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Partner

October 27, 2017

Mr. John B. Rhodes  
Chair and Chief Executive Officer  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

**RE: Joint Petition of Charter Communications and Time Warner Cable for Approval of  
a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization,  
and Certain Financing Agreements**  
**Case 15-M-0388**

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Dear Chair Rhodes:

Charter Communications, Inc. (“Charter” or the “Company”) respectfully submits this correspondence in response to your letter dated October 12, 2017 (the “Letter”) with respect to the current status of Charter’s ongoing activity regarding the commitments presented in connection with the Commission’s approval of Charter’s merger with Time Warner Cable.<sup>1</sup> The Letter seeks information on a wide range of issues regarding Charter’s labor dispute, broadband speeds and service offerings, customer complaint levels, service improvement investments, and Charter’s obligation to meet its network expansion commitments under the Merger Order, most of which were recently covered in Charter’s Annual Report filed in May 2017.<sup>2</sup> Charter appreciates this opportunity to fully address the issues raised in the Letter.<sup>3</sup>

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<sup>1</sup> Case 15-M-0388, *Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Order Granting Joint Petition Subject to Conditions (Issued and Effective January 8, 2016) (the “Merger Order” or the “Order”).

<sup>2</sup> Case 15-M-0388, *supra*, Charter Annual Update (Filed on May 18, 2017).

<sup>3</sup> Charter’s response to the Letter should not be construed in any way as a waiver or a concession by Charter with respect to the Commission’s jurisdiction to regulate Charter, impose conditions on the Merger, or otherwise compel Charter to act (or refrain from acting) with respect to any activities Charter conducts in New York that are beyond the scope of the Commission’s limited jurisdiction, including but not limited to Charter’s activities in New York related to broadband service or infrastructure.

Charter’s response to the Letter should also not be construed in any way as a waiver or a concession by Charter that any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, is lawful or valid under the New York Constitution, the Federal Constitution, or any applicable New York or

The combination of Charter and Time Warner Cable has already brought substantial benefits to New York and over the next few years will provide far more than the two billion dollars in net benefits required in the Merger Order.<sup>4</sup> Charter has already expended hundreds of millions of dollars in capital and operating expenditures and on internal resources to comply with the Conditions of the Merger Order.<sup>5</sup>

Charter has invested in its network to enhance broadband speeds and is bringing its networks to an all-digital platform; it has launched a low-cost broadband service for qualified low-income families and seniors to bridge the digital divide and focused efforts on improving customer service by insourcing more calls and by bringing customer call center operations and employment back from overseas. The Company is advancing its efforts to improve its diversity and inclusion programs and growing its veteran and minority employment as well. These are just a few of the benefits that have come to New York as a result of the Merger.

While this letter addresses each of your requests, Charter notes that since the approval of the Merger Order, the Company has filed numerous ongoing updates and reports to ensure that the Commission and the New York State Department of Public Service Staff (“Department” or the “DPS Staff”) are well informed on the implementation status of the Merger conditions. As a result of these activities, Charter has met all of its reporting obligations set out in the Merger Order. These reports include the following:

- On July 5, 2016, in compliance with the Merger Order Clause B.1, Charter submitted its 45-Day Network Implementation Plan.<sup>6</sup>
- On August 17, 2016, in compliance with Condition VI.1 of the Merger Order, Charter filed its 90-Day Report and Implementation Plan (“90 Day Report”)<sup>7</sup> to outline the initial activities, investments, and schedules designed to implement the Conditions imposed in the Merger Order.

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federal statutes, caselaw and regulations. Charter reserves all of its rights, including its right to challenge any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, in a state or federal court of competent jurisdiction on the basis that the provision or condition is invalid because the Commission lacked statutory authority or jurisdiction to impose the condition, that enforcement of the provision or condition and any associated penalty violates the Due Process or Commerce Clauses of the New York Constitution or the Federal Constitution, or that the provision or condition is preempted by or otherwise contravenes state or federal law.

<sup>4</sup> Merger Order at p. 34.

<sup>5</sup> *Supra*, Charter Annual Update (Filed on May 18, 2017).

<sup>6</sup> Case 15-M-0388, *supra*, Charter Network Expansion Implementation Plan 45 Day Report (July 5, 2016) (“45 Day Report”) (Revised Plan filed on July 26, 2016). The Revised Plan was submitted based on feedback from the Commission Staff and the BPO to provide updated information to supplement Charter’s Network Implementation Plan.

<sup>7</sup> Case 15-M-0388, *supra*, Charter 90-Day Report and Implementation Plan (Filed on August 17, 2016).

