STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

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Table of Contents

INTRODUCTION.. 1
SUMMARY OF APPLICATION.. 2
PROCESS TO DATE... 8
SCOPE OF REVIEW... 9
STANDARD OF REVIEW.. 13
General 13
Application 20
PROPOSED BENEFITS... 24
Capital investment 24
Enhanced video programming 26
Accelerated transition to all-digital video network 27
Expanded low-income broadband services 28
Enhanced Wi-Fi Hotspot Deployment 30
Potential for greater competition in the business market .. 32
Miscellaneous assertions 33
POTENTIAL DETRIMENTS.. 35
Customer service 39
With regard to Charter's and Time Warner's annual PSC Complaint Rate on telephone service quality, both companies are well below the established threshold as illustrated below. 41
Overall, Charter's pricing appears to be comparable to Time Warner's rates for consumers. However, Charter lacks offerings that may be desirable to low and middle income customers. 41
Universal broadband affordability 43
Jobs and focus in New York State 44
Infrastructure expansion investment 45
Market power 47
ANALYSIS AND RECOMMENDATIONS.................................... 47
Customer service 58

Jobs and focus in New York State 59
Universal broadband affordability 51
Infrastructure expansion investment – 48
CONCLUSION... 61

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INTRODUCTION

In a joint petition filed July 2, 2015 (Joint Petition), Time Warner Cable Inc. (Time Warner or TWC)[1] and Charter Communications, Inc. (Charter) (collectively the Petitioners) request approval of a holding company level transaction that would result in the transfer of control of certain Time Warner subsidiaries from Time Warner to Charter.[2] Approval was initially requested under Public Service Law (PSL) §§100, 101 and 222.[3] On July 10, 2015, the Petitioners filed a supplement to their Joint Petition seeking Commission approval under PSL §99(2), as well. A third entity, Bright House Networks, LLC (BHN), a subsidiary of Advance/Newhouse Partnership that is not a party to the instant petition (BHN does not operate in New York), would also merge into "New Charter."[4] As the Petitioners have structured the proposed

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[1] The abbreviated "Time Warner" in this document does not refer to Time Warner, Inc., which is a separate entity not associated with this transaction.

[2] The subsidiaries are Time Warner Cable Information Services (New York), LLC (TWCIS) and Time Warner Cable Business LLC (TWCB) (the Competitive Carrier Subsidiaries) and Time Warner Cable Northeast LLC and Time Warner Cable New York City LLC (the Cable Franchisee Subsidiaries).

[3] Simultaneously with, but separate from, the transaction, as part of its reorganization into New Charter, Charter will internally re-assign 16 of its 27 franchises held by its New York operating subsidiaries to a single entity, Charter Communications Entertainment I, LLC (CCE-I).

[4] The parent entity resulting from the merger will ultimately assume the name "Charter Communications, Inc."

transaction, after a series of mergers the Time Warner subsidiaries and BHN will be indirect wholly owned subsidiaries of New Charter.

To obtain approval of the proposed transaction under the PSL, the Petitioners must show that the transaction is in the public interest by demonstrating that the relative benefits outweigh the potential risks and detriments and that the transaction produces overall net positive benefits for New York. Absent the additional commitments and conditions as described in more detail below, the Petitioners cannot satisfy their burden under the public interest standard as applied in Commission decisions regarding utility acquisitions and mergers including the recent review of Fortis, Inc.'s (Fortis) acquisition of Central Hudson Gas & Electric Corporation (Central Hudson).[5] Accordingly, Commission approval of the proposed transaction should only be granted subject to the additional commitments and conditions discussed herein.

On July 22, 2015, the Commission issued a Notice Inviting Comments regarding the proposed transaction. The following are the comments of the New York State Department of Public Service Staff (Staff).

SUMMARY OF APPLICATION

On May 23, 2015, Charter, along with CCH I, LLC, the current Charter subsidiary that will become New Charter, entered into agreements (Agreements) with each of the Time Warner, Liberty Broadband Corporation (Liberty Broadband), Liberty

[5] Case 12-M-0192, Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions, Order Authorizing Acquisition Subject to Conditions (issued June 26, 2013)(Fortis Order).

Interactive Corporation (together with Liberty Broadband, "Liberty"), and Advance/Newhouse, a parent company of BHN. Under the terms of the Agreements, Time Warner will ultimately merge into a subsidiary of New Charter through a series of mergers. Those mergers will result in Time Warner stockholders, other than Liberty, receiving a combination of cash and shares of New Charter Class A common stock in exchange for their shares of Time Warner stock, and Liberty receiving shares of New Charter Class A common stock in exchange for its shares of Time Warner stock. In addition, subject to separate conditions set forth in Charter's agreement with Advance/Newhouse, New Charter will acquire BHN for approximately $10.4 billion, comprised of cash and equity of New Charter and an indirect subsidiary of New Charter. Liberty will invest a total of $5 billion in connection with the proposed transaction in exchange for additional shares of New Charter Class A common stock. Following the close of the proposed transaction, New Charter will be the third-largest cable provider behind AT&T/DirecTV and Comcast Corporation (Comcast). New Charter will own and/or manage systems serving approximately 19.4 million broadband customers, 17.3 million video customers, and 9.4 million voice customers across 41 states.

In New York, Charter currently provides cable television and other important services to a relatively small number of customers through its Cable Franchisee Subsidiaries, which operate two cable system clusters in and around

Plattsburgh and Chatham, New York.[6] The Cable Franchisee Subsidiaries provide service to approximately 14,000 residential and business customers in the Plattsburgh service area and approximately 2,500 residential and business customers in the Chatham service area. The Plattsburgh area networks are fully interactive, two-way systems, capable of providing video, voice and broadband services, while the Chatham networks are one-way, video service-only systems.

According to publically available data, Time Warner currently provides cable television, Internet and telephone services to approximately 2,600,000 subscribers in approximately 1,150 cities, towns, and villages throughout New York State. Time Warner is also a major presence in four out of the five New York City boroughs and each of the major upstate cities. While the Joint Petition does not seek immediate authority for changes to New York customers' rates, terms or conditions of service, or for direct assignment of Time Warner's franchises, certificates, assets or customers, after the close of the proposed transaction, the Petitioners assert that if New Charter wishes to make additional changes that require regulatory approval, it will follow applicable New York filing and notice requirements associated with any such changes.

[6] In their petition filed in Case 14-M-0219, Joint Petition of Charter Communications, Inc. and Comcast Corporation for Approval of a Transfer of Control of Subsidiaries and Franchises, Charter and Comcast identified 28 communities served by Charter in New York. Charter held a franchise in the Village of Keeseville until its dissolution, effective January 1, 2015. Customers who resided in the former Village's franchise area are now served under the franchises in effect in the Towns of Ausable and Chesterfield. As noted above, separate from, but simultaneously with the transaction, 16 of the 27 Charter franchises will be re-assigned internally so that they will be held by a single entity, CCE-I.

The proposed transaction will include the pledge of assets and the issuance of substantial debt. According to the Joint Petition, certain operating subsidiaries of New Charter, including the Time Warner Subsidiaries and the Charter Fiberlink Subsidiary will become guarantors of, and, with respect to any secured facilities, will pledge their assets to secure, (1) indebtedness being incurred to finance the transaction in part, and (2) legacy indebtedness of Time Warner and its subsidiaries that will become indirect subsidiaries of New Charter. The Joint Petition states that Charter expects to finance part of the consideration for the transaction with additional indebtedness of approximately $24 billion. This additional indebtedness, according to the Petitioners, is expected to be in the form of new senior secured bank loans, senior secured notes, and unsecured indebtedness made available to two of Charter's subsidiaries, CCO Holdings, LLC, and Charter Communications Operating, LLC (Charter Operating), the immediate holding company for all of Charter's operating subsidiaries. In connection with the completion of the proposed transaction the Joint Petition further states that Charter Operating and its subsidiaries, including the Time Warner Subsidiaries and the Charter Fiberlink Subsidiary expect to guarantee approximately $23 billion in indebtedness of Time Warner and its subsidiaries that will become New Charter subsidiaries.

The Petitioners state that the proposed transaction will enhance competition and provide current Time Warner customers with faster Internet speeds and deliver other public interest benefits. Among the benefits put forward by the Petitioners are as follows:

- Additional investments in all-digital systems in Time Warner's service areas by completing digitization within 30 months of the close of the proposed transaction. This

would include faster (60 megabits per second (Mbps) minimum) broadband speed offerings.

- Merger-specific efficiencies, which would generate savings in a number of areas including combined purchasing power, overhead, product development, engineering, and information technology.

- Merging Charter's New York assets which are currently isolated from the rest of its service territories to create efficiencies through reduced costs, improved customer service and additional service offerings.

- Bringing overseas Time Warner jobs back to the United States and adding in-house positions.

- Expanding to New York, within three years of the close of the proposed transaction, BHNs' low-income broadband option (Connect2Compete) which partners with schools to provide a low-cost Internet service, discounts on Internet-capable devices, and innovative digital literacy training.

- Promoting the deployment of advanced voice services and enhancing competition in the voice marketplace by creating a more robust competitor.

- Pledging not to block or throttle Internet traffic or engage in paid prioritization, whether or not the Federal Communications Commission's (FCC) Open Internet Order is upheld. This commitment would continue for three years, without regard to the outcome of the ongoing litigation challenging federal reclassification.

The Petitioners also state there would be no harm to competition with online video distributors (OVDs), video programmers, or multichannel video programming distributors (MVPDs). Upon the close of the proposed transaction, the Petitioners state that New Charter will have approximately 2.5 million fewer broadband subscribers than Comcast currently serves. Similarly, New Charter will serve about 17% of MPVD subscribers nationwide, making it the third largest video

provider behind Comcast (22%) and AT&T/DirecTV (currently at 20%). Charter and BHN do not own any broadcast or cable TV interests outside of local news, sports, and public affairs programs, and Time Warner owns only local channels plus a few regional sports networks, reducing the risk of the use of market power to the detriment of consumers.

Staff's analysis of the relative potential benefits of the proposed transaction, as well as identified potential detriments and harms that could result from the proposed transaction, are discussed in detail below. In addition, these comments present specific recommendations for mitigation of those detriments and harms, including any unforeseen risks and detriments that may come as a result of the proposed merger. Based on Staff's review, we find that there is no net positive benefit as a result of the proposed merger absent specific commitments and conditions that translate into New York consumers being guaranteed to share promised efficiency gains. To ensure the proposed transaction promotes the public benefit and satisfies the Commission's public interest standard under the PSL, Staff recommends that the Petitioners make certain commitments to mitigate potential detriments and deliver net positive benefits to New York customers. These commitments should address service quality, job retention, universal service, network deployment to unserved/under-served areas and broad infrastructure investment and improvement. Only with these commitments backed by enforceable conditions set by the Commission, do we believe the merger would promote the public interest and should, therefore, be approved.

