

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 8, 2017

COMMISSIONER PRESENT:

John B. Rhodes, Chair

CASE 17-C-0757 - In the Matter of a Management and Operations
Audit of Time Warner Cable Information Services
(New York), LLC.

ORDER INITIATING A MANAGEMENT AND OPERATIONS AUDIT

(Issued and Effective December 8, 2017)

INTRODUCTION

This Order directs the Department of Public Service Staff (DPS Staff), on behalf of the Commission, to initiate a management and operations audit of Time Warner Cable Information Services (New York), LLC (TWCIS(NY)) a wholly-owned indirect subsidiary of Charter Communications, Inc. (Charter). Management and operations audits involve, among other things, forward-looking evaluations of management processes, systems, operational practices, and organizational effectiveness, for the purpose of improving performance. This management and operations audit should focus on TWCIS(NY)'s management and affiliate responses to network and service outages that have occurred since March 2017. During that time, Charter, the ultimate parent company of TWCIS(NY), has been engaged in an ongoing labor dispute with the International Brotherhood of Electrical Workers (IBEW) representing employees in the New York City area. DPS Staff is directed to take steps necessary to assist the Commission in conducting the audit by DPS Staff and to engage an independent consultant.

BACKGROUND

Pursuant to PSL §96(6), “[t]he commission shall have the power to provide for a management and operations audit of any telephone corporation.” In 2012, TWCIS(NY) sought Commission designation as an Eligible Telecommunications Carrier (ETC) in order to receive federal universal service support for offering Lifeline Service pursuant to 47 U.S.C. §214. At that time, TWCIS(NY) was a wholly-owned subsidiary of Time Warner Cable (TWC) and authorized to provide telecommunications services in New York pursuant to Certificates of Public Convenience and Necessities (CPCNs) issued by the Commission on December 31, 1993 in Case 93-C-0569 and on August 25, 1994 in Case 93-C-0899.¹ In March, 2013, the Commission further determined that TWCIS(NY) held a valid CPCN under PSL §99 and had tariffs in effect offering intrastate telephone services.

TWCIS(NY) subsequently filed a replacement tariff effective February 23, 2013 offering Voice over Internet

¹ The Commission authorized TWCIS(NY)'s predecessor entities, Time Warner AxS of Rochester, L.P. and Time Warner AxS of New York City, L.P., to provide telecommunications services. See, Joint Petition of Time Warner Communications Holdings, Inc. et al. for Transfers and Rescissions of Certain Certificates of Public Convenience and Necessity and Approval for Corporate Restructuring, Including the Issuance or Transfer of Stock and the Issuance of Debt, Case 98-C-0593 (issued May 12, 1998). The Commission later granted its approval of a corporate restructuring plan and the transfer of CPCNs from Time Warner AxS of Rochester, L.P. and Time Warner AxS of New York City, L.P. to Time Warner ResCom of New York, LLC. Id. Petitioner's name change from Time Warner ResCom of New York, LLC to Time Warner Cable Information Services (New York), LLC became effective on October, 6, 2011. See, Letter from David W. Cramer, Utility Analyst II (Telecom), State of New York Public Service Commission, to Carey Roesel, Consultant to Time Warner Cable Information Services (New York), LLC, Matter No. 11-02116 (effective Oct. 11, 2011).

Protocol (VoIP) Home Phone and commercial Business Class Phone services on a fully regulated basis. It committed to be regulated by the Commission as any other competitive local exchange carrier (CLEC) in New York would, including being subject to the Commission's service quality regulation (16 NYCRR Part 602).²

Although TWCIS(NY) subsequently requested certain waivers of the Commission's telephone regulations, it was granted only waivers relating to partial payments and distribution of directories. TWCIS(NY) was required to continue to report on all applicable service quality metrics consistent with the Commission's rules for at least six months.³

The Commission further authorized TWCIS(NY) to limit its service quality reporting to "Core" customers, provided the Director of the Office of Telecommunications was satisfied that the initial six months of TWCIS(NY) reporting complied with established reporting guidelines (16 NYCRR §603.4(a)). To date, however, no such determination has been made by the Director of the Office of Telecommunications and TWCIS(NY) continues to be required to report on the full panoply of applicable Commission regulations.

Charter's merger with TWC included the acquisition of TWC's TWCIS(NY) subsidiary. A supplement to Charter's Joint

² See, Case 12-C-0510, Petition of Time Warner Cable Information Services (New York), LLC for Modification of Its Existing Eligible Telecommunications Carrier Designation, Order Approving Designation as A Lifeline-Only Eligible Telecommunications Carrier (issued March 18, 2013).

³ See, Case 13-C-0193, Petition of Time Warner Cable Information Services (New York), LLC for Waivers of Certain Commission Regulations Pertaining to Partial Payments, Directory Distribution, Timing for Suspension or Termination of Service, and a Partial Waiver of Service Quality Reporting Requirements, Order Granting in Part and Denying in Part Requests for Waivers of Rules (issued October 21, 2013).

Petition in Case 15-M-0388, dated July 10, 2015, stated that "Petitioners ... may also require Commission approval under Section 99(2) of the PSL, which applies to transfers of telephone franchises. Time Warner Cable Information Services (New York), LLC (f/k/a Time Warner Cable ResCom of New York, LLC) ("TWCIS") and Time Warner Cable Business LLC ("TWCB"). . . will continue to operate in New York under their existing certificates, and Petitioners do not seek approval at this time to transfer the Competitive Carrier Subsidiaries' certificates to any other entity." As such, Charter, through its merger with TWC, acquired, among other things, the previously-approved CPCNs held by subsidiaries of TWC.