- On November 18, 2016, Charter submitted its Update to Network Expansion Plan<sup>8</sup> to provide the Commission with revised information regarding its network implementation as well as to provide a summary of completed work.
- On February 17, 2017, Charter submitted another update to its Network Expansion Plan<sup>9</sup> providing a summary of completed work.
- On May 18, 2017, Charter submitted its Annual Update<sup>10</sup> to provide the Commission with updated information on all of Charter's efforts in the areas listed in the 90 Day Report.
- Lastly, on August 18, 2017, Charter filed its most recent Quarterly Network Expansion Plan Update and Communications Plan.<sup>11</sup>

As set out within these reports, Charter has demonstrated significant progress toward meeting the conditions of the Merger Order, and is exceeding a number of conditions in substance or timing, including the following:

- The requirement to offer a low-income broadband service with download speeds of up to 30 Mbps for \$14.99 per month throughout New York by August 18, 2017: Charter rolled-out its low income product, named Spectrum Internet Assist ("SIA"), throughout its New York footprint, approximately five months ahead of schedule.
- The requirement to provide 100 Mbps speed upgrades by the end of 2018: Charter satisfied this condition in March 2017, twenty-one months ahead of schedule.
- The requirement to have no net loss in customer facing jobs: As anticipated, Charter has grown its workforce in the State across many job categories, including customer facing jobs, and recently announced job growth in the Rochester area and other areas in Upstate New York.
- The requirement to invest a minimum of \$50 million in service improvement programs for the specific benefit of New York operations by May 17, 2018: Charter has invested nearly double that amount in customer improvement programs during the first year and anticipates additional investments in such programs through the second year anniversary of the transaction.

In addition, on June 19, 2017, DPS Staff, the Commission, and Charter entered into a Settlement Agreement (the "Settlement Agreement")<sup>12</sup> related to Charter's obligation to extend

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<sup>8</sup> Case 15-M-0388, *supra*, Charter Update to Network Expansion Plan (Filed on November 18, 2016).

<sup>9</sup> Case 15-M-0388, *supra*, Charter Update to Network Expansion Plan (Filed on February 17, 2017).

<sup>10</sup> *Supra*, Charter Annual Update dated May 18, 2017.

<sup>11</sup> Case 15-M-0388, *supra*, Charter Quarterly Network Expansion and Communications Plan (Filed on August 18, 2017).

<sup>12</sup> Case 15-M-0388, *supra*, Settlement Agreement dated June 19, 2017, later approved by the Commission in the Order Adopting Revised Build-Out Targets and Additional Terms of a Settlement Agreement (Issued and Effective September 14, 2017).

its network to pass 36,250 new premises between May 2016 and May 2017. As the Commission is aware, Charter faced certain challenges in connection with such obligation, due to the inability of pole owners to provide pole licenses and complete make-ready work that were needed for Charter to meet its network expansion goals.<sup>13</sup> Section 18.i of the Settlement Agreement required that a Project Management team (“PM”) be formed and that the PM meet at least monthly to track Charter’s network expansion progress. Since the formation of the PM, which is comprised of representatives from DPS Staff, Charter and the Broadband Program Office (“BPO”), the Company has been actively engaged in weekly meetings with these state agencies and has been providing new detailed weekly tracking reports on its network expansion progress.



### **Charter’s Responses**

**Request 1:** Charter committed to not reducing its customer-facing work force for four years from the issuance of the Approval Order. In connection with this commitment provide:

- a. Updated customer facing job counts from May 2017 to present, including payroll and other documentation that demonstrates each customer-facing employee included in the job count is currently on the payroll of Charter.
- b. An explanation regarding how the IBEW strike impacts this commitment.
- c. The number of how many additional employees Charter has hired since the IBEW strike and an explanation of whether those hires are temporary or permanent with supporting payroll information for each.

### **Charter Response:**



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<sup>13</sup> In Order to resolve the pole-attachment issues with the Pole Owners, in June and July of 2017, Charter sent Demand Letters to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), New York State Electric & Gas Corporation (“NYSEG”), Verizon New York, Inc. (“Verizon”), Windstream New York, LLC, Frontier/Citizens Communications (“Frontier”), TDS Telecommunications Corporation, and Fairpoint Communications. Also, in July 2017, Charter filed official complaints in Case 15-M-0388 against Verizon; National Grid; NYSEG; and Frontier. Since September, Charter has been meeting with the Pole Owners on a weekly basis to expedite the make-ready work that is needed for Charter to meet its network expansion goals.

<sup>14</sup> *Supra*, Confidential Exhibit 6 of Charter Annual Update dated May 18, 2017.