PROCESS TO DATE

Following the filing of the Joint Petition on July 2, 2015, the Commission issued a Notice Inviting Comments (Notice) on July 22, 2015. In addition, pursuant to the State Administrative Procedure Act (SAPA), a Notice of Proposed Rulemaking was published in the State Register on July 29, 2015. The comment period for the SAPA Notice expired on September 14, 2015 and the initial comment period for the Commission's Notice expires on September 16, 2015, with replies being accepted until September 30, 2015.

The Commission has publically noticed three Informational Forums and Public Statement Hearings concerning the Joint Petition and the proposed transaction. Those hearings are scheduled to be held in Albany on September 17, 2015, New York City on September 21, 2015, and Buffalo on September 24, 2015 to allow for on-the-record public comments from interested consumers, non-profit organizations, government and business groups, and members of the general public regarding whether the Commission should approve the proposed transaction. To date, the Commission has also received over 20 electronically filed comments from the public at-large. Generally, comments that support the proposed transaction assert that, among other things, New Charter will create jobs and provide better products at more affordable rates. Those that oppose state that, the merger will inevitably lead to higher rates and potential data caps on broadband services in the future.

Finally, under §617 of the Federal Communications Act (47 U.S.C. §537), when the sale or transfer of a cable television franchise requires the approval of a franchising authority, the franchising authority must act within 120 days or the request will be deemed granted, unless the requesting party and the franchising authority agree to an extension of time. On July 17, 2015, the Petitioners sent a letter to the Secretary of the Commission agreeing to extend the time for action by the Commission through December 22, 2015.

SCOPE OF REVIEW

The purpose of the Commission's review in a merger proceeding is to determine the impact that the proposed transaction will have on consumers, otherwise known as the "public interest" standard. While the Petitioners assert that certain of the subjects and benefits discussed in their filing pertain to non-jurisdictional products and services and specifically reserve their rights to object to the Commission's jurisdiction over such services and products, the Commission's review here should not be limited to telephone and cable services and should also include the impact of the transaction on broadband Internet service (broadband). To be clear, Staff is not recommending that the Commission "regulate" broadband in the traditional sense of the word and we observe that the FCC recently determined that broadband would be reclassified as an interstate telecommunications service subject to common carrier regulation under Title II of the Federal Communications Act.[7] We also acknowledge that the FCC opted to forbear from many Title

[7] GN Docket No. 14-28, In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order (issued March 12, 2015) (Open Internet Order).

II regulations most notably rate regulation. The Commission still, however, has a duty to consider the impacts of broadband that may result from the merger as part of its broader public interest review under the merger and acquisition provisions of the PSL. In looking at the telephone and cable video markets in New York, it is essential to also look at the broadband market because all of these telecommunications services are provisioned over the same networks and fall under the rubric of communications services that consumers consider increasingly essential in a digital society.

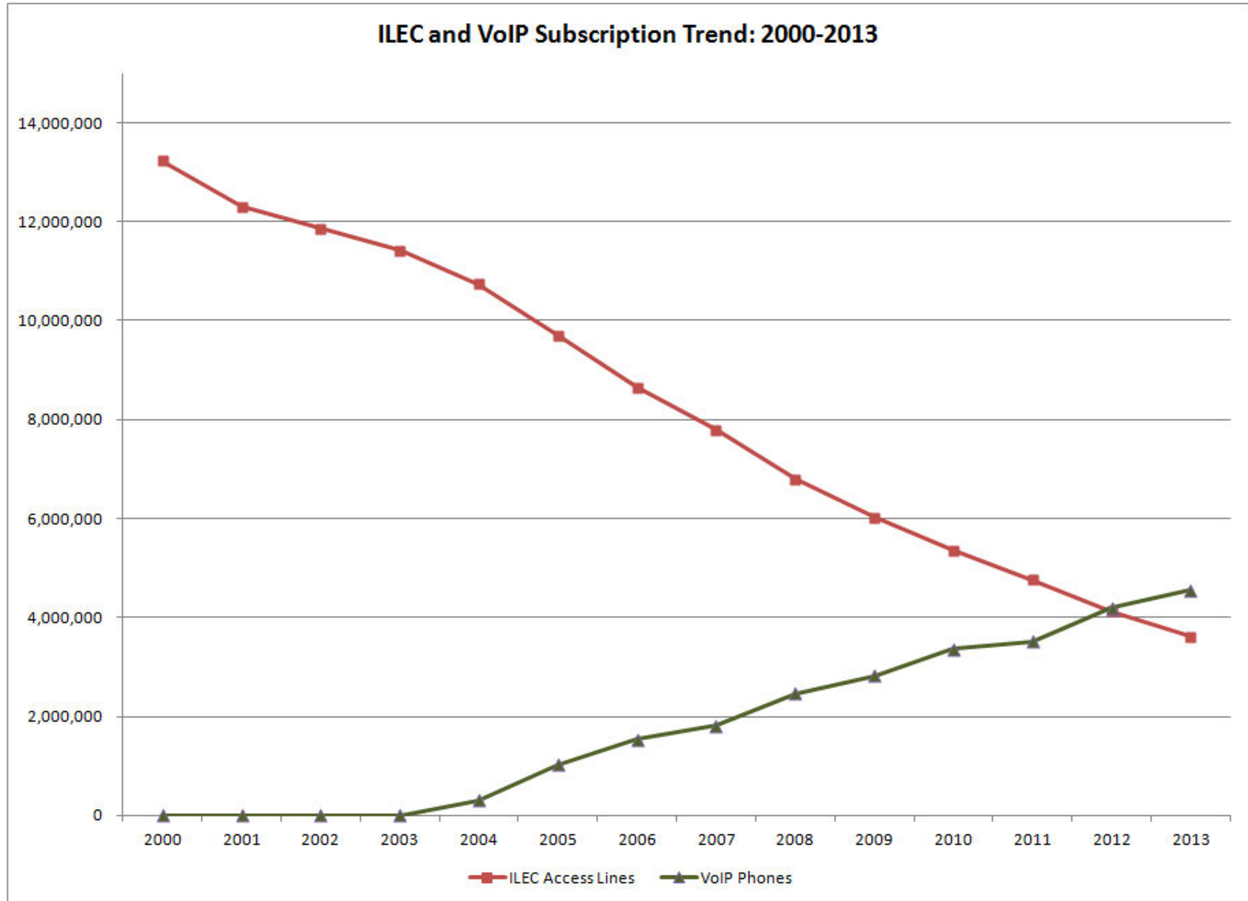
Application of the public interest standard to include consideration of broadband is reasonable for several reasons. First, not only does broadband rely upon the same network as telephone and cable services, but perhaps more importantly, in many instances, broadband competes directly with cable and telephone services for market share in New York. For example, the Petitioners' standalone broadband service offerings allow their customers to download and stream content through third-party providers such as Netflix, Hulu, Sling, and AppleTV, which compete directly with traditional cable video services. As networks are upgraded and download speeds increase (which the Petitioners have indicated will occur following the close of the proposed transaction) offerings like these and many others, will only become more robust and competitive in the future.

Similarly, Voice over Internet Protocol (VoIP), the technology behind the Petitioners' voice service offerings relies on the same network as cable video and Internet services, and is replacing traditional landline telephone service nationwide. In fact, in 2012, fixed VoIP providers overtook traditional phone service access lines in New York and that

trend has continued.[8] The prevalence of broadband networks provided by landline telephone and cable companies, as well as terrestrial wireless companies, has opened up opportunities for advanced services to become widely available to consumers. Over the course of the last decade, more than 4 million New York residential and business consumers have adopted VoIP phone service. Since 2000, incumbent telephone company access line counts have fallen from more than 13 million, to approximately 4 million.[9] Millions of those incumbent local exchange carrier line losses were customers migrating to VoIP phone service, as were many secondary line migrations from dial-up Internet services, to faster, more advanced cable modem, digital subscriber line (DSL) and optical carrier broadband services now offered by most companies providing broadband service in New York. The following chart illustrates the impact of VoIP on traditional wireline services.

[8] Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State, Staff Assessment of Telecommunications Services (dated June 23, 2015), p. 12.

[9] Incumbent telephone company access line counts are provided in company Annual Report filings pursuant to 16 NYCRR §641.1.



Under Federal law, the Commission is obligated to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all … (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." 47 U.S.C. §1302(a). That statute defines "advanced telecommunications capability" to include "broadband telecommunications capability." 47 U.S.C. §1302(d)(1). Therefore, under this

clear Federal mandate, the Commission must consider the impact of the proposed transaction on broadband in New York State.[10]

Finally, it cannot be ignored that the Petitioners rely heavily on the incremental benefits of enhanced broadband offerings in their Joint Petition, touting, among other things, faster download speeds and technological innovations as benefits for New York consumers inherent in the proposed transaction.[11] Indeed, they implicitly acknowledge that any Commission public interest review of the net positive benefits and potential detriments and harms of the proposed transaction should include an examination of broadband, in addition to telephone and cable services. Therefore, the Commission cannot reasonably examine the impacts of the proposed transaction on the telephone and cable markets in New York without also considering the impacts on the broadband market and services.

STANDARD OF REVIEW

General

Under PSL §99(2): "[n]o telephone corporation shall transfer or lease its works … without the written consent of the commission…. Any other transfer or lease between non-affiliates regardless of cost shall be effective without the commission's written consent within ninety days after such corporation notifies the commission that it plans to complete such transfer or lease … unless the commission, or its designee, determines

[10] The United States Court of Appeals for the District of Columbia Circuit reached the same statutory interpretation. See, Verizon v. Federal Communications Commission, et al., No. 11-1355 (decided January 14, 2014), pp. 18-19.

[11] 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, Joint Petition, pp. 28-30.

within such ninety days that the public interest requires the commission's review and written consent." Since Time Warner currently operates under a duly authorized and approved Certificate of Public Convenience and Necessity, Commission approval of the proposed transaction is required.[12] While a PSL §99 transfer is presumed to be in the public interest, the Commission may determine that the public interest requires further review and written consent and, it has made such a finding in this case.[13]

Under PSL §§100(1) and (3): "[n]o telegraph corporation or telephone corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold any part of the capital stock of any telegraph corporation or telephone corporation … unless authorized so to do by the commission." Moreover, "[n]o consent shall be given by the commission … unless it shall have been shown that such acquisition is in the

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[12] Case 93-C-0569, Petition of Time Warner AxS Rochester L.P. for a Certificate of Public Convenience and Necessity to provide switched and non-switched telecommunications services on an intraLATA, interLATA, inter and intra-city basis within the State of New York (issued December 31, 1993) and Case 93-C-0899, Petition of Time Warner AxS of New York City, L.P. to Amend the Certificate of Public Convenience and Necessity granted to Manhattan Cable Television, Inc. by Commission Order Issued August 29, 1986 and transferred to Time Warner AxS of New York City by Order Issued August 9, 1993, to include the provision of all forms of telecommunications service on an intraLATA, intracity basis throughout the State of New York, filed in C 27091 (issued August 25, 1994).

