



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

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Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and 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

**PROTEST OF THE CENTER FOR ACCESSIBLE TECHNOLOGY, COMMON CAUSE,
THE UTILITY REFORM NETWORK AND THE GREENLINING INSTITUTE TO THE
APPLICATION FOR TRANSFER OF CONTROL OF TIME WARNER CABLE
INFORMATION SERVICES (CALIFORNIA), LLC AND BRIGHT HOUSE
NETWORKS INFORMATION SERVICES (CALIFORNIA), LLC, TO CHARTER
COMMUNICATIONS, INC. AND TRANSFER OF CONTROL OF CHARTER
FIBERLINK CA-CCO.**

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Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“the Commission”) Rules of Practice and Procedure, The Center for Accessible Technology (“CforAT”), Common Cause, The Utility Reform Network (“TURN”), and The Greenlining Institute (“Greenlining”) (collectively, “Joint Consumers”), protest the above-captioned joint application of Joint Application of Charter Communications, Inc. (“Charter”); Charter Fiberlink CA-CC0, LLC (“Charter Fiberlink”); Time Warner Cable Inc. (“Time Warner Cable”); Time Warner Cable Information Services (California), LLC (“TWCIS”); Advance/Newhouse Partnership (“Advance/Newhouse”); Bright House Networks, LLC (“Bright House”); and Bright House Networks Information Services (California) (“BHNIS”) (collectively, “Applicants”) to authorize

the transfer of control of Time Warner, TWCIS, Bright House and BHNIS to Charter. The application was filed on July 2, 2015, and first appeared on the Commission's Daily Calendar on July 8, 2015. Pursuant to Rule 2.6(a), this protest is timely filed.

SUMMARY

The Commission should assess the proposed transaction pursuant to Public Utilities Code section 854, subdivisions (a), (b), and (c). Public Utilities Code section 854, subdivisions (b) and (c) expressly apply to the proposed transaction, as does section 706 of the 1996 Telecommunications Act. The Commission should not waive its review under subdivisions (b) and (c). If the Commission does waive that review, however, the commission should use the criteria enumerated in those sections in making its public interest assessment.

Applicants have not met their burden of proving that the proposed transaction is in the public interest. Applicants have not provided sufficient information for the Commission to determine that the proposed transaction would maintain or improve the quality of management of the new company. The proposed transaction promises to reduce competition, particularly in Los Angeles markets. Applicants have not provided sufficient information for the Commission to determine the effects of the proposed transaction on diversity, the new company's consumer practices, or state and local economic benefits. Additionally, the Commission should investigate the effects of the proposed transaction on consumers with unique telecommunications needs. Many of the purported benefits of the proposed transaction are not merger specific. Accordingly, the Commission should deny the Application or, in the alternative, further investigate whether the proposed transaction is in the public interest. If the Commission does approve the proposed transaction, it should impose mitigation measures to protect the public interest.

ARGUMENT

I. THE COMMISSION SHOULD ASSESS THE PROPOSED TRANSACTION USING PUBLIC UTILITIES CODE SECTION 854, SUBDIVISIONS (A), (B), AND (C).

Under Public Utilities Code section 854(a), the Commission must approve acquisitions of public utilities.¹ “The Commission has broad discretion to determine if it is in the public interest to authorize a proposed transaction pursuant to Public Utilities Code section 854, subdivision (a).”² This discretion includes the ability to examine any public interest impacts of the proposed transaction, including broadband impacts. Additionally, if a transaction involves a utility with gross annual California revenues in excess of \$500 million, the transaction is subject to review under section 854, subdivisions (b) and (c).³

A. State and Federal Law Requires That The Commission Examine the Broadband Impacts of the Proposed Transaction.

Under Public Utilities Code section 851, “[a] public utility...shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so.” In section 851 proceedings, the Commission’s primary question is whether the proposed transaction is in the

¹ *Decision Granting Conditional Approval of the Acquisition of PacificCorp by MidAmerican Energy Holdings Company* (Feb. 16, 2006) D.06-02-003 at 23.