[REDACTED] A summary of the number of current customer-facing jobs and general job descriptions is included in Confidential Exhibit 1a-Customer Facing Jobs attached hereto.<sup>15</sup>

- b. It is well established that IBEW members who are on strike remain employees of Charter (*see* Section 2(3) of the National Labor Relations Act, 29 USC Section 152(3), and also *see e.g., NLRB v. Mackey Radio Corp*, 304 US 333 (1938). Accordingly, the IBEW strike does not impact Charter's commitment relating to customer facing jobs or the number of customer-facing jobs Charter has in New York. Also, as previously acknowledged by the Commission itself in the Settlement Order, the "Commission has to respect the labor management contract negotiating process."<sup>16</sup>
- c. As described in the response to Request 1.a. above, Charter has hired [REDACTED] in New York State since the beginning of the strike and all such employees who have been hired are holding permanent positions.

**Request 2:** The Approval Order requires Charter to continue to offer the Time Warner "Everyday Low Price" \$14.99 for two years from the date of the closing. Staff has been unable to verify the continuation of this service. Indeed, Staff have visited Charter's website and to date have not been able to find any mention of the Everyday Low Price offering. Therefore, provide:

- a. Copies of New York State rate cards containing the "Everyday Low Price" Service.
- b. Links to any webpages where customers can sign up for the Everyday Low Price service or otherwise learn that it continues to be available.
- c. Any direct mail, advertising or other materials used to inform customers that Everyday Low Price is available.
- d. The number of subscribers to Everyday Low Price on the date of the closing.
- e. The current number of subscribers to Everyday Low Price.

**Charter Response:**

- a. Attached please find Exhibits 2a-1 through 2a-12 for Charter's copies of all New York State Rate Cards containing the Everyday Low Price Service ("EDLP").
- b. Each of the rate cards included in the Response to Request 2.a can be accessed at [www.spectrum.com/ratecard](http://www.spectrum.com/ratecard). Notably, [REDACTED] signed up for EDLP, which demonstrates that the service is being made available to existing and new customers.
- c. Please see Response to 2a and 2b above.

<sup>15</sup> Confidential Exhibit 1a-Customer Facing Jobs also updates Exhibit 6 included in Charter Annual Update dated May 18, 2017.

<sup>16</sup> Settlement Order, p. 14.

- d. As of May 31, 2016, Charter had [REDACTED] EDLP customers.
- e. As of September 30, 2017, Charter had [REDACTED] EDLP customers.

**Request 3:** The Commission required Charter to achieve a 17.5% reduction in its PSC Video Complaint Rate (from its 2014 rate) by the end of 2018. Charter should provide:

- a. A report containing any internal metrics regarding the number of complaints received regarding video service from the close of the transaction, compared with the Calendar Year 2014 period.

**Charter Response:**

The PSC Video Rate Complaint is based upon the number of complaints received by the Commission, not the number of complaints made to the Company by customers. The number of complaints received at the Commission is available at the agency. Charter is only aware of the specific complaints received at the Commission based upon those complaints that are referred from the Commission to the Company. Charter respectfully notes that the relevant data related to these Charter complaints is readily available on the Commission's website available at:

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/448C499468E952C085257687006F3A82?OpenDocument>.

In addition, as described in detail in confidential Exhibit 5 of its first Annual Report,<sup>17</sup> the Company has made and continues to make major investments in various customer service initiatives. Charter also notes that Charter's first performance metrics on this issue is not due until the end of 2018.<sup>18</sup>

**Request 4:** The Commission required Charter to offer a \$14.99 low-income broadband product as a condition of its approval. Provide:

- a. Any marketing materials used in New York associated with the Spectrum Internet Assist program.
- b. Statistics or other reports regarding the number of customers in New York that are receiving service through this program.

**Charter Response:**

- a. Copies of marketing materials and launch events for Spectrum Internet Assist are attached here as Exhibits 4a-1 through 4a-16. Spectrum Internet Assist provides broadband service with download speeds of 30/4 Mbps to eligible customers for \$14.99 per month. The price includes provision of a cable modem (customers may also use their own Spectrum-compatible modem) as well as all of Spectrum's standard internet features, including a security suite (McAfee or F-Secure) and up to seven mailboxes. Charter launched Spectrum Internet Assist across its entire footprint in New York State in March 2017, many months ahead of the requirements in the Merger Order.

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<sup>17</sup> See Confidential Exhibit 5 of Charter Annual Update dated May 18, 2017.

<sup>18</sup> Merger Order at p. 63.