[13] On July 23, 2015, the Acting Director of the Office of Telecommunications and Director of the Office of Accounting, Audits & Finance issued a letter to the Joint Petitioners indicating that the public interest warrants further review for PSL §§99, 100 and 101, hence stopping the 90-day/45-day respective clocks for Commission review. See, Letter from Peter McGowan, Acting Director, Office of Telecommunications, and Doris Stout, Director, Office of Accounting, Audits & Finance to Charter and Time Warner.

public interest; provided, however, that any such consent shall be deemed to be granted by the commission ninety days after such corporation applies to the commission for its consent, unless the commission, or its designee, determines and informs the applicant in writing within such ninety day period that the public interest requires the commission's review and its written consent." Thus, the burden of demonstrating that the transaction satisfies the public interest rests with the Petitioners. If Time Warner and Charter cannot satisfy this burden, the Commission may, in its discretion, conduct a further review of the public harms that may result from the proposed transaction. Again, it has made such a determination here.[14]

PSL §101 states that an application is deemed approved after 45 days unless the Commission or its designee notifies the petitioner in writing, within the time period, that the public interest requires the Commission's review and its written order. Again such written notification was provided.

Similarly, under the newly amended PSL §222(3)(b): "[t]he commission shall not approve the application for a transfer of a franchise, any transfer of control of a franchise or certificate of confirmation, or of facilities constituting a significant part of any cable television system unless the applicant demonstrates that the proposed transferee and the cable television system conform to the standards established in the regulations promulgated by the commission … that approval would not be in violation of law, or any regulation or standard promulgated by the commission, and that the transfer is otherwise in the public interest…."[15]

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[14] Id.

[15] L. 2014, Ch 57 (Part R).

The amended PSL §222, specifically requires that the Petitioners make a demonstration that the proposed transaction is in the public interest. The burden falls to the Petitioners in the first instance to show that the proposed transaction's benefits outweigh its detriments in order to obtain Commission approval. The standard enumerated under PSL §222 is in line with that used in PSL §70 for electric and gas corporation mergers and acquisitions. Under the PSL §70 "public interest" criterion, a petitioner must show that the transaction would provide ratepayers a positive net benefit. In implementing the public interest standard, the Commission's examination of the relative benefits and detriments of the proposed transaction is very broad. For example, the impact of Iberdrola's acquisition of Rochester Gas & Electric Corporation (RG&E) and New York State Electric & Gas Corporation (NYSEG) on the vertical market power of Iberdrola in the wind energy industry was examined at length by the Commission in its analysis and ultimate approval of that transaction.[16]

In amending PSL §222, Staff believes that it was the New York State Legislature's intent to align the Commission's

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[16] Case 07-M-0906, Joint Petition of Iberdrola, S.A., Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009) pp. 63-89 (Iberdrola Order); see also, Digital Paging Systems, Inc. v Public Serv. Commn., 360 N.Y.S.2d 931 (3d Dep't 1974)(where the Commission, in analyzing a request for authorization to purchase more than ten percent of the voting capital stock, determined that the transaction was not in the public interest because the proposed purchase would exacerbate conflict between stockholder groups, which would be an obstacle to financing and a drain on time and resources of management of the carrier).

review and approval process for PSL §222 proposed transactions with PSL §70 reviews and approvals. The former PSL §222 review required Commission approval if it did not find a violation of the public interest, while the amended statute now requires a demonstration of the public interest by the applicant. This modification, together with the fact that there is no provision for a transaction to go into effect by operation of law, makes the amended PSL §222 consistent with the PSL §70 merger and acquisition standard. Therefore, it makes sense, both as a practical and legal matter, to consider applications for the transfer and acquisition of cable franchises, assets and stock under the same transfer and acquisition analysis used for electric or gas corporations. A review and interpretation of the public interest standard under PSL §70 is paramount to establishing the appropriate public interest standard to be applied here under PSL §222. Such review will define what is meant by the phrase "public interest," as well as identify what is required to satisfy that standard.

Under the Commission's PSL §70 merger and acquisition precedent,[17] the public interest standard is satisfied if the merger or acquisition is found to produce a "net positive benefit" for ratepayers. As stated by the Commission in its Fortis Order: "the clearest articulation [of the] public

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[17] Case 06-M-0878, <u>National Grid PLC and KeySpan Corp. – Stock Acquisition</u>, Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KEDNY and KEDLI (issued August 23, 2007) and Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KEDNY and KEDLI (issued September 17, 2007) (together KeySpan Orders); Case 07-M-0906, <u>Acquisition of Energy East Corp. By Iberdrola, S.A.</u>, Abbreviated Order Authorizing Acquisition (issued September 9, 2008); Iberdrola Order, <u>supra</u>; Fortis Order, <u>supra</u>.

interest analysis…" under which the Commission approves a merger or acquisition is that it "require[s] Petitioners to make a three-part showing: that the transaction would provide customers positive net benefits, after considering (1) the expected benefits properly attributable to the transaction, offset by (2) any risks or detriments that would remain after applying (3) reasonable mitigation measures."[18] Further, once the Commission has compared the transaction's benefits and detriments: "[it] can assess whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized benefits…" referred to as positive benefit adjustments (PBAs).[19] Therefore, if the proposed transactions' benefits do not outweigh unmitigated detriments, monetary PBAs can be used to sufficiently "tip the scale" to establish that the transaction provides a net positive benefit for existing customers. If this is accomplished, the transactions should be found to be in the public interest and ultimately approved.

Applying the public interest standard in a manner that ensures consumers obtain a net positive benefit is not unique to

[18] Case 12-M-0192, supra, Fortis Order, p. 59.

[19] Id.

New York. In fact the FCC,[20] the public utility commissions of the States of California,[21] and Oregon,[22] as well as the Commonwealth of Massachusetts,[23] all have a "net positive benefit" standard that is applied to utility mergers.

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[20] See, Comcast/NBCU Order. The FCC stated that its public interest review "entails a thorough examination of the potential harms and benefits of the proposed transaction, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose remedial conditions to address potential harms likely to result from the transaction. If, on balance, the benefits associated with the proposed transaction outweigh the remaining harms, the Commission must approve the transfer if it serves the public interest." See also, Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12363, ¶30 (2008); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276, ¶22 (2008); SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶16 (2005).

[21] See, Cal. Pub. Util. Code 854(b) (1996). California has a statutory mandate that a minimum of 50% of the short- and long-term net economic benefits of electric utility merger be shared with its customers.

[22] See, Or. Pub. Util. Comm'n, In re Legal Standard for the Approval of Mergers, 212 Pub. Util. Rep. 4th 449, 455–457 (2001); I/M/O the Application of Enron Corp. For an Order Authorizing the Exercise of Influence Over Portland General Electric Company, 177 PUR 4th 587, 595-596 (June 4, 1997). Oregon has gone so far as to require that 100% of the merger savings flow through to ratepayers in order for a transaction to be considered in the public interest.

[23] See, Joint Petition for Approval of Merger between NSTAR and Northeast Utilities, pursuant to G.L. c. 164, § 96, Interlocutory Order on Standard of Review, D.P.U. 10-170 (March 10, 2011). Massachusetts as recently changed its standard of review of utility mergers to require a showing of net benefits.

Application

In this case, the Commission should seek net positive benefits in the form of conditions, and if necessary, a PBA because the Petitioners have not made enough concrete commitments to share with New York customers an equitable portion of the projected synergy savings associated with the proposed transaction. Conditional approval of the proposed transaction designed to ensure that synergy savings inure to the benefit of New York customers builds upon the premise that synergy savings benefit customers in a fully competitive market and provides assurance that New York customers will receive a fair share of those promised savings. Such conditions and commitments also serve to lend credibility to Petitioners' claims regarding the benefits of the transaction and are consistent with established Commission precedent in applying the public interest standard to merger and acquisition cases. For this transaction, Staff uses two methodologies to quantify the dollar value of the public interest benefits that should inure to New York customers: 1) an estimate of the amount of synergy savings that would be received by customers in a competitive market, and 2) a PBA estimate based on methodologies used by the Commission in reviewing other comparable proposed transactions.

As part of the proposed transaction, published reports project that the merger of Time Warner and Charter will produce $800 million of synergy savings.[24] Post acquisition, New York customers would represent approximately 10.879% of New Charter's

[24] Charter to Merge with Time Warner Cable and Acquire Bright House Networks Combinations Benefit Shareholders, Consumers and Cable Industry, May 26, 2015, available at http://ir.timewarnercable.com/investor-relations/events-and-presentations/upcoming-events/event-details/2015/Charter-Communications-to-Merge-with-Time-Warner-Cable-and-Acquire-Bright-House-Networks-Conference-Call/default.aspx.

total customer base (approximately 2,600,000[25] out of 23,900,000). In a fully competitive market, the vast majority of savings that are replicable by other market participants should inure to the benefit of customers. A conservative presumption of a 50% customer/50% shareholder sharing of these synergies, applied to New Charter's expected New York customer percentage, establishes that New York customers should receive approximately $43.5 million (10.879% x $400 million) in benefits annually from the proposed transaction.[26] Over the first ten post acquisition years, New York customer synergy savings should be approximately $402 million using a pro forma run rate where 50% of the synergies are achieved in the first year, 75% of the synergies are achieved in the second year, and 100% thereafter ($43.5 million X 50% + $43.5 million X 75% + $43.5 million X 8 = $402.375 million).[27] Staff utilizes a pro forma calculation of synergy savings given the uncertainty associated with both the actual realization, and timing of that realization, of these synergy savings.

[25] Staff notes that this customer count may be a conservative estimate because it is based on publically reported cable specific customers and not total customer relationships, which could be higher and, thereby, increase New York's overall share of synergy savings.

[26] It should be noted that in both the Iberdrola and Fortis transactions, 100% of the relatively modest expected synergies were applied as a customer benefit. But, Staff recognizes here that the telecommunications and cable markets are somewhat competitive and, therefore, we use 50% of the expected synergies as a gauge of dedicated customer benefit in this case.

[27] This estimate may be conservative, as it limits consideration of public benefits to only the first ten years post-acquisition and may not include savings associated with capital expenditure synergies and revenue synergies.

A commitment from the Petitioners to provide at least $402 million of incremental benefits would obviate or greatly lessen the justification for conditions or a PBA to establish a "net positive benefit" in this case. However, without such a commitment, conditions would become necessary to establish a net positive benefit to satisfy the public interest standard.[28] In both the Iberdrola and Fortis proceedings, PBAs were either required by the Commission, or settled upon by the parties and adopted by the Commission, to create a net positive benefit for ratepayers. The methodology used by Staff in those proceedings was relatively straightforward and was based on the "delivery revenues" of each utility.

In this proposed transaction there are no stated "delivery revenues" to use as a viable benchmark. However, Commission assessed revenues are common to all industries - electric, gas, telephone, and cable - and can be used as a benchmark.[29] Therefore, a fair net positive benefit benchmark would be to compare the public interest benefits in both Iberdrola and Fortis to the respective assessable revenues of the companies involved in those transactions. In 2007, NYSEG and RG&E assessable revenues equaled approximately $2.71 billion, and the PBA required was $275 million.[30] The Iberdrola PBA was approximately 10% of the companies' assessable revenues. In 2011, Central Hudson's assessable revenues were approximately $869 million and the public interest benefit (including minimal synergies) settled upon by the parties and approved by the Commission was close to $49 million, which included a public

[28] Case 07-M-0906, supra, Iberdrola Order, p. 131.

