanded Charter must comply with the Federal Communication Commission's (FCC) Open Internet Order.³² However, the Proposed Decision's Lifeline condition could benefit from clarifying language. Additionally, while Greenlining and WGAW agree with the Proposed Decision's conclusion that Applicants have failed to show that the proposed transaction will benefit public utility employees, Greenlining and WGAW urge the Commission to impose conditions to help ensure that employees will benefit from the proposed transaction.

1. The Commission Should Clarify the Proposed Decision's Mitigation Measures Regarding LifeLine.

Greenlining and WGAW strongly support the PD's mitigation measure requiring that the expanded Charter offer Lifeline service throughout its service territory.³³ It appears that, like the mitigation measure regarding net neutrality, the Commission does not intend for this obligation to expire. The PD could benefit from clarification of this intention. Additionally, the PD could benefit from clarification that New Charter, through its certificated carriers, must offer LifeLine

³¹ *Id.* at 38, Ordering Paragraph 2(d).

³² *Id.* at 69, Ordering Paragraph 2(h).

³³ *Id.*, Ordering Paragraph 2(j).

service throughout New Charter's entire service territory. Accordingly, Greenlining and WGAW respectfully suggest the following change to ordering paragraph 2(j):

- 2 (j). Within six months of the closing of the Transaction, New Charter's certificated carriers shall offer *federal and California* Lifeline phone service discounts to all eligible households (in accordance with CPUC Lifeline rules) within ~~its~~ *New Charter's* service territory.

2. The Commission Should Clarify the Proposed Decision's Mitigation Measures Regarding Jobs.

Greenlining and WGAW agree with the Proposed Decision's conclusion that Applicants have failed to demonstrate that the proposed transaction will be fair and reasonable to affected public utility employees.³⁴ Greenlining and WGAW respectfully suggest that the Commission add the following ordering paragraph:

- 2(x). *For three years from the issuance of this Order, New Charter shall not cause a net loss in jobs in California.*

C. The Commission Should Add Mitigation Measures To The Proposed Decision That Ensure The Proposed Transaction Serves The Public Interest.

Greenlining and WGAW believe that the Proposed Decision errs in failing to include several conditions that would ensure that the proposed transaction is in the public interest. For example, Greenlining and WGAW are familiar with Center for Accessible Technology's (CforAT) Opening Comments and agree that the Proposed Decision omits important analysis and conditions designed to protect consumers with disabilities. Similarly, Greenlining and WGAW feel that, in order to ensure that the proposed transaction is in the public interest, the Proposed Decision must include conditions (1) requiring that the expanded Charter allow former Time Warner Cable and Bright House customers to keep their current plans and (2) requiring that

³⁴ *Id.* at 40, citing Cal. Pub. Util. Code § 854(c).

Charter provide reasonably comparable benefits to California that it has provided to any other state.

1. The Commission Should Ensure That Current Time Warner and Bright House Networks Customers Can Retain Their Current Plans.

Greenlining and WGAW have both noted the importance of allowing existing Time Warner Cable and Bright House Networks customers to retain their current plans, at current prices, for a minimum period after the merger closes.³⁵ Charter did commit in its Reply Brief to “[a]llow existing Time Warner Cable and Bright House Networks customers to retain, without material changes that have the intent to discourage, the broadband services they subscribe to at the close of the Transaction for three years from the date of the closing.”³⁶ However, this commitment is not reflected in the Proposed Decision. It should be noted that this commitment extends only to broadband services, and the term “material changes that have the intent to discourage” leaves the expanded Charter ample room to modify pricing. Additionally, Greenlining and WGAW believe that a three-year commitment is far too short to protect consumers.

As Greenlining noted, the NYPSC’s approval of the proposed transaction requires New Charter to allow former Time Warner Cable customers to keep their current service for a period of three years from closing.³⁷ A similar commitment or requirement in California would serve the needs of communities of color and protect the public interest. Accordingly, Greenlining and WGAW respectfully request that the Commission add the following ordering paragraph:

³⁵ Testimony of Stephanie Chen at 9:8-13; WGAW Opening Brief at 53.

³⁶ Charter Reply Brief at 4.

³⁷ NYPSC Order at Appendix A, p. 3. This includes a requirement that customers can keep plans offering standalone broadband access.

2(x). *For a period of seven years from transaction close, New Charter will permit current Time Warner Cable and Bright House Networks to keep their current plans at current prices.*

2. The Commission Should Ensure That Its Mitigation Measures Are At Least As Robust As Mitigation Measures In Other States.

As noted above, Charter's commitments in this proceeding are significantly less robust than Charter's commitments in other states.³⁸ As the Proposed Decision notes, if the Commission approves the proposed transaction, the expanded Charter will become the third-largest MVPD in the country.³⁹ As the parties have noted, if the Commission approves the proposed transaction, the expanded Charter will have virtually exclusive control over the Los Angeles market and the attendant profits from that market. Given the immense benefits the expanded Charter will reap from the proposed transaction, it is unreasonable that Californians should not receive the same commitments that the expanded Charter has agreed to in other states. Accordingly, Greenlining and WGAW respectfully request that the Commission add the following ordering paragraph:

2(x). *If, in obtaining approval of the transaction in other state or local jurisdictions, New Charter commits to conditions that provide benefits stronger than those listed in this Order, New Charter shall, within 30 days following such commitment, notify the Commission of its intent to provide those same benefits in California at terms that are reasonably comparable to the other state or local commitments.*

³⁸ Section I(B)(2)(a), above.

³⁹ Proposed Decision at 6.

III. CONCLUSION

For the above-stated reasons, Greenlining and WGAW respectfully request that the Commission modify the Proposed Decision to deny the proposed transaction, or, in the alternative, adopt the mitigation measures discussed above.

Respectfully submitted,

Dated: May 2, 2016

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