² *Id.*

³ Pub. Util. Code § 854.

public interest.⁴ In reviewing a transaction, the Commission must take into account any antitrust implications and competitive considerations when it weighs the public interest.⁵ Sections 851 and 854 provide express authority for the Commission to examine all of the public interest benefits of the proposed transaction. Accordingly, a Commission examination of all of the possible public interest impacts of the proposed transaction, including safety, consumer benefits, broadband infrastructure, and competitive issues, are within appropriate scope of this proceeding.

Additionally, the Commission has jurisdiction to review the broadband aspects of a transaction where “expressly delegated by federal law.”⁶ Section 706 of the 1996 Telecommunications Act provides a specific grant of regulatory authority to both the FCC and to state commissions to “encourage the deployment of advanced telecommunications capabilities on a reasonable and timely basis” and to take necessary action in support of that deployment.⁷ Section 706 applies to “each State commission with regulatory jurisdiction over telecommunications services,” and the CPUC is the state commission in California with regulatory jurisdiction over telecommunications services. Under Section 706, the CPUC has an obligation to review the impact of the merger on broadband deployment in California as it contains, in the D.C. Circuit’s words, “a direct mandate.”⁸

⁴ Decision Granting Approval Under Public Utilities Code Section 851 For Conveyance of a Lease By Southern California Edison Company To the City of Lakewood, D.13-10-063 (Oct. 31, 2013).

⁵ See, *Phonetele, Inc., v. Public Util. Com.* (1974) 11 Cal. 3d 125; *Industrial Comm. Systems v. Public Util. Com.* (1978) 22 Cal. 3d 572; and *U.S. Steel Corp. v. Public Util. Com.* (1981) 29 Cal. 3d 603).

⁶ Cal. Pub. Util. § 710(a).

⁷ *Verizon v. FCC* (D.C. Cir. 2014) 740 F.3d 623, 635, 638. See also, *Id.* at 649 (finding “section 706 grants the [Federal Communications] Commission authority to promote broadband deployment by regulating how broadband providers treat edge providers . . .”).

⁸ *Comcast v. FCC* (D.C. Cir. 2010) 600 F.3d 642, 658.

B. The Commission Should Review The Proposed Transaction Under Public Utilities Code Section 854(b).

Under Public Utilities Code section 854(b), bear the burden of showing that the proposed transaction (1) provides short-term and long-term economic benefits to ratepayers, (2) equitably allocates the total short-term and long-term forecasted economic benefits of the proposed transaction between shareholders and ratepayers, and (3) does not adversely affect competition. Applicants argue that because Charter Fiberlink, TWCIS and Bright House California are not utilities and that those companies each have annual revenues below \$500,000,000, § 854(b) does not apply.⁹ Applicants' argument presumably relies on § 854(f), which states that "[i]n determining whether an acquiring utility has gross annual revenues exceeding the amount specified in subdivisions (b) and (c), the revenues of that utility's affiliates shall not be considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control." Corporations Code § 150 states that "[a] corporation is an 'affiliate' of, or a corporation is 'affiliated' with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the other specified corporation."

By the plain language of the statute, however, § 854(f) does not apply to *acquired* utilities--in this case, Time Warner Cable Information Services (California) (TWCIS) and Bright

⁹ Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CC0, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C), to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C) at 19, note 27 (June 8, 2015). (*hereafter*, Application).

House Networks Information Services (BHNIS).¹⁰ Accordingly, the Commission can, and should, consider the revenues of TWCIS' and BHNIS' affiliates. Given Time Warner's Los Angeles footprint and 2014 income of almost 23 billion dollars,¹¹ it is entirely possible that Time Warner has annual revenue exceeding \$500 million in California. Similarly, given the fact that Bright House serves 2.5 million customers in only six states,¹² it is entirely possible that Bright House has annual revenue exceeding \$500 million in California. Joint Consumers urge the Commission to further investigate Time Warner and Bright House's California revenue in order to determine whether the Commission must make the findings required by § 854(b).