[29] Commission assessed telephone revenues are derived pursuant to PSL §18-a while cable revenues are derived pursuant to PSL §217.

[30] Id., pp. 136-137.

interest benefit of $40 million and dedicated synergy savings of $9.5 million, which equated to 5.7% of Central Hudson's assessable revenues. When Time Warner's New York State assessable 2014 cable revenues are added to its assessable telephone revenues, Time Warner's Commission assessed revenues equal approximately $2.87 billion. Using Iberdrola as a benchmark would require public interest benefits of about $291 million for this transaction, while the Fortis benchmark would produce public interest benefits of approximately $163 million.

The difference in the approved public benefit percentages for Iberdrola and Fortis can be attributed to the remaining unmitigated risks of the respective transactions after risk/detriment mitigation was achieved through Commission approved conditions. In Fortis, the Commission found that "any offsetting risks or detriments … ha[d] been minimized…."[31] In essence, after applying risk mitigation terms and conditions and considering the other benefits shared with customers, the transaction risk was minimal for Central Hudson customers and a PBA representing only 4.6% of Central Hudson's assessable revenues, in addition to the $9.5 million of concrete consumer commitments, was required to create a sufficient net positive benefit. On the other hand, the unmitigated transaction risks for NYSEG and RG&E customers was greater in the Iberdrola transaction and the Commission found that "the only real and significant public benefit to be derived from the transaction is the possibility of providing customers PBAs as a monetized benefit,"[32] and, therefore, the much greater PBA percentage of approximately 10% was necessary for Commission approval.

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[31] Case 12-M-0192, supra, Fortis Order, p. 60.

[32] Case 07-M-0906, supra, Iberdrola Order, p. 112.

As stated in the Iberdrola Order, the appropriate PBA level determination "requires an exercise of informed judgment rather than a purely mathematical calculation, but there are benchmarks we can apply to avoid basing a decision solely on subjective notions of equity."[33] However, the Commission has recognized that every transaction, no matter how conditioned, includes unique factors that require case-by-case analysis. Here, we are faced with a transaction that purports to promise efficiency gains, but also includes both foreseen and unforeseen risks and detriments. As discussed in further detail below, the unmitigated risks of this transaction are real and potentially substantial. Therefore, Staff recommends that the Commission use the $402 million as its targeted net positive benefit in addition to the risk minimizing conditions discussed below. Staff believes that this amount recognizes the unique benefits that New York represents for the combined companies in terms of value synergies not captured by efficiency gains.

PROPOSED BENEFITS

Staff has reviewed and analyzed the proposed transaction. Identified below are the benefits that we believe would accrue to New York customers, if the proposed transaction were approved, as compared to no such merger occurring between these companies. In each instance, Staff attempts to analyze the relative significance of each purported benefit.

Capital investment – While the Petitioners state that they will increase capital investment in New York beyond that of Time Warner, Staff notes that they have not made any specific investment commitments in their Joint Petition or responses to Staff's Interrogatory Requests (IRs). According to their

[33] Id., p. 132.

confidential response to DPS-26 which specifically asks, among other things, whether "New York State capital investment plan projections are expected to change as a result of the proposed transaction," the Petitioners state **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION].**

Moreover, in their confidential response to DPS-44, in which Staff inquired about planned or contemplated expansion of the Time Warner Maxx service to regions of New York State not currently receiving this service, the Petitioners respond **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION].**[34]

[34] However, in **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION].**

Thus, to consider New Charter's capital investment an incremental benefit, the merged company must demonstrate a tangible commitment to make new investments or invest beyond Time Warner's current capital investment budgets, anticipated to be **[BEGIN CONFIDENTIAL INFORMATION]** ██████████ **[END CONFIDENTIAL INFORMATION].** Because New York State represents almost one quarter of Time Warner's national market share, in terms of customer count, and also because of the importance that Time Warner places upon its New York market, Staff anticipates that any future plans for the rollout of Maxx in 2015 and beyond would likely include significant portions of the New York State market as well. Additionally, given the overall extent of the residential and business initiatives indicated in confidential Exhibit 43(f) which include **[BEGIN CONFIDENTIAL INFORMATION]**

██████████████████████

██████████ ██████████ **[END CONFIDENTIAL INFORMATION]**, Staff anticipates that some portion of those overall initiatives would likewise be realized in many parts of New York State.

Enhanced video programming – The Petitioners, in response to DPS-8, state they will introduce new, IP-capable Worldbox consumer premises equipment (CPE) and cloud-based Spectrum Guide user interface system. The Worldbox CPE system represents an advance in set-top box development that will enhance the customer experience with capabilities, such as additional simultaneous recordings and increased storage capacity for digital video recorder users.

Staff views the espoused benefits of these expanded video offerings with some skepticism because, as discussed in the detriments section below, they come with a potentially higher price-tag for New York consumers. However, notwithstanding the foregoing, we concede that these expanded

video offerings do represent a very minor incremental benefit for New York customers.

Accelerated transition to all-digital video network – Approximately 40 percent of Time Warner's New York customers are served by an all-digital system.[35] The Petitioners expect to transition all of Time Warner's cable systems to all-digital networks within 30 months of the close of the transaction, although they state that it is possible that systems serving less than 1% of homes may not be transitioned to all-digital service due to the challenges of interconnecting certain remaining Charter networks.[36] Moreover, Petitioners state that they intend to raise base broadband service speed tiers in Time Warner's service areas to Charter's current standard minimum service speed of 60 Mbps with uniform pricing options across markets and without data caps, usage based pricing, early termination fees or modem fees. By contrast, Time Warner's currently marketed broadband service offerings in much of New York top out at speeds of 50 Mbps and include fees for modem rentals.

In Time Warner's territories like New York City which are already all-digital, and provisioned for faster broadband service of 300 Mbps, Petitioners will introduce its offerings within a year of closing. Customers in remaining territories outside of New York City will have access to New Charter's speed tiers and pricing as their systems are converted to all-digital, which Petitioners state will happen within 30 months of the transaction's closing.[37]

[35] Response to DPS-10.

[36] Response to DPS-13.

[37] Id.

Staff agrees that a collateral benefit of an all-digital network includes additional bandwidth for network services,[38] including faster Internet speeds (consistent with Governor Cuomo's state broadband policy).[39] However, this digitalization and associated speed increases can only truly be considered a benefit if the Petitioners can adequately demonstrate that Time Warner would not have otherwise completed a similar transition to an all digital, faster network in a similar timeframe.

As stated above, there is no indication that Petitioner's plan for converting to all-digital in New York is any different from Time Warner's existing plan, although Petitioners' estimate a 30-month timeframe in which this transition would be completed and Time Warner has not publicly provided any such timeframe. Moreover, assuming the Petitioners adequately demonstrate that Time Warner would not have completed a similar transition to all-digital networks in a similar timeframe, this purported benefit must be balanced against the fact that some customers in New York may never see these benefits. According to Petitioners, about 1% of homes may never be transitioned to all-digital service. Finally, these upgrades come with potentially higher video price-tags.

Expanded low-income broadband services – The Petitioners state they will expand BHNs' low-income broadband program (Connect2Compete), which partners with schools to provide a low-cost Internet service, discounts on Internet-

[38] Transitioning multiple analog video channels, each with a 6 MHz bandwidth, to digital format utilizing compression technology, will reduce overall bandwidth needed for video programming, and allow newly vacated analog video spectrum to be utilized for other services, such as enhanced broadband service.

[39] Broadband for All, https://www.ny.gov/programs/broadband-all.

capable devices, and innovative digital literacy training. They expect to build upon BHNs' broadband program for low-income consumers by making a broadband offering available with higher speeds and expanded eligibility while continuing to offer the service at a significant discount. The offer would be available within six months after the transaction's closing and across the entire New Charter footprint within three years of the closing.

While Connect2Compete appears to be a positive program to introduce broadband service and the Internet to households with at least one child eligible for the school lunch program, the program suffers from many of the same infirmities associated with Comcast's "Internet Essential" program. During the Public Statement hearings in Case 14-M-0187, significant concerns were raised regarding the eligibility requirements of Comcast's Internet Essential's program which apply with equal weight to the instant transaction. Among other things, various parties stated that the program was too restrictive and should be available to a broader range of low-income customers and encouraged Comcast to remove enrollment obstacles by having Internet Essentials support families with a range of home languages, not just English and Spanish, remove restrictions that precluded families from enrolling who have subscribed to Comcast Internet service within the last 90 days, and remove restrictions for ineligibility based on arrears.[40]

Therefore, while there is a benefit associated with having a program in New York like Connect2Compete, and Staff concedes that the program is voluntary, and recognizes the

[40] See e.g., Case 14-M-0183, Joint Petition of Comcast Corporation and Time Warner Cable, Inc. for Approval of a Transfer of Control of Subsidiaries and Franchises, Information Forum/Public Statement Hearing (dated June 19, 2014) Tr. 29-33.

Petitioners for introducing the program, there remain serious concerns regarding the eligibility requirements of this program, as well as the general availability of broadband service to low-income customers, which must be taken into consideration when weighing its relative benefit.

Enhanced WiFi Hotspot Deployment - Time Warner indicates in confidential response to DPS-34 that it has deployed **[BEGIN CONFIDENTIAL INFORMATION]** ████ **[END CONFIDENTIAL INFORMATION]** WiFi hotspots in New York State as of July 14, 2015.[41] In its response to DPS-40, Time Warner states that there is no current plans for expansion of WiFi beyond 2015, but by the end of 2015, it plans to have a total of **[BEGIN CONFIDENTIAL INFORMATION]** ████ **[END CONFIDENTIAL INFORMATION]** public WiFi hotspots in New York. This represents a growth of **[BEGIN CONFIDENTIAL INFORMATION]** ████████████████ **[END CONFIDENTIAL INFORMATION]**, of WiFi hotspots over six months. On the other hand, the Petitioners state that New Charter plans to deploy at least 300,000 new out-of-home WiFi access points across its national footprint within four years.

Generally speaking, the expanse of WiFi hotspots will allow New York consumers greater access to wireless connections when travelling both within and outside New York State. Staff is cognizant of the overall value-added service that deployment of new WiFi hotspots will provide, by giving users greater mobility and ease of access to their video, voice and data services away from home. However, Petitioners have not determined where each of these access points will be located, or

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[41] A "hotspot" is a physical location situated with telecommunications equipment that allows users in the vicinity of the hotspot area, to access the Internet over a wireless (WiFi) connection to the user's Smart Phone, tablet or other mobile device.

how many will be deployed in New York State, but have stated that they will expand the existing WiFi network to additional areas heavily trafficked by consumers. Once the proposed transaction is complete, New Charter expects to evaluate the merits of leveraging in-home routers as public WiFi access points and will have greater resources to devote to such a strategy.