- b. The Merger Order does not require reporting of the number of customers subscribing to Spectrum Internet Assist program. Without waiving any objection that the Commission may not require such reporting, as of September 30, 2017, [REDACTED] customers have been enrolled in Spectrum Internet Assist since inception.

**Request 5:** The Approval Order required that Charter allow existing Time Warner customers to retain legacy Time Warner standalone broadband or bundled broadband services for three years following the close of the transaction. In connection with this condition, provide:

- a. The number of subscribers to broadband or bundled services on the date of the closing.
- b. The current number of subscribers to legacy Time Warner broadband or bundled services.

**Charter Response:**

- a. As of May 18, 2016, the total number of customers subscribing to Legacy Time Warner Cable internet service was [REDACTED] and of those, [REDACTED] were part of bundled services.
- b. As of September 21, 2017, the total number of customers subscribing to Legacy Time Warner Cable internet service was [REDACTED] and of those, [REDACTED] were part of bundled services.

**Request 6:** The Commission required that Charter bid for Broadband 4 All Program funding to provide line extensions to any remaining unserved and underserved premises in its New York service territory, exclusive of the 145,000 premises that will be built out pursuant to the Approval Order. Provide:

- a. Details regarding when Charter made such a bid, including any copies of the bid and associated materials.

**Charter Response:**

Section I.e of the Merger Order reads as follows:

**e. Subject to the final terms and conditions of the Broadband 4 All Program being comparable** to the Connect New York Program, New Charter shall bid for Broadband 4 All Program funding to provide line extensions to any remaining unserved and underserved premises in its New York service territory, exclusive of the 145,000 premises that will be built out pursuant to this Order. (emphasis added.)

Accordingly, the Order does not unconditionally mandate that Charter bid under the program.<sup>19</sup> Instead, Charter is required to bid only if the terms and conditions of the Broadband 4 All Program are comparable – i.e., equivalent or substantially similar in all material respects – to the terms and conditions of the ConnectNY program.

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<sup>19</sup> The Phase II and Phase III of the New NY Program discussed herein will be collectively referred as “Broadband 4 All Program.”

As Charter has previously explained on a number of occasions, the Broadband 4 All Program bears little similarity to the terms and conditions of the ConnectNY program. The terms and conditions of each program are immensely different on their face, and in material ways that would require significantly different levels of time, material, and financial resources as well as duties and responsibilities on the part of Charter. The programs employ significantly different terms, conditions, and criteria for selecting areas to be built, awarding grants, and program administration. Specifically, there are material differences between these programs in terms of provider control over the location of premises deployment, flexibility on funding ratios, timeframes, speed requirements, pricing restrictions, supported technology, bid fees, government authority to enlarge or shrink bid areas awarded, structure of the award program, post-award ability of providers to challenge/modify awards, and others. A more detailed discussion of these differences can be found in Charter's November 30, 2016<sup>20</sup> and August 31, 2017 letters to the BPO (See Confidential Exhibit 6a-4 and Confidential Exhibit 6a-20, respectively).

Notwithstanding the fact that these bids are not relevant to the Commission's enforcement responsibilities insofar as these were voluntary bids not subject to the Merger Order, Charter hereby attaches the confidential bid documents for Phase II and Phase III for the Commission's information. (See Confidential Exhibits 6a-1 through 6a-26 attached hereto).

**Request 7:** Pursuant to the Approval Order, Charter's network shall be all-digital within 30 months of the close of the transaction and Charter shall make investments and offer broadband speeds up to 100 Megabits per second (Mbps) to all its customers (including Columbia County) by the end of 2018. In May 2017, Charter advised the Commission that it was offering 100 Mbps broadband speeds to all its customers who had broadband available. However, there is nothing in the compliance filing supporting this claim. On the other hand, the Department of Public Service continues to receive complaints regarding issues associated with purported broadband speeds. Therefore, further information is necessary to support this claim. Provide:

- a. A detailed report on what work was done to achieve this commitment.
- b. Any and all analysis, data, information of other relevant documents.
- c. Any and all field testing done by Charter.
- d. Any broadband-related speed complaints received by Charter.

**Charter Response:**

- a. As disclosed in its Annual Report, the Company has invested more than [REDACTED] in New York since closing its transaction with TWC in 2016. Those investments, detailed in Exhibit 5 of the Annual Report, include nearly [REDACTED] in expenditures to enhance network operations, such as investments in expanded fiber capacity, upgraded edge routers, and continued roll-out of legacy TWC's "Maxx" program, which converts video signals to all-digital while expanding capacity for broadband service. These and other

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<sup>20</sup> Please note that Charter copied Chair Zibelman and the Commissioners on the November 30, 2017 Letter to the BPO.



ongoing projects have prepared Charter's network to deliver broadband speeds up to 100 Mbps throughout the state, with speeds up to 300 Mbps available in certain areas.