C. The Commission Should Not Waive its Review under § 854 (b) and (c).

Applicants erroneously claim that this current proposed transaction should also be exempt from § 854(b) and (c) review. Joint Consumers believe that the Application does not contain sufficient facts to warrant a waiver of 854(c). The proposed transaction promises to harm California consumers and the public interest. While it is true that the Commission has waived the 854(c) requirements in prior transactions involving NDIECs and CLECs from 854(c), the circumstances of those transactions have generally been far different than those in the current proceeding.¹³ Accordingly, the Commission should not waive the 854(b) and (c) requirements.

¹⁰ Joint Consumers agree with Applicants that under the plain language of the statute, the Commission cannot consider the gross annual revenues of Charter's affiliates, because Charter is an acquiring company.

¹¹ Time Warner Cable, Time Warner Cable Reports 2014 Fourth-Quarter and Full-Year Results (Jan. 29, 2015), available at <http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Time-Warner-Cable-Reports-2014-Fourth-Quarter-and-Full-Year-Results/default.aspx> (last accessed August 6, 2015).

¹² Application at p. 11.

¹³ *In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. for Authorization to Transfer Control of AT&T's Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur*

D. Even if § 854 (b) and (c) do not Expressly Apply, the Criteria Enumerated in Those Sections is Relevant to a Public Interest Assessment.

The issue of whether this transaction triggers the application of §§ 854(b) and (c) aside, the Commission has found that the criteria enumerated in those provisions provide a useful framework for analyzing transactions under the public interest standard in § 854(a).¹⁴ Thus, the Commission has looked at the proposed transaction's impact on: the financial condition of the resulting public utility, service quality, management quality, fairness to affected public utility employees, fairness to the majority of affected public utility shareholders, the benefits to state and local economies, Commission jurisdiction, and competition.¹⁵ Similarly, in D.00-06-079, the Commission noted that it utilized a number of factors to determine whether a transaction such as this is in the public interest, including antitrust considerations, economic and financial feasibility, purchase price, value of consideration exchanged, efficiencies, operating costs savings, and others.¹⁶

As the Commission noted in D.10-10-017, "some of the criteria enumerated in §§ 854(b) and (c) mirror criteria identified by past Commission decisions as relevant to a public interest assessment under § 854(a), and depending on the nature of the transfer at issue, may well be relevant and even necessary to the specific public interest assessment required."¹⁷ Moreover, the Commission has found that in order to determine whether the transaction is in the public interest

Indirectly as a AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation (Nov. 18, 2005) D.05-11-028 at p. 20. All of the transactions cited in the SBC/AT&T decision took place in markets that were far less concentrated than today's markets.

¹⁴ D.06-02-033, *supra* note 1, at p. 23.

¹⁵ *Id.*

¹⁶ *In the Matter of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc. and U S West Long Distance, Inc., and U S West Interprise America, Inc.* (Jun. 22, 2000) D.00-06-079 at p. 14.

¹⁷ *In the Matter of Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction* (Oct. 15, 2010) D.10-10-017 at p. 15 (*hereafter*, Sierra Pacific Power).

under § 854(a), “it is reasonable for the Commission to assess the public interest factors enumerated in § 854(c) and undertake an analysis of antitrust and environmental considerations.”¹⁸ Even if the Commission finds that §§ 854(b) and (c) do not apply to this transaction, Joint Consumers respectfully request that the Commission utilize the criteria set forth in those subsections when making its public interest assessment.