New Charter will own or manage systems comprising approximately 19.4 million broadband subscribers. Time Warner, in response to confidential DPS-46, states that the company's **[BEGIN CONFIDENTIAL INFORMATION]** ██████ **[END CONFIDENTIAL INFORMATION]** New York broadband subscribers, would represent approximately **[BEGIN CONFIDENTIAL INFORMATION]** ███ **[END CONFIDENTIAL INFORMATION]** of the New Charter's National broadband subscriber base. Staff, therefore, estimates that **[BEGIN CONFIDENTIAL INFORMATION]** ███████████████ ████ **[END CONFIDENTIAL INFORMATION]**, of the 300,000 WiFi hotspots New Charter plans to deploy within the next four years, should be in New York State. Given Time Warner's significant growth in WiFi hotspots in the State through 2015, albeit with no expansion plans beyond this year, Staff expects that Time Warner would have, nonetheless, continued some amount of WiFi hotspot expansion in the coming years per business-as-usual. In fact, Time Warner's downloadable "WiFi Finder" application, which gives Time Warner customers easy ability to locate active WiFi hotspots in their area, also has a, "Request a Hotspot" feature, complimented by a geographic information system location map, that lets customers directly contact the company to request an

indoor or outdoor hotspot.[42] Thus, without additional build-out and WiFI network deployment information from the Petitioners, it is difficult to give any WiFi deployment forecasts over the next four years a specific value.

Potential for greater competition in the business market - The Petitioners state that the proposed transaction will result in a stronger, more cost-efficient competitor and will offer new options that aggressively price services to small, medium, and enterprise business customers across a wider-area of New York. New Charter's larger footprint should allow it to serve New York business customers more effectively, including regional and super-regional business customers with offices in New York and surrounding states (most notably Ohio and Vermont). In their confidential response to DPS-5, the Petitioners state that **[BEGIN CONFIDENTIAL INFORMATION]**

[42] The Time Warner WiFi Finder application is featured on Time Warner's website, at: http://www.timewarnercable.com/en/apps/wifi-finder.html. The application is downloadable from the Apple Store or Google Play to customer smart phones, tablets and other mobile devices.

[REDACTED] **[END CONFIDENTIAL INFORMATION].**

Staff considers this a benefit of the proposed transaction because competition in the small and medium business voice and data markets has not evolved at the same pace as the residential market, and these services and network upgrades should serve to increase such competition. Although we note that Time Warner currently markets several business Internet type services, such as "Dedicated Internet Access," "Ethernet Private Line," "Ethernet Virtual Private Line," and "Ethernet Local Area Network." All of these services can be provisioned for data speeds of up to 10 Gbps and support metro and national business applications including online backup, storage area networking, and data center connectivity.[43] So without additional build-out information, including details regarding physical infrastructure deployments in specific geographic areas of the State and additional granularity with respect to investment into enterprise capabilities beyond what Time Warner is currently offering via its business Internet services, it is difficult to give this business market expansion benefit specific incremental value.

Miscellaneous assertions - In addition to the foregoing, the Petitioners claim that the proposed transaction will not result in a reduction in competition. They note, that neither Charter nor Time Warner directly compete against one another for cable customers in New York, thus, they argue that there will not be a decrease in competitive cable options as a

[43] Time Warner Cable, Business Services, available at, https://business.timewarnercable.com/services/internet/business-internet/overview.html.

result of the merger.[44] The Petitioners also claim that, there will be no disruption in customer services because upon completion of the proposed transaction, Time Warner subsidiaries will become indirect, wholly owned subsidiaries of New Charter. The Petitioners state that they are not seeking authority for the transfer of customers or for any changes in rates, terms or conditions of service and New Charter will also continue to provide Lifeline Discounted Telephone Service (Lifeline) pursuant to Time Warner's existing eligible telecommunications carrier designation. Moreover, to assist blind and visually impaired customers, Charter states that it is working on developing a talking guide solution for video services, which it is planning on rolling out by December, 2016.[45]

Staff expects that customers will retain the same digital phone number they had with Time Warner; will have the same billing account information; and, other technology will continue to operate seamlessly. In other words, the transaction should be technologically transparent for consumers. We also acknowledge that, following the proposed transaction, there should be no diminution in the number of service provider options available to consumers in the video market because Charter and Time Warner do not currently have overlapping service areas in New York. Since the potential for direct competition no longer exists, this assertion is in no way a

[44] Petitioners' analysis of their respective footprint indicates that there is a small area in Clinton County in which Time Warner and Charter both serve customers within the same census blocks. But, Petitioners state that the overlap is potentially overstated, as different providers may serve distinct, non-overlapping portions of the same blocks. Joint Petition, p. 32, f.n. 31.

[45] Response to DPS-48.

benefit of the proposed transaction, it simply maintains the status quo.

Moreover, regarding the Petitioners' assertion that there will be no disruption in customer service, we note first that New Charter is likely to change set top boxes and other customer premise devices at some point following the transaction's close, which has the potential to disrupt (albeit temporarily) service. But, we recognize that this is standard, industry-wide service call practice, and is, therefore, beneficially and detrimentally neutral. We also note that if New Charter wishes to make additional changes following the proposed transaction that require regulatory approval, it has explicitly asserted that it will follow applicable Commission filing and notice requirements associated with such changes. As a result, there is no guarantee that New Charter will maintain the status quo for any length of time following the proposed merger, and, therefore, no such commensurate benefits would accrue to New York consumers.

POTENTIAL DETRIMENTS

Despite the Petitioners' assertions that there will be no negative impacts as a result of the proposed transaction, Staff has identified a number of substantial potential detriments and harms that are likely to result if the merger is approved without any enforceable conditions or commitments. The detriments identified by Staff are as follows.

Issuance of debt – Time Warner currently has better credit ratings than Charter. Time Warner has a rating of "BBB" by Standard & Poor's (S&P) and "Baa2" by Moody's Investors Service (Moody's). Charter is rated "BB-" by S&P and "Ba3" by Moody's. Both Moody's and S&P rate Charter four "notches" below Time Warner.

The Petitioners' request for authorization under PSL §101 for the issuance of debt connected to the proposed transaction represents the single most significant potential detriment. The Joint Petition states that Charter expects to finance part of the consideration for the transaction with additional indebtedness of approximately $24 billion. This additional indebtedness, according to the Petitioners, is expected to be in the form of new senior secured bank loans, senior secured notes, and unsecured indebtedness. As New York would represent 10.879% of New Charter's customer base, New York consumers would represent approximately $2.6 billion of this debt issuance.

Excessive leverage related to the merger poses risk for New Charter and its customers. The more debt issued for payment to Time Warner shareholders the more interest that New Charter must pay while at the same time obtaining no increase in customers and revenues resulting from the transaction. The consequences of a heavy debt burden can be substantial. If a company cannot meet its debt service obligations, it could lead to default in the terms of New Charter's debt and eventually to bankruptcy. Therefore, the payment of its interest and return of principal are atop the hierarchical payments that a debtor company must make. Dividends on the other hand are more flexible. When a company is prosperous it is easy to overlook the risk and leverage since it actually serves to magnify earnings. However when losses occur, the opposite is true. In a worst case scenario a corporation that borrows too much money might face bankruptcy or default during a business downturn. A high debt service could also serve to limit capital investment, both in terms of new products and expansion of existing markets and may result in a decline in general service quality since a company may have to seek cost cuts in these areas if it cannot

otherwise service its debt. A high debt load could increase financing costs as well if the company's credit rating is affected and will also make it more difficult for a company to raise additional debt to support its capital expenditures.

With the proposed merger, Time Warner will become part of a new entity with much higher levels of debt and lower credit ratings. If the announced merger with Charter is successfully completed, Moody's review anticipates it will result in a multi-notch downgrade of Time Warner's current long-term debt rating of "Baa2".[46] The acquisition debt issued to date to partially fund the proposed transaction has received a "Ba1" rating from Moody's.[47] Moody's review for downgrade takes note of Time Warner's intention to merge with a lower-rated and more leveraged entity, which, given the financing plans that include a significant debt component,[48] will lead to deterioration in New Charter's balance sheet strength and credit metrics to a level not consistent with an investment grade rating.[49] New Charter is projected to have debt in excess of $60 billion, compared to Time Warner's current level of long-term debt of $23 billion, as of December 31, 2014.

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[46] Credit Opinion: Time Warner Cable, Inc., Moody's Investors Service, June 1, 2015.

[47] Moody's assigns Ba1 to Charter's 1st lien secured bonds, Ba3 CFR remains on review for upgrade, Rating Actions, Moody's Investor Service (issued July 9, 2015).

[48] Charter will use about $29.3 billion in new borrowing to help finance the takeovers of TWC and BHN.

[49] Standard & Poor's and Fitch have issued similar pronouncements concerning the merger. Time Warner Cable Inc. 'BBB' Rating Is on CreditWatch Negative On Its Agreement To Be Bought By Charter Communications, Research Update, Standard & Poor's Rating Services (issued May 26, 2015); Fitch Places Time Warner Cable's 'BBB' IDR on Rating Watch Negative, Fitch Ratings (issued May 26, 2015).

One measure of cash flow that is used by the rating agencies in analyzing cable companies is Earnings before Interest, Taxes, Depreciation, and Amortizations (EBITDA). When taken into consideration in the ratio of debt to EBITDA, this is a metric that measures a company's ability to payback or service its debt. In essence, it reflects how many times the annual cash flow is required to fully cover the debt. A smaller number is more supportive of credit quality than a larger number. As of December 31, 2014, TWC had a debt/EBITDA of approximately 2.8x[50] compared to the New Charter's pro forma debt/EBITDA of 4.5x.[51] Moody's analysis similarly anticipated that the issuance of this debt would increase the debt/EBITDA ratio from Time Warner's current level of 3.0x (implied Moody's "Baa2" rating, investment grade) to the combined company's 4.5x (implied Moody's "Ba3" rating, non-investment grade) after the transaction is consummated.

Beyond the fact that the decline in this metric appears to be leading to a credit rating downgrade, the metric also has potential implications for the financing plans of TWC. Time Warner could be directly impacted by becoming part of a higher leveraged entity. Its current $3.5 billion revolving line of credit could eventually require refinancing if New Charter's debt/EBITDA ratio exceeds 5.0x.[52] As discussed, New Charter has a pro forma debt/EBITDA of 4.5x, which is much closer to the limit than TWC's current ratio of 2.8x. A downturn in the economy, aggressive pricing of comparable services by competitors, loss of customers or any number of

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[50] Time Warner Cable 2014 10-k, www.sec.com.

[51] Charter to Merge with Time Warner Cable and Acquire Bright House Networks, Combinations Benefit Shareholders, Consumers and Cable Industry, www.sec.com, May 26, 2015.

[52] See, f.n. 50, supra.

adverse factors could reduce income and force the refinancing of the TWC's line of credit. This could lead to higher interest costs and reduced borrowing capabilities. Under the present metrics, without this merger, economic conditions would need to be much worse for such a refinancing to become a factor.