In the Commission's Approval Order on the merger between TWC and Charter, it noted that "[w]ith respect to ETC and Lifeline ... [Charter is] ... not proposing any changes and will seek Commission approval in the future if changes are so desired."⁴ Thus, Charter's wholly-owned subsidiary TWCIS(NY) remains an ETC and is obligated to comply with Commission regulations as a CLEC, including service quality requirements, subject to the limited waivers granted in Case 13-C-0193.

Further, in the Commission's Approval Order, Charter was also required, among other conditions, to not cause any net loss in customer facing jobs for four years following the close of the transaction.⁵ This condition was adopted to ensure that Charter, and by extension its operating subsidiaries, did not

⁴ 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 January 8, 2016), f.n. 103 (Approval Order).

⁵ Id., pp. 64-65; Appendix A, p. 5.

reduce its customer facing workforce in order to achieve synergy savings associated with the transaction. The Commission was concerned such a reduction would ultimately result in diminished service quality for New York customers.⁶ In response to an inquiry from Chairman Rhodes,⁷ Charter reported in October 2017 that it currently has a customer facing workforce that complies with the level it is required to maintain.⁸ Charter indicated, however, that the workforce figure includes approximately 1,700 striking IBEW members in the New York City area.⁹

LEGAL AUTHORITY

TWCIS(NY) is subject to the Commission's authority to order a management and operations audit pursuant to PSL §96(6) (a). TWCIS(NY) holds a CPCN and has on file a tariff offering intrastate telecommunications service, and is therefore functioning as a telecommunications provider in New York under PSL Article 5 (Telephone).¹⁰ PSL §96(6) (a) gives the Commission the authority to "provide for a management and operations audit of any telephone corporation. The commission shall have discretion to have such audits performed by its staff or by independent auditors."¹¹ The Commission may further require that TWCIS(NY) pay for the audit and require that it implement any

⁶ Id., pp. 63-64

⁷ Case 15-M-0388, Letter from Chairman Rhodes to Charter CEO Tom Rutledge (issued October 12, 2017).

⁸ Case 15-M-0388, Charter Response to Chairman Rhodes' Letter (filed October 27, 2017).

⁹ Id.

¹⁰ Case 98-C-0593, Time Warner Communications Holdings, Inc., et al. Certificates of Public Convenience and Necessity, Untitled Order (issued April 23, 1998)

¹¹ PSL §96(6) (a).

recommendations that result from the audit. In addition, the Commission also approved the Charter/TWC merger pursuant to PSL §§99, 100, 101 (Article 5) and 222, subject to the conditions discussed in the body of the Approval Order. That Approval Order resulted in the TWC subsidiaries, including TWCIS(NY), being transferred to Charter.¹²

DISCUSSION AND CONCLUSION

The Commission's Orders in Cases 12-C-0510, 13-C-0193, and 15-M-0388 show that TWCIS(NY)'s service quality is critically important. Since the IBEW strike began in March of 2017, Charter and more specifically its operating subsidiaries including TWCIS(NY) have experienced a number of service related problems, including nine major outages in the New York City area and more than 125 intentional cable cuts.¹³ These cuts have resulted in more than 320,000 telephone, cable, and broadband service outages for a substantial number of TWCIS(NY)'s voice customers in the New York City area, as well as disrupting cellular networks and various New York City government and emergency response entities. According to media reports, prior

¹² Approval Order, pp. 68-69.

¹³ See, New York Post, Striking Spectrum Workers cut cable lines as acts of sabotage: suit (October 11, 2017), available at <https://nypost.com/2017/10/11/striking-spectrum-workers-cut-cable-lines-as-acts-of-sabotage-suit/>; Ars Technica, Charter accuses its employees of cutting cables 125 times during strike (October 18, 2017), available at <https://arstechnica.com/tech-policy/2017/10/charter-accuses-its-employees-of-cutting-cables-125-times-during-strike/>

to the strike, Charter and its subsidiaries experienced only four such cable cut incidents over a three-year period.¹⁴

Given these developments, a process shall be initiated to determine whether TWCIS(NY) and its affiliates have adequately responded to the strike by making personnel, maintenance, construction, or other management and operational changes necessary to continue to provide customers with adequate telephone service quality. DPS Staff is directed to begin the management and operations audit process consistent with the discussion in this Order. The scope of the audit should include examination of TWCIS(NY)'s response to the IBEW strike. That examination shall include, but not necessarily be limited to, an examination of TWCIS(NY)'s affiliate transactions related to the preservation of service quality during the strike, practices of hiring contractors to replace striking employees, adequacy of its response to acts of vandalism, and whether TWCIS(NY) should be taking or should have taken other steps to protect the interests of its New York customers during the strike.

It is ordered:

1. Department of Public Service Staff is directed to take steps necessary to assist the Commission in conducting a management and operations audit of Time Warner Cable Information Services (New York), LLC and engaging an independent consultant consistent with the discussion in this Order.

¹⁴ See, New York Post, Spectrum offering \$50K reward for info on vandalized cables (November 23, 2017), available at <https://nypost.com/2017/11/23/spectrum-offering-50k-reward-for-info-on-vandalized-cables/>; Brooklyn Daily Eagle, New allegations leveled at striking Charter-Spectrum workers (October 16, 2017), available at <http://www.brooklyneagle.com/articles/2017/10/16/new-allegations-leveled-striking-charter-spectrum-workers>

2. This proceeding is continued.

(SIGNED)

Commissioner