II. APPLICANTS BEAR THE BURDEN OF PROVING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST.

In an application for transfer of control, the applicants bear the burden of proving that the Commission should approve the application and any ancillary agreements.¹⁹ When evaluating a proposed transaction under § 854(a), “[t]ypically the Commission has required an applicant to show that a proposed transfer is ‘not adverse to the public interest’ though occasionally the Commission has articulated the standard as requiring a showing that the transfer is ‘in the public interest.’”²⁰ Under § 854, subdivisions (a), (b), and (c), if a proposed transaction is adverse to the public interest, applicants do not meet the burden of proof.

III. APPLICANTS HAVE NOT MET THEIR BURDEN OF PROVING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST.

Applicants have not met their burden of proving that the proposed transaction is in the public interest. Applicants have provided insufficient information for the Commission to determine that the proposed transaction would maintain or improve the quality of management of the new company. The proposed transaction promises to reduce competition, particularly in the Los Angeles markets. Applicants have not provided sufficient information for the Commission

¹⁸ *In the Matter of the Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI’s California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon’s Acquisition of MCI* (November 18, 2005) D.05-11-029 at Conclusion of Law 8 .

¹⁹ *Sierra Pacific Power*, *supra* note 15, at p.16.

²⁰ *Id.* at p. 11.

to determine the effects of the proposed transaction on diversity, the new company's consumer practices, or state and local economic benefits, and many of the purported benefits of the proposed transaction are not merger specific.

A. Applicants Have Failed To Show That The Proposed Transaction Will Maintain or Improve the Quality of Management of the New Company.

The Commission's public interest assessment includes a consideration of, among other factors, whether the proposed transaction will "[m]aintain or improve the quality of management of the resulting public utility doing business in the state."²¹ Applicants have failed to make this showing because they have not complied with the certification requirements under D.13-05-035. The Commission requires a telephone corporation seeking authority to transfer control to go through a certification process.²² An important requirement of this process obliges the applicant to show that it has the technical and managerial skills necessary to provide the proposed services in its service territory.²³ The applicant must provide a sworn affidavit stating that "to the best of applicant's knowledge neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by... any law enforcement or regulatory agency for failure to comply with any law, rule or order."²⁴ Through these certification requirements, the Commission ensures that the review process is accurate and efficient to achieve the goal of protecting California consumers from carriers providing services in the state.²⁵

²¹ Pub. Util. Code § 854(c)

²² *Decision Addressing Revisions To The Certification Processes For Telephone Corporations Seeking Or Holding Certificates of Public Convenience And Necessity, and Wireless Carriers Seeking Or Holding Registration* (May 23, 2013) D.13-05-035.

²³ *Id.*

²⁴ *Id.* at p. 7.

²⁵ *Id.* at p. 37.

Applicants' claim that they are exempt from the Commission's certification requirements under D.13-05-035 is incorrect. Applicants argue that they do not have to meet those requirements because it is unreasonably burdensome for the Applicants to make that broad certification. Applicants state that it is too burdensome for Charter to encompass all of affiliates and employees for the purposes of this certification.²⁶ Applicants also states that Charter has provided a certification focused on "applicant Charter and its regulated California Utility, Charter Fiberlink."²⁷ The information provided by Applicants is insufficient to meet the requirements of D.13-05-035. Additionally, even if the Commission were willing to allow Applicants to unilaterally decide that a certification focused on Charter and Charter Fiberlink was sufficient, Applicants have still not provided sufficient information. For example, several sections of what appears to be Applicants' affidavit make claims about Charter, but are silent as to Charter Fiberlink.²⁸ Joint Consumers respectfully suggest that Applicants' efforts to comply with D.13-05-035 are insufficient to show that the proposed transaction will maintain or improve the quality of management the new company.

B. Applicants Have Failed To Show That The Proposed Transaction Will Not Harm Competition.

The Commission's public interest assessment includes a consideration of, among other factors, the proposed transaction's effect on competition.²⁹ Applicants argue that there will be a *de minimis* harm to competition as a result of the proposed transaction, because the merging

²⁶ Application at p. 26.

²⁷ *Id.* at p. 32.

²⁸ *Id.* at p. 27.