Cable operators are typically large users of capital, and as such are dependent on a good credit quality to keep their borrowing rates reasonable. This transaction leaves the successor entity in a considerably worse credit position than is currently enjoyed by Time Warner. This is a risk not only to the company's bondholders, but its customers as well. As discussed above, if the operating environment declines for cable companies the New Charter will have more difficulty maintaining the investments necessary to bring expanded products and provide good service quality to its customers and, thus, this represents the single most substantial risk of the proposed transaction. Accordingly, the Commission should seek to mitigate this risk and ensure that New York receives net benefits (in the manner outlined below) that are sufficient to offset this and the other potential harms.

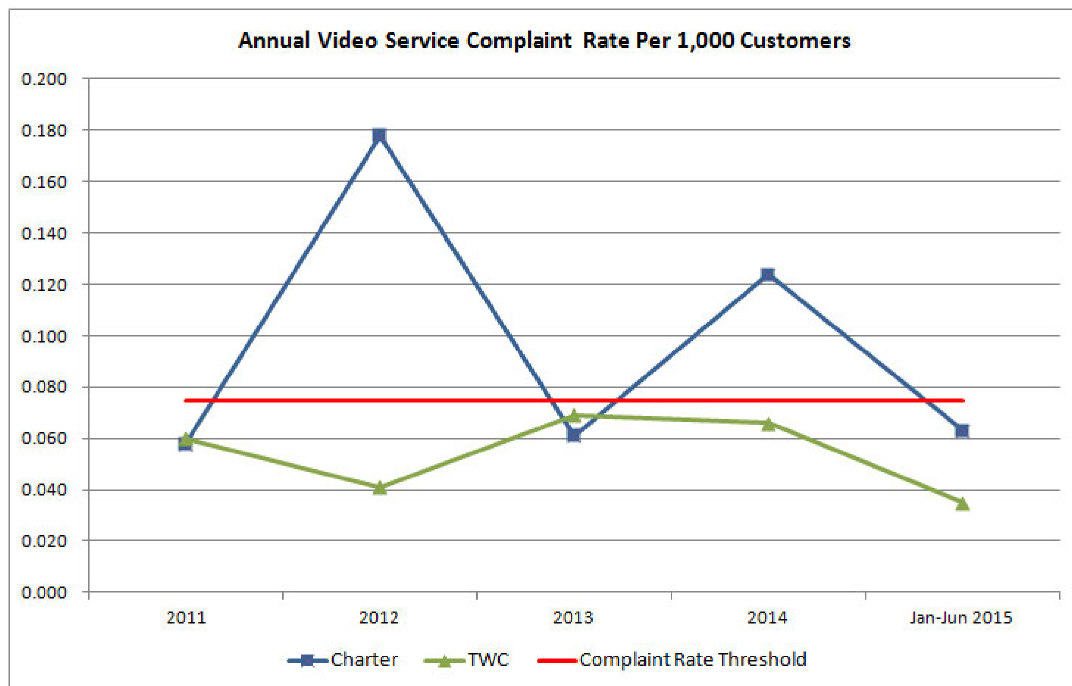
Customer service – According to a May 2015 report from the American Customer Satisfaction Index (ACSI), Time Warner was the lowest and Charter was in the middle of the 12 rated cable television companies.[53] Among Internet Service Providers, customers rated Time Warner and Charter as ninth and tenth, respectively, out of the 12 rated companies.[54] According to ACSI, customers rated Charter even lower for Internet service

[53] See, ACSI, Telecommunications and Information Report 2015, p. 2, available at https://www.theacsi.org/news-and-resources/customer-satisfaction-reports/reports-2015/acsi-telecommunications-and-information-report-2015.

[54] Id., p. 4.

than for cable television service.[55] This concern is heightened by the fact that New Charter may have less of a New York focus.

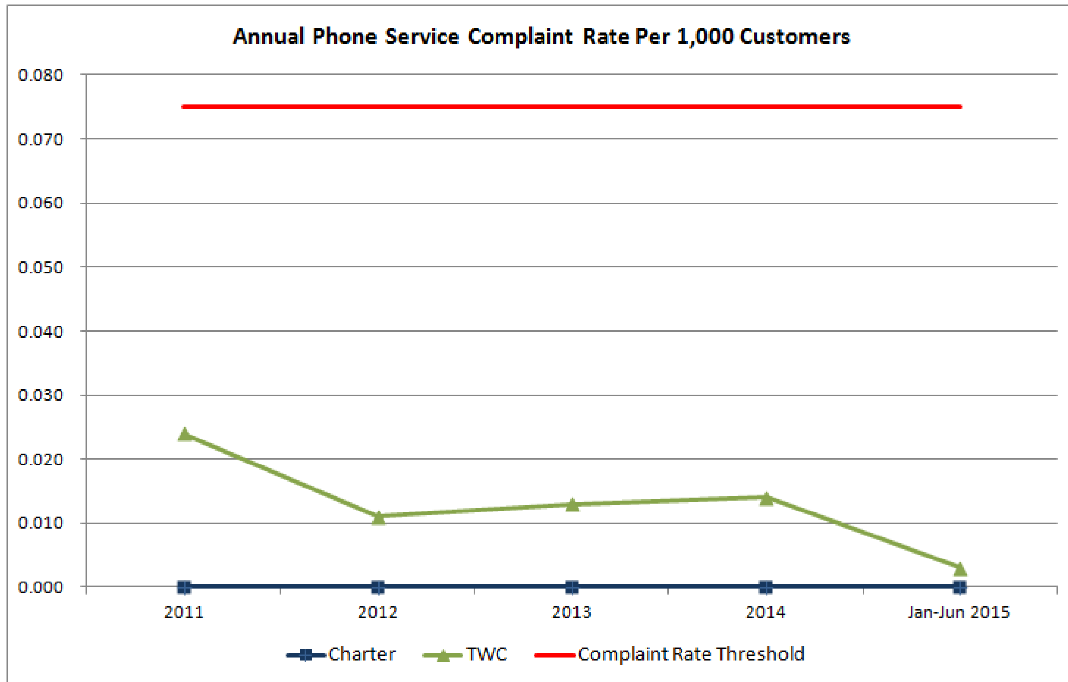
Staff did however review aspects of the Petitioner's service quality, as reported by consumers, through analysis of the Commission's PSC Complaint Rate.[56] This metric is used by the Commission as an independent measure of service quality, apart from service quality performance (such as the Customer Trouble Report Rate metric) reported by carriers under the Commission's Service Standards. A review of the metric was inconclusive for Charter, because in New York the company has such a small customer base that it would only take a handful of escalated complaints to trigger the PSC Complaint Rate metric. A review of Time Warner's PSC Complaint Rate in New York, however, yields that the company has performed adequately under this metric as illustrated in the following chart.



[55] Id.

[56] The Complaint Rate metric is typically applied to telephone service, but the metric calculation was used by Staff as a proxy to gauge a comparable video service complaint rate.

With regard to Charter's and Time Warner's annual PSC Complaint Rate on telephone service quality, both companies are well below the established thresholds as illustrated below.

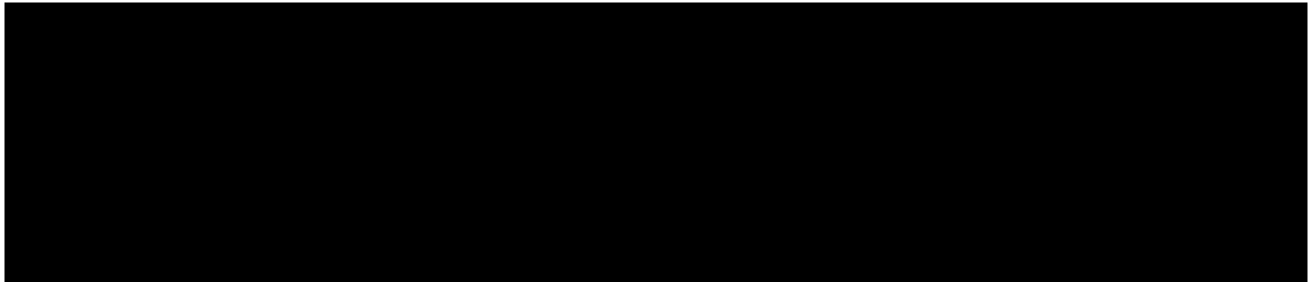


Charter lacks offerings that may be desirable to low- and middle-income customers - Overall, Charter's pricing appears to be comparable to Time Warner's rates for consumers. However, Charter lacks offerings that may be desirable to low- and middle-income customers. According to the Petitioners' response to DPS-35 related to Average Revenues per Unit (ARPU), confidential responses to DPS-31 and DPS-47 related to cable television rate card information, and from publicly available information obtained from Charter's and Time Warner's websites, Charter's pricing appears to have fewer low-cost options than Time Warner's in New York State.

Staff analyzed promotional prices, list prices and the average prices that Charter and Time Warner customers pay. Charter has simpler pricing structures, but tends to omit low-

end and high-end plans. Both companies offer promotional pricing which revert to list prices over time. Both companies offer bundled discounts. Charter's list prices are often higher than Time Warner's, but the prices that customers pay on average, over time, tend to be comparable for the video and data services provided by Charter and Time Warner per the following illustration.[57]

[BEGIN CONFIDENTIAL INFORMATION]



[END CONFIDENTIAL INFORMATION]

Charter's and Time Warner's pricing is not always directly comparable. Charter's basic broadband plan offers 60 Mbps down and 4 Mbps up, which exceeds the specifications of most of Time Warner's products. In contrast, Time Warner's video plans often include more channels. Given the complicated nature of this comparative pricing analysis due to the

[57] We note that ARPU comparisons can be confusing to the extent that the ARPUs are not measured uniformly by both companies. For example, based on rate information for voice services provided in responses to confidential DPS-31 and DPS-47 **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**. See, the FCC's 2013 Video Competition Report, FCC 13-99, In the Matter of Annual Assessment of the Status of Competition in MB Docket No. 12-203 the Market for the Delivery of Video Programming, ¶139, p. 68 (rel. July 22, 2013), for a discussion of issues related to ARPU comparisons between companies.

differentiated nature of Charter's and Time Warner's offers, it is not clear whether one pricing structure represents a better option for customers. Based on ARPUs, it appears that overall, Charter customers pay similar prices to Time Warner customers. But we caution that as a result of the proposed merger, some lower-income New Charter customers may pay more for a higher level of service that they cannot necessarily afford or desire.

Universal broadband affordability – Similarly, the merger could negatively impact consumer choice in the broadband and emerging on-line video markets and drive up prices. Time Warner currently offers a standalone broadband offering under its "Everyday Low Price" suite of services. This service is available to all customers regardless of income or other eligibility criteria. This Time Warner offering is $14.99/month for speeds of up to 2 Mbps, has been available since November 2013 and replaced a previously generally available low-price option.[58] In addition, Time Warner offers a "Basic" $29.99/3 Mbps option as well as a "Standard" $34.99/15 Mbps option (both of these are promotional rates).[59]

In contrast, Charter's least expensive generally available offering for standalone Internet service is its Spectrum Internet offered at $39.99 per month on a promotional

[58] Times Union, Time Warner launches low-cost Internet: $14.99 a month, November 7, 2013, available at http://blog.timesunion.com/business/time-warner-launches-low-cost-internet-14-99-a-month/57799/.

