

BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

Regarding

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

Comments of Common Cause

Susan Lerner
Executive Director
Common Cause/NY
New York, NY
slerner@commoncause.org

Todd O'Boyle
Program Director
Common Cause
Washington, DC.
toboyle@commoncause.org

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INTRODUCTION

On behalf of its more than 15,000 New York members and supporters, Common Cause¹ appreciates the opportunity to comment on the above captioned proceeding. We respectfully urge the Public Service Commission (PSC) to deny the merger as inimical to the public interest. Charter, Time Warner Cable, and Bright House Networks (jointly the “Petitioners”) propose merging into “New Charter” that would deliver quality service to New Yorkers. However their commitments are not merger specific, and fails to satisfy the Commission’s public interest standard. Indeed, the merged entity would pose significant danger to the public interest, by threatening media localism and diversity. Lastly, it would undermine the competitive market for communications.

I. APPLICANTS’ CLAIM THAT MERGER WILL ADVANCE PUBLIC INTEREST ARE INACCURATE

The Petitioners make an exhaustive case² that the proposal will benefit the public interest, though they fail to demonstrate how the merger would meaningful advance the public interest in New York. Indeed, their claimed benefits are insufficient and/or not merger-specific.

- a. Petitioners’ claimed public benefits are insufficiently specified, and/or not merger-specific.

Petitioners make much of the alleged benefits of increased scale, which will “result in lower per-customer costs³.” However, the Petitioners offer no indication that those savings will be passed on to consumers in the form of lower bills, or even less-frequent cost increases. This is noteworthy, because nationally communications prices have been raising at staggering rates. Federal Communications Commission (FCC) data show that in 2012, basic cable prices increased at four times the rate of inflation⁴. Meanwhile, research shows that affordability is a chief factor in non-adoption of broadband⁵. As discussed below, the Petitioners’ proposed low-income broadband program, whatever its merits, is not merger specific,

- i. Alleged job creation may not be merger specific, and not obviously benefiting New York.

¹ Common Cause is a nonpartisan, nationwide grassroots network of 400,000 members and supporters that has advocated open, honest, and accountable government for over 45 years. Because a vibrant informational ecosystem is critical to self-governance, Common Cause is working to ensure public interest communications policies that connect all Americans to news and information.

² See Applicants’ “Joint Petition” available at <http://www.dps.ny.gov/%7BC4AED78C-BD5E-47BD-B6B7-11A25D8A59DF%7D.pdf> subsequent references and page numbers refer to this submission.

³ *Ibid* at 23.

⁴ See FCC: Basic Cable Prices Increased At Four Times the Rate of Inflation. May 19, 2014. Available at <http://consumerist.com/2014/05/19/fcc-basic-cable-prices-increased-at-four-times-rate-of-inflation/>

⁵ See Broadband adoption may depend on price. April 1, 2015. Available at <http://www.publicintegrity.org/2015/04/01/17011/broadband-adoption-may-depend-price>

Petitioners claim “New Charter will bring thousands of overseas Time Warner Cable jobs back to the United States, adding thousands of jobs to the American economy⁶.” However meritorious on-shoring those jobs may be, the Petitioners have not demonstrated that this is merger-specific. Time Warner Cable may very well be able to do so without the merger. Moreover, the PSC’s obligation is to New Yorkers, and Petitioners gloss over whether any of these jobs will be in New York. Without a clear indication that this will positive jobs impact in New York, the PSC should deny the merger.

ii. Petitioners’ diversity claims are also not merger-specific

Similarly, Petitioners cite several diversity measures that are not merger-specific⁷. Common Cause supports advancing workforce diversity. We are similarly encouraged by each of the Petitioners’ commitments to supplier diversity. However, the Petitioners have failed to demonstrate that the respective providers need this merger to achieve diversity goals. Each party could commit to independently advancing best practices, or better: innovating new initiatives that could filter throughout a competitive industry.

iii. Connect2Compete is not merger specific.

Common Cause for years has advocated the proliferation of affordable, competitive broadband across the nation. We believe achieving universal service will require policy intervention at the federal, state, and local levels. Public, non-profit, and private sector actors all have a role to play.