²⁹ Pub. Util. Code § 854(b); Sierra Pacific Power, *supra* note 15.

companies service territories do not overlap.³⁰ However, Comcast's planned divestiture of its customers creates very serious potential threats to competition in the Los Angeles area.

Charter and Time Warner both provide service in Los Angeles, and the two companies' service territories appear to overlap significantly,³¹ although Applicants argue otherwise.³² Joint Consumers believe that if the Applicants obtain approval for the merger, the loss of Time Warner as a competitor could result in significantly reduced competition in the Los Angeles Market. Accordingly, the Commission should investigate the impact of Charter's exit from the Los Angeles market on competition and the public interest.

C. Applicants Have Failed To Show That The Proposed Transaction Will Result In Any Economic Benefit to Residential Customers.

The Application is unusually silent regarding cost savings as a result of New Charter's ability to eliminate redundant costs and increase bargaining power with suppliers and purchasers. Additionally, Applicants represent that they are "unable to make representations about the impacts of the Transaction on specific employees."³³ The Application does not contain sufficient information to allow the Commission to conclude that the proposed transaction will result in cost savings or other economic benefits to residential customers. Given the potential rise in New Charter's revenue derived from California post-merger, the Commission should scrutinize how the new company will provide short-term and long-term economic benefits to the public interest.

D. Applicants Have Failed To Show That The Proposed Transaction Will Result In A Company With A Commitment To Diversity.

Supplier, workforce, management, and ownership diversity are issues of public interest, particularly in a state as diverse as California. Applicants note Time Warner Cable's previous

³⁰ Application at pp. 20-11.

³¹ See Broadbandmap.gov to explore the service territories of Charter and Time Warner in the Los Angeles area.

³² Application at p. 27.

³³ Application at p. 29.

diversity efforts,³⁴ but are strangely silent regarding Charter or Bright House’s past or current diversity efforts. Additionally, while Applicants refer to Time Warner Cable’s “best practices with respect to diversity,”³⁵ they provide no detail regarding those practices. In fact, Time Warner Cable has historically not been forthcoming regarding its diversity efforts; for example, Time Warner Cable consistently declines to provide the Commission with annual supplier diversity numbers.³⁶

While the Application claims that that “New Charter will recognize the vital importance of promoting diversity and inclusion strongly rooted in the communities it serves,”³⁷ Applicants do not appear to have made any greater commitment to substantially improve the new company’s efforts to diversify its suppliers or workforce, and overall economic development of California’s diverse communities beyond the merging companies’ currently lackluster efforts. The Commission has been a national leader in ensuring robust supplier diversity programs in major California’s energy, telecommunications, and water companies all throughout the state. The Commission’s merger assessment should include an investigation of the new company’s commitment to diversity. Applicants’ current statements regarding the new company’s efforts are insufficient to ensure that New Charter will have a meaningful commitment to diversity. Accordingly, the Commission cannot conclude that New Charter’s diversity efforts will serve the public interest.

³⁴ *Id.* at p. 25.

³⁵ *Id.*

³⁶ The Greenlining Institute, 2014 Supplier Diversity Report Card: Unexpected Achievements and Continuing Gaps (2015) p. 12.

³⁷ Application at p. 25; *see also, Id.* at p. 22.

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

Applicants claim that if the Commission approves the proposed transactions, consumers will benefit from Charter’s “customer-friendly contracting practices.”³⁸ Post-transaction, New Charter would maintain Charter’s previous policies of no contracts with early termination fees and no data caps or usage-based billing.³⁹ However, the Application does not contain any specific commitment regarding maintaining these practices. New Charter could eliminate these practices shortly after it consummated the proposed transaction. This vague commitment and others like it are insufficient to guarantee that the proposed transaction will not harm the public interest.