[59] Time Warner Internet Services, available at http://www.timewarnercable.com/en/internet/internet-service-plans.html. The rates listed are the promotional rates for the respective service offerings for the first 12 months. The retail list rates for these two services are $47.99 and $57.99 per month, respectively.

basis for speeds of up to 60 Mbps.[60] Importantly, Time Warner's lower priced offerings represent choices for New York consumers. Any loss of these services would likely result in consumers paying more to ensure they have access to the same level of high-speed Internet service and its important resources.

Jobs and focus in New York State – The potential for loss of jobs in New York is material following the proposed transaction. New Charter will inevitably have less of a focus on New York in terms of both jobs and the level of customer service provided to the New York market because the State will represent a smaller portion of the combined company's customer base post-merger than currently exists with Time Warner. According to the Joint Petition, Charter expects to increase United States based jobs as a result of the merger, however, no commitment is made with regard to jobs located specifically in New York. Charter has no call centers, no service centers and no walk-in centers in New York. In contrast Time Warner has five call centers employing approximately 1,996 staff, 61 retail/walk-in centers employing approximately 2,674 staff, nine corporate offices employing approximately 1,257 staff, nine service/maintenance locations employing approximately 1,687 staff, two media offices employing approximately 435 staff, and 11 other service related functions employing about 1,003 staff, with total employment in the State of approximately 9,052. Time Warner is a company with its headquarters in New York and a New York centric focus. Charter, on the other hand, is headquartered in Connecticut and has a much wider national footprint. For example, New York currently represents about

[60] Charter Communications, available at https://www.charter.com/browse/content/packages (This is a promotional rate for the first 12 months and includes free internet modem).

17.3% of Time Warner's overall customer base.[61] New York would represent 10.879% of the combined entity's customer base following the proposed transaction.

Hence, there is a real danger that New Charter will look to gain operational efficiencies by moving/consolidating customer-facing jobs and other positions to out-of-state locations, despite any claims to the contrary. Out-of-state service centers would make it difficult for it to maintain its current level of customer service. Longer wait times and lack of local knowledge could lead to increased frustration and dissatisfaction on the part of New York customers, and a significant decline in the overall level of service provided. The use of larger regional call centers might result in efficiencies that could benefit New Charter financially, but would be unlikely to benefit its customer in terms of improved service quality. These facilities employ staff conducting a variety of important services for customers throughout the State, services that are best provided at the local level rather than from out-of-state facilities.

The Petitioners have made no commitment regarding the number of jobs they will create or retain in New York following the proposed transaction. Although the response to DPS-14 indicates that the merger will not result in a reduction of customer-facing jobs in New York, as indicated, it might be possible to gain operational efficiencies by moving/consolidating customer-facing jobs to out-of-state locations.

Infrastructure expansion investment – It has been reported that the transaction will produce $800 million in

[61] Petitioners' Public Interest Statement filed with the FCC, p. 10.

operating efficiencies, with additional opportunities for revenue synergies, as a result of the proposed merger.[62] Operational efficiencies typically encompass the types of scale, scope, and coordination of economies that can potentially be realized through horizontal and vertical integration. The Petitioners, however, have not provided a reasonable identification of these operational savings and revenue synergies associated with the proposed merger. Nor, according to their confidential response to DPS-25, **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION].**

Rather, the Petitioners' claim that the proposed transaction will nevertheless translate into consumer benefits. New York consumers can benefit from merger synergies and savings either via lower prices or investment of those savings and synergies back into the networks used by New York consumers. Staff notes that in confidential response to DPS-11 (and DPS-44 as outlined above), for example, Time Warner indicated that its current 2015 New York State rural residential network deployment plan includes approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** for line extension projects covering **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** miles and **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** premises passed. This equates to an overall average investment of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** per mile and **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** per premises passed.

[62] See, f.n. 24, supra.

There is obvious tangible benefit to Time Warner's rural residential network deployment plan, as a significant number of cable network miles and premises passed have been achieved, where it might not otherwise have occurred without such a proactive plan. This has resulted in further competitive wireline telecommunications options for consumers newly served by Time Warner, and afforded the company additional growth opportunity. New Charter has not committed to a continuation or expansion of the Time Warner plan. Without firm commitments, however, there is the potential that operational savings associated with distribution improvements to Time Warner's New York systems might be allocated to the benefit of other states or to shareholders, but not New York consumers.

Market power - Petitioners describe the proposed transaction primarily as a merger of two firms that do not compete in each other's service territories. Thus, the Petitioners argue that the transaction will not have a negative impact on competition. Staff generally agrees with this assertion. There appears to be little danger of the increased exercise of market power in this case and therefore no detriment exists in this regard. However, this cannot be considered a benefit of the transaction either as it simply maintains the status quo going forward.

ANALYSIS AND RECOMMENDATIONS

New York consumers expect and deserve best-in-class communication services and Staff would expect that Charter shares that same goal. Staff's recommendations are thus design to facilitate New Charter's deployment of advanced networks to meet this very important objective. Based on a review of the relative potential benefits and detriments described above, Staff has determined that the proposed merger would not result

in a net positive benefit for New York absent specific commitments that ensure New York will share in the promised efficiency gains. We also find that while certain detriments can be mitigated with specific conditions discussed below, the purported benefits must be turned into concrete commitments by New Charter in order for the Commission to find sufficient net positive benefits to approve the proposed transaction.

The potential detriments associated with the increased debt resulting from the proposed transaction are troubling since New Charter is not subject to the Commission's traditional rate-of-return regulations and operates in competitive markets. It is difficult to establish conditions that would effectively mitigate these risks. Thus, the lack of flexibility associated with the debt issuances is an especially important reason why the Commission must obtain benefits associated with the other commitments and conditions discussed below to produce a net positive benefit that will offset these substantial unmitigated risks.

Accordingly, we recommend that the following commitments and conditions be considered as part of any Commission approval of the proposed transaction in addition to any necessary PBA discussed herein. Below, Staff identifies broad areas of commitments that we believe provide valuable public interest benefits. We also endeavor to attach a value where meaningful and propose a means by which these commitments can be translated into concrete actions, but recognize that alternative means may also be possible by Petitioners or other interested parties.

Infrastructure deployment and expansion – Time Warner and Charter operate networks that support telephone, cable, and broadband services. Ultimately, all of these services would be improved if key components of the infrastructures of those

networks were modernized and expanded to more areas of the State. As indicated above, the presence of high-speed broadband throughout the current Time Warner/Charter footprints is a substantial interest to the State. Individuals and businesses alike increasingly rely on some type of broadband connection as their principal means to access Internet-based voice, video, and data communications. Greater consumer access to high-speed broadband services provides the conduit for further growth and engine for the development of the State's public and economic interests.

However, absent a specific commitment regarding investment, or scheduling, above Time Warner's current levels, or the continuation or expansion of current Time Warner programs, like its successful rural residential network deployment plan, the public benefits asserted by Petitioners are speculative at best. Accordingly, New Charter should be required to develop a strategic implementation plan to build-out its all-digital network to the remaining unserved or under-served Charter and Time Warner franchise areas in New York. This type of substantive commitment would serve three key objectives: 1) expanding service to rural communities and other unserved areas; 2) expanding service to industrial parks and businesses; and, 3) expanding service to community anchor institutions (e.g., schools, libraries, community centers, municipal buildings, public facilities and hospitals).

Included in this network upgrade/deployment should be added focus on the Chatham Systems. Nearly all of the communities in New York State that have cable networks deployed are fully interactive, two-way systems that provide access to video, voice and broadband services. The Chatham cable systems are among the few exceptions in the State, being one-way capable only. New Charter should be required to upgrade its existing

Chatham cable systems serving communities in Columbia County, from its current one-way video service-only design, to a two-way, fully interactive cable network, similar to Charter, Time Warner and most other cable networks operating in New York State. This commitment would 1) align the Chatham cable networks, architecturally and provisionally (capable of offering video, voice and broadband services), with all other Charter and Time Warner networks; 2) achieve network integration and interconnection between the Chatham networks and the other New Charter networks; and, 3) substantially improve wireline telecommunications service to thousands of residents, businesses, and community anchor institutions in Columbia County.

Staff conducted a field inspection of the Chatham systems on July 31, 2015. We found that while there were some operational issues associated with, among other things, pole attachment/make ready work necessary to complete such an upgrade to the network, these construction concerns were not insurmountable provided New Charter is committed to working with the respective pole owners. Staff remains ready and able to assist Charter in this endeavor, should the company need assistance with inter-company communications and coordination.

Staff believes that the timeframe associated with this build-out should roughly correspond with the Petitioner’s commitment to go all-digital in New Charter’s entire footprint within 30-months of the merger’s closing and must have established reporting requirements to monitor and verify network build-out progress. However, New Charter should be given an opportunity to demonstrate why slippage in the deployment schedule is warranted. Staff would expect New Charter to work closely with the Department of Public Service and the New York State Broadband Program Office (BPO), in consultation with

regional stakeholders, to establish such build-out criteria and funding priorities. In this regard, the Commission should direct New Charter to file an implementation plan for this deployment within 60 days of the closing of the merger and consult with Staff, the BPO and others on its implementation.

Staff further believes that these commitments to build-out to unserved and under-served areas of New Charter's footprint, as well as footprint network infrastructure upgrades, will ensure that New Charter is investing at levels that are beyond Time Warner's actual 2014 and planned 2015 and 2016 capital expenditures throughout New York State. These commitments will derive an investment net gain post-transaction.

Universal broadband affordability – With access to broadband becoming increasingly important for all New Yorkers, New Charter should commit to a series of steps and service offerings designed to make broadband service truly universal in the current Time Warner/Charter footprints in New York State.

Accordingly, the provision of Connect2Compete program, which limits participation to families who have not subscribed to an Internet service within the last 90 days, should be enhanced. Families who would otherwise qualify for the program, but subscribe to the $14.99 monthly Time Warner offering, or other relatively lower-priced Internet services before the Connect2Compete program becomes available in New York, or because they were not aware of the program, should be permitted to enroll. Similarly, the Connect2Compete program limits participation to customers with no overdue bills. Customers in arrears should not be excluded from participating in this program. Indeed, payment troubled customers may obtain considerable benefits from the program that may aid them in paying their bills on time as a result of learning how to use the Internet to enhance their training and skills and to search

for higher paying jobs. Finally, the speed of this offering should be raised from its current level to 5 Mbps download and 1 Mbps upload to 10 Mbps in order for it to remain relevant in a market that demands increasingly faster Internet speeds and is rapidly evolving. The Commission should require New Charter to modify the Connect2Compete program in the ways described herein, but maintain its current price of $9.95 with no installation or activation fees.