- b. Charter's Annual Report informed the Commission that Charter completed implementation of speed upgrades and now provides all of its New York customers with access to 100 Mbps speed tiers. Consistent with this milestone, Charter hereby submits broadband deployment data from June 2017, as submitted to the Federal Communications Commission ("FCC") in satisfaction of the FCC's fixed broadband deployment data collection (See attached Exhibit 7a-1 - FCC Form 477). Charter's June 2017 deployment data verifies that the Company now offers download speeds up to 100 Mbps in all areas where it provides broadband services in New York. Charter also provides the Commission with representative samples of marketing materials that have been used to advertise the 100 Mbps tier in areas where it is newly available (See attached Exhibits 7a-2 through 7a-4 – Marketing Materials for 100 Mbps).
- c. Charter measures Internet speed performance through participation in the Federal Communications Commission's Measuring Broadband America ("MBA") program. The MBA program uses the SamKnows methodology to measure broadband performance for a statistically significant population of customers from participating Internet service providers. The FCC is expected to release 2017 MBA data early in 2018 and Charter anticipates that the report will—as with past reports—validate the company's delivery of actual broadband speeds at or above advertised speed tiers, based on the FCC's use of average peak-period performance as the appropriate measure of "actual speed."
- d. In September 2017, Charter received [REDACTED] related to broadband speeds in New York.<sup>21</sup>

**Request 8:** Charter further advised that it is on schedule to complete the Columbia County upgrade by the end of 2018. However, there is nothing to support its claim. Therefore, further information is necessary. Provide:

- a. A detailed report explaining the work completed to date in Columbia County.
- b. A detailed report on the remaining work to be completed in Columbia County.
- c. All analysis, data, information of other documents to support this claim.
- d. All field testing done by Charter to support this claim.

**Charter Response:**

- a. Attached please find Confidential Exhibit 8a - Columbia County Updates detailing the work completed in each town in Columbia County. Charter notes that it is substantially ahead of the schedule provided in the Merger Order.
- b. See the spreadsheet provided in response to subsection "a" above, which also details the work remaining to be completed in each town in Columbia County. Please note that

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<sup>21</sup> The Merger Order does not require the number of broadband related speed complaints. Nonetheless, Charter provides the most current monthly figure it has subject to footnote 3 herein.

completion of the remaining work is contingent upon factors outside Charter's control, including but not limited to timely approval and release of pole licensing and make ready.

- c. Please see responses to "a" and "b."
- d. Field testing is typically conducted upon completion of construction, and therefore, has not been done to date.

**Request 9:** Pursuant to the Approval Order, Charter shall make investments and offer broadband speeds up to 300 Mbps to all its customers by the end of 2019. To ensure that Charter is on track to meet this obligation, provide:

- a. A detailed report on what work was done to achieve this commitment.
- b. Any and all analysis, data, information of other relevant documents.
- c. Any and all field testing done by Charter.
- d. Any broadband-related speed complaints received by Charter.

**Charter Response:**

Charter is [REDACTED] to offer broadband speeds up to 300 Mbps to all its customers. Charter notes that this commitment is not due until the end of 2019, and, Charter is [REDACTED] (see above Response to 7a).

**Request 10:** Charter is required to invest \$50 million in customer service improvements in the two years following the close of the transaction. Charter last provided an update in May 2017 regarding these investments. Charter should provide:

- a. An update regarding what additional expenditures have been made since May 2017.

**Charter Response:**

In compliance with Condition III.A. I of the Order, Charter has already invested (and reported to the Commission) over \$50 million in service improvement programs, for the specific benefit of New York operations, and will continue to make additional investments. Expenditures since May 2017 have gone toward customer operations, including new call center facilities, improvements in customer communication, and new customer-facing tools. Expenditures have also gone towards improving equipment, network facilities and field operations to support greater customer service.

## CONCLUSION

Charter's ongoing and planned services and investments in New York represent significant public benefits, and bring real value to New York customers in Charter's footprint, including those areas that have been historically unserved or underserved. Charter's commitment to work with the Commission and its Staff, other New York agencies, and key stakeholders as well as its demonstrated commitment to invest in and offer high quality services at competitive prices, while improving customer service, will produce tangible benefits throughout New York. Charter understands and appreciates the State's interest in expanding broadband access in the State of New York and it will continue to work with the State to fulfill our mutual goals. Charter has made significant progress towards meeting these goals and will continue to do so.

Very truly yours,

*s/ Maureen O. Helmer*

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*s/ Adam Falk*

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