F. Applicants Have Failed To Show That The Proposed Transaction Will Result In State and Local Economic Benefits.

The Application contains vague promises that the proposed transaction “will generate substantial pro-consumer and pro-competitive benefits.”⁴⁰ However, the Application does not include any meaningful support for these promises. Accordingly, the Application does not include sufficient information to allow the Commission to conclude that the purported state and local benefits will be in the public interest.

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

While the Application discusses the purported benefits of the proposed transaction on customers generally, it fails to discuss the effects of the proposed transaction on customers with unique telecommunications needs, including limited English proficiency customers, customers

³⁸ *Id.* at 25.

³⁹ *Id.*

⁴⁰ *Id.* at p. 30.

with disabilities, and low-income customers.⁴¹ The Commission should determine whether New Charter will adequately serves the needs of these customers by providing, for example, in-language customers service, accessible communication (including web access), and affordable broadband service for low-income customers.

H. Many of The Purported Benefits of the Proposed Transaction are Not Merger-Specific.

The Commission does not consider the purported benefits of a transaction if those purported benefits are “vague, speculative, or otherwise cannot be verified by reasonable means.”⁴² While Applicants claim a number of purported benefits, the Application does not contain enough information for the Commission to verify those benefits. For example, the Application makes some general assertions about how competition will benefit, but provides no actual detail. Similarly, Applicants claim that New Charter will increase customer care and jobs,⁴³ but have not provided any transition plans that demonstrate these benefits. Applicants’ analysis of the 854(c) factors consists of bare claims that the proposed transaction satisfies each of the factors, without any substantial supporting data.⁴⁴ Accordingly, the Commission should reject those claims as unverifiable.

“When reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse

⁴¹ The Application notes that New Charter will expand Bright House’s broadband program for low-income customers, but provides no meaningful detail regarding that program. Application at 26.

⁴² U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines* (Aug. 19, 2010) available at http://www.ftc.gov/sites/default/files/attachments/merger-review/100819_hmg.pdf

⁴³ Application at p. 21.

⁴⁴ Application at pp. 27-30.

consequences of the proposal.”⁴⁵ Applicants claim that the proposed transaction will result in Charter’s “increasing its customer care capacity” through “investment and in-sourced jobs in the United States.”⁴⁶ However, there does not appear to be any reason that Charter could not take these actions in the absence of the proposed transaction. Similarly, Applicants cite bringing Time Warner Cable’s overseas jobs back to the United States.⁴⁷ Again, there is no reason Time Warner Cable could not do this in the absence of the proposed transaction. The Commission should investigate whether Applicants could achieve the purported benefits listed in the Application with a reasonable option other than the proposed transaction.

I. The Commission Should Deny the Proposed Transaction or, in the Alternative, Assess the Public Interest Impacts of the Proposed Transaction.

Applicants have not met their burden of showing that the proposed transaction is in the public interest. Applicants have not provided sufficient evidence to show that the proposed transaction will offer substantial benefits to California consumers and will not create a great risk of public interest harms. Joint Consumers respectfully request that the Commission deny the Application or, in the alternative, investigate the above-listed issues to determine whether the proposed transaction is in the public interest.

IV. IF THE COMMISSION DOES APPROVE THE PROPOSED TRANSACTION, IT SHOULD IMPOSE MITIGATION MEASURES TO PROTECT THE PUBLIC INTEREST.

If the Commission does not deny the Application, it should impose mitigation measures sufficient to ensure that the proposed transaction is in the public interest.⁴⁸ The Commission should not consider the new company’s compliance with existing requirements, such as

⁴⁵ Cal. Pub. Util. § 854, subd. (d).

⁴⁶ Application at p. 26.

⁴⁷ *Id.*

⁴⁸ *See* Pub. Util. Code § 854(c)(8).

Applicant's commitment that the New Charter will comply with the Federal Communication Commission's net neutrality rules,⁴⁹ as mitigation measures.⁵⁰ Should the Commission approve the Application, the Commission should impose mitigation measures that will preserve competition, protect consumers, and ensure that the new company passes through the economic benefits of the transaction. The Commission must take care to craft detailed mitigation measures with measurable performance metrics and substantial penalties if the new company fails to meet those metrics.