Connect2Compete, Bright House Networks’ program to offer affordable broadband to low-income households, may be a laudable initiative. Petitioners promise to “begin making the offer available within six months after the Transaction closes and offer it across the New Charter footprint within 3 years of closing.⁸” We welcome affordable broadband, but there is nothing merger-specific about expanding Connect2Compete. Moreover, there is nothing merger-specific about providers making affordable product offerings available to the public. Indeed, providers should endeavor to serve willing customers at all price points, regardless of their income-level.

b. Petitioners’ behavioral pledge to abide by Open Internet Order is insufficient and irrelevant

Common Cause is a strong supporter of the net neutrality and of the FCC’s 2015 Open Internet Order. However, the Petitioners’ offer to abide by the rule is irrelevant, since the rules are in effect⁹. Any behavior to the contrary would be violation of the Order, and subject the

⁶ See Joint Petition at 25.

⁷ *Ibid* at 26-27.

⁸ *Ibid* at 27.

⁹ See Court Rejects Plea to Block FCC Net-Neutrality Rules. June 11, 2015. Available at <http://www.nationaljournal.com/tech/court-rejects-plea-to-block-fcc-s-net-neutrality-rules-20150611>

firms to sanction. Once again, the commitment to abide by the Order even if be struck down is not merger-specific.

II. THE MERGER WOULD CONCENTRATE MARKET POWER AND STIFLE COMPETITION

Should the merger be approved, New Charter would have scale sufficient to negotiate lower rates for carriage of video content. Those fees support jobs in New York's entertainment industry, and lowering them could lead to job loss. If those savings were being passed on to consumers, Petitioners might theoretically argue that the merger would advance the public interest. To reiterate, the Petitioners have not made the case yet the benefits, whatever they are, will redound to consumers or workers.

New Yorkers stand to benefit the most when the PSC advances a policy agenda that lifts up competition and consumer protection. Consumers will realize higher quality service and more affordable prices. More vibrant competition will benefit the creative industry as creators have more video providers purchasing their wares. Quite simply, nothing in the Petitioners' proposal will meaningfully address the core needs of New Yorkers.

Common Cause welcomes Charter's desire to enter the New York market. Charter should do so by entering the competitive market and offering consumers viable choice.

III. THE PSC SHOULD TAKE NOTE OF PAST PROMISES

New Yorkers are all too familiar with promises of improved cable service, fast internet speeds and anticipated benefits from increased competition between providers that are rarely realized. Currently, the City of New York has asserted that Verizon failed to live up to its obligations under the 2009 FiOS Franchise Agreement between Verizon and the City. Hundreds of our members have responded to a survey, indicating that they have tried to obtain FiOS service, but were either unable to do so for long periods (in violation of the Franchise Agreement) or remain unable to do so (also violative of the Agreement).

Testimony at the recent Public Statement hearings on the status of telecommunications indicates that there are significant gaps in cable and broadband deployment in rural areas in the Hudson Valley, Capitol Region and Western New York areas, although Time-Warner Cable and others represent that there is full coverage. There is no indication from Charter that the merger would in any way address or remedy the situation. Without any indication from Charter that the merger would change what has been until now studied indifference to the need to expand coverage areas to these under-served areas outside of New York City, it is difficult to see how permitting the merger to go forward could be considered to be in the public interest. Nothing in the proposed merger indicates that, for example, all residents of the Village of Esperance would have broadband access rather than dial-up or that residents of Niverville or Copake, NY would have broadband access much less cable television service.

We have concerns about Charter's history of not supporting community agreements with local franchising authorities and about the negative impact Charter has had on local community information services provided by Public, Educational and Government (PEG) Access channels and organizations. Charter has unilaterally moved channels without community consent or notification in a number of states, and has reduced the ability of elderly and low-income consumers from receiving essential civic information. Additionally, the corporation has aggressively sought to undercut its agreements to support PEG in states such as California, taking controversial legal stands to walk away from their public interest obligations – stands not taken by other cable operators.

IV. Conclusion.

For the foregoing reasons, Common Cause believes that the proposed merger would pose a danger to the public interest and should be denied.