V. PROCEDURAL ISSUES

A. Comments or Objections Regarding the Applicants' Statement On The Proposed Category

Joint Consumers have no objection to Applicants' proposed category of Ratesetting.

B. Need for Hearing

As discussed above, the Commission should investigate and make factual findings regarding the impacts of the proposed transaction. These factual findings should include, but should not be limited to, investigating the impact of the proposed transaction on low-income consumers, economic benefits, and diversity. The Commission should also investigate and make factual findings regarding the question of whether mitigation measures can be implemented that would result in an overall benefit to the public interest. Accordingly, Joint Consumers believe that this proceeding will require evidentiary hearings, and respectfully requests that the Commission order evidentiary hearings.⁵¹

⁴⁹ Application at p. 25.

⁵⁰ While compliance with existing requirements cannot be viewed as mitigation, this review does offer an opportunity to ensure that the Applicants are meeting existing obligations. Among the existing obligations that should be considered are the requirements to provide appropriate information and education regarding emergency backup power for voice service.

⁵¹ While evidentiary hearings may not ultimately be necessary, the Commission should set dates for hearings now, rather than risk undue delay.

Additionally, Joint Consumers respectfully request that the Commission schedule hearings consistent with the suggested schedule below, in part to allow for input from California to the Federal Communications Commission. The Commission's input would be invaluable to the FCC's investigation of the proposed merger.

C. Issues to be Considered

Joint Consumers dispute Applicants' contention that the only issue to be determined in this proceeding is whether Applicants have met the requirements of Public Utilities Code section 854, subdivision (a). Joint Consumers respectfully request that the Commission's merger assessment include consideration of the following issues:

- **Whether Applicants have met their burden of proof to demonstrate that the transaction is in the public interest under §854(a), (b), and (c).**
- **How the proposed transaction's impacts on broadband deployment will affect the public interest.**
- **Whether Applicants have complied with the Commission's D.13-05-035 certification requirements.**
- **How the proposed transaction's impacts on competition will affect the public interest.**
- **How the proposed transaction's impacts on residential customers will affect the public interest.**
- **How the proposed transaction's impacts on diversity will affect the public interest.**
- **How the proposed transaction's impacts on the new company's business practices will affect the public interest.**
- **Whether the purported benefits of the proposed transaction are merger-specific.**
- **What mitigation measures, if any, would be sufficient to ensure that the proposed transaction is in the public interest.**

D. Proposed Schedule

Joint Consumers respectfully suggest a schedule that will allow the Commission to provide input into the Federal Communication Commission's investigation.⁵² Accordingly, Joint Consumers suggest the following schedule:

August 7, 2015	Period for Submission of Protests Expires
August 17, 2015	Reply to Protests
August 31, 2015	Prehearing Conference
September 30, 2015	Scoping Memo Issued
October 8, 2015	Opening Comments on Scoping Memo
October 22, 2015	Reply Comments on Scoping Memo
November 9, 2015	Supplemental Applicant Testimony ⁵³
December 16, 2015	Intervenor Testimony
January 15, 2016	Rebuttal Testimony
January 25-27, 2016	Evidentiary Hearings
February 26, 2016	Opening Briefs
March 14, 2016	Reply Briefs
April 15, 2016	Proposed Decision Issued
May 15, 2016	Opening Comments on PD
May 30, 2016	Reply Comments on PD

⁵² Federal Communications Commission, In the Matter of Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to the Transfer of Control of Licenses and Authorizations (June 27, 2015) MB Docket No. 15-149.

⁵³ As noted above, Applicants have not provided sufficient proof that the proposed transaction will be in the public interest. Joint Consumers assume that Applicants will need to submit testimony in order to meet their burden of proof, and have allowed for this scenario in the schedule.

CONCLUSION

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

Respectfully submitted,

Dated: August 7, 2015

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