New Charter should also be required to adhere to a minimum enrollment target for in the Connect2Compete program across its entire statewide footprint within five years of the close of the transaction. Without such a target it is difficult to measure the success of this very important low-income program. Moreover, to further assist low-income customers in New York, the Commission should require New Charter to participate in any established federal Lifeline[63] program and, in consultation with Staff, form a working group of interested stakeholders to develop outreach and other strategies to improve Lifeline adoption rates and bridge the digital divide in New York.

Time Warner currently provides certain affordable standalone broadband offerings to thousands of customers who do not otherwise meet the eligibility requirements for the Connect2Compete program, but cannot afford the cost of more expensive products and services. Discontinuance of these standalone Time Warner offerings, with no equivalent New Charter offerings would deprive the New York market of some of the most popular Time Warner broadband offerings priced at levels that allow these consumers to be connected to the Internet and

[63] In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, et al.

subscribe to alternative video services (e.g., Netflix, Amazon and Hulu) at a total cost that is competitive with other cable video packages. Similarly, consistent with the Commission's long-stated policy of encouraging competition in the telephone market,[64] and the ability to combine Time Warner's "Everyday Low Price" Internet package with over-the-top or VoIP telephone services, allows low- and fixed-income customers to have access to both telephone and Internet services for approximately the cost of a standalone telephone service.[65] Charter offers no comparable product and there is no evidence that competitive pressures are likely to compel it to do so post merger.

In order to maintain access to broadband service for New Yorkers who do not qualify for Connect2Compete, and allow such customers an ability to compete with bundled telephone and cable offerings, New Charter should commit to continue to offer Time Warner's $14.99 "Everyday Low Price" Internet offering for at least five years following the proposed merger's closing, and to increase the speed of this offering to 3 Mbps download and 1 Mbps upload which is the current speed in the New York City metropolitan area. Staff would anticipate that such an upgrade might result in a moderate price increase to reflect an evolving

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[64] See e.g., Case 05-C-0616, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006).

[65] Verizon New York Inc.'s current rate for a basic access line is $8.61 and the rate for its Unlimited Local Plan in Manhattan is $16.34. The combination of these two rates results in a rate of $24.95 for the functional equivalent of a flat-rate residential basic service in Manhattan. Combining $14.99 broadband service with a $9.99 VoIP offering such as MagicJack or a $12.99/mo Vonage plan, is roughly equal to the $24.95 Verizon residential basic service.

market. Such a condition will prevent harm to current subscribers of this service who would be forced to pay more than twice what their costs are today for broadband service.

Charter notes in its petition that it will offer its 60 Mbps broadband product to its New York customers at a promotional price of $39.99 and a retail price of $59.99, which is comparable to Time Warner's "Standard" Internet offering (15 Mbps) on both a promotional and retail basis. The Commission should clarify that New Charter will continue to offer all of its broadband services at promotional rates and with no separate modem fees in the first three years following the close of the transaction.

Accelerated transition to all-digital video network – While Staff acknowledges Petitioner's commitment to deploy an all-digital network within 30 months of the transaction's close in New York and notes that this network should be capable of delivering speeds up to 100 mbps, there is, critically, no specific commitment to provide such a service offering in New York. Such a service offering would be consistent with Governor Cuomo's Broadband for All policies which call for 100 Mbps service to be available to all New Yorkers by 2018.[66] Thus, to ensure that New York's short-term broadband objectives are being fulfilled, Staff believes that New Charter should be required to offer a broadband service at speeds up to 100 Mbps throughout its New York footprint within 30 months of the close of the proposed merger. The current timeframe corresponds with its proposed build-out of an all-digital network and should serve to generate additional revenues as penetration levels increase statewide.

[66] See f.n. 39, supra.

Similarly, as New Charter is committed to providing faster speeds to New York, such investments were likely to be made by Time Warner in a business-as-usual environment and, therefore, any commitment to provide these increases should not be considered an incremental benefit by the Commission or reduce New York's share of synergy savings, the focus of which should be on expansion to unserved residential and business customers.

But, in order to achieve a net benefit for New York, the Commission should require New Charter to upgrade its network and services to provide broadband speeds of up to 300 Mbps in the New York markets beyond New York City within 42 months of the close of the transaction. We note that the expansion of this service to other areas of the State would have a significant and immediate impact on economic and social developments as described above. In fact, communities across the State have been active in recent months in Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State, in calling for faster broadband speeds to be delivered to their respective communities. The Commission should require the Petitioners to expand this very critical network upgrade to all remaining areas of the State by the end of 2018, especially the major upstate cities. However, New Charter should be given an opportunity to demonstrate if a longer timeframe is warranted.

New Charter's promised upgrades, and more particularly those recommended herein, satisfy New York State's current policy goal of 100 Mbps service for all New Yorkers in its service territory. This should not, however, prevent the Commission from encouraging even faster speeds over the longer-term in New Charter's New York footprint. New York's and New Charter's long-term broadband efforts must keep pace with anticipated network evolutions in order to be considered best-

in-class and continue to service the combined company's customers and benefit economic and social initiatives for the citizens of the State. In this regard, the Commission should consider requiring New Charter to deploy network infrastructure capable of delivering speeds of up to 1 gigabit per second in the five largest New York markets currently served by Time Warner by 2020 as a means of achieving the State's longer-term broadband goals.

While such a requirement is ambitious, it is not unprecedented or unachievable. According to industry research firm IHS, cable providers around the world, including the United States, plan to begin conversions of their systems to support DOCSIS 3.1 technology (capable of delivering speeds up to 1 Gbps or 1000 Mbps).[67] New York should be on the cutting edge of this technological revolution. In fact, Time Warner has publically stated that these types of speeds will likely be available in its Los Angeles service territory in the coming years.[68]

Issuance of debt – As discussed in detail above, the possible detriments associated with the increased debt resulting from the proposed transaction are significant. Although Charter's and Time Warner's public filings,[69] including its Securities and Exchange Commission Form 8-K, state that they expect Time Warner to maintain investment grade credit ratings,

[67] IHS, CCAP, DOCSIS 3.1, and Distributed Access Strategies and Vendor Leadership: Global Cable Operator Survey, http://www.infonetics.com/pr/2015/CCAP-DOCSIS-Distributed-Access-Survey.asp?

[68] Report: Time Warner Cable says DOCSIS 3.1 will meet Los Angeles' 1-Gig goal, FierceTelecom, http://www.fiercetelecom.com/story/report-time-warner-cable-says-it-can-address-los-angeles-1-gig-desires-docs/2015-06-16

[69] See f.n. 50, supra.

and S&P[70] and Fitch[71] each rated the issued acquisition debt at "BBB-", the lowest level of investment grade, Moody's[72] rated this debt "Ba1", the highest level of non-investment grade. In their confidential response to IR-28, **[BEGIN CONFIDENTIAL INFORMATION]** [REDACTED]

[BEGIN CONFIDENTIAL INFORMATION].

The ratings on the debt straddle the level between an investment and a non-investment grade rating. Debt that carries a non-investment grade is much more expensive than debt that carries an investment grade rating. Bank of America/Merrill Lynch estimates that as of September 9, 2015, the spread between "BB" rated debt and "BBB" rated debt was 140 basis points. The credit ratings on Time Warner and any subsequent debt issuances will likely reflect the ratings assigned to the debt issued to partially fund the merger. The major reason for the downgrade is the amount of leverage that will be present at Time Warner's parent, New Charter. Increased debt hurts credit metrics like debt/EBITDA that measure a company's ability to repay its debt obligations.

We recommend that New Charter after the acquisition take action to reduce it financial leverage. This should include retaining a greater portion of earnings going forward and issuing equity securities to provide a greater level of equity funding of capital expenditures in the future. In this regard the Commission could require Time Warner and New Charter

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[70] Charter Communications Inc. senior secured term loan H rated "BBB-", Standard & Poor's Ratings Services, July 20, 2015.

[71] Fitch rates Charter's new secured term loan H "BBB-", Fitch Ratings, July 20, 2015.

[72] See, f.n., 47, supra.

to notify it should their respective credit ratings fall to "BB/Ba2" (a two notch decline in the S&P rating and a one notch decline in the Moody's rating given to the new debt) and present a plan detailing actions to be taken to restore credit ratings to "BB+/Ba1" or higher.

Customer service – The poor customer satisfaction performance of Time Warner (and to a lesser degree Charter) indicated in certain national surveys is a concern. This concern is offset somewhat by the fact that Charter performs relatively better, but is heightened by the fact that New Charter may have less of a focus on New York and may become distracted during the transition that will inevitably occur following the close of the proposed merger.

As a condition of the Commission's approval of the proposed transaction, New Charter should be required to maintain service quality performance at or below existing PSC Complaint Rate thresholds. Therefore, following the proposed merger, the Commission should require that New Charter's PSC Complaint Rates for telephone and cable services,[73] respectively, be maintained consistently below the PSC Complaint Rate thresholds presently used to measure utility complaint activity and responsiveness on a monthly and annually basis. New Charter should be required to commence development of a plan, with the Office of Consumer Services' (OCS) assistance, within 30 days of the issuance of an

[73] The measurement for cable service should be calculated in the same manner OCS currently calculates complaint rates for gas, electric and water services. Each month OCS provides an overview of complaint activity and utility responsiveness during the preceding month. Specific details regarding the way Staff measures the companies' activities are described in the section "How Utility Complaint Data Is Reported."

Order in this case, fashioned to maintain its cable/telephone PSC Complaint Rates going forward.

In the event New Charter is unable to maintain these levels of service quality it should be subject to a performance incentive mechanism until such time that service is restored to acceptable levels. That incentive mechanism must be set at a level commensurate with the size of the combined companies to ensure an appropriate service quality improvement response. Staff proposes a $5 million dollar incentive mechanism for cable and telephone, respectively, if performance standards are not met, on an annual basis, with a doubling to $10 million dollars for any consecutive failures.

Finally, the Commission should require New Charter to complete the development and implementation of the talking guide solution for the blind and visually impaired by December, 2016. This initiative was previously introduced by the Charter and is a laudable program.

While these conditions generally mitigate Staff’s concern over degradation of service quality following the transaction’s close, it does not create any incremental net positive benefit for New York and thus should not be afforded any incremental value by the Commission. Moreover, Staff believes that industry-wide service quality is generally below customer expectations and we would urge New Charter to work with Staff, interested stakeholders and other companies in New York to develop stronger measures and standards of service quality going forward.

Jobs and focus in New York State - In order to maintain basic service quality metrics and avoid undue negative economic consequences following the proposed transaction for New York, approval of the proposed merger should be accompanied by specific job-related commitments.

First, following the close of the proposed merger there should be no net loss of customer facing jobs in New York for at least two years. Second, for non-headquartered staff, any job reduction in New York should be no greater than the percentage of jobs company-wide. This will ensure that synergies and cost savings that New Charter experiences will be achieved in a manner that ensures the percentage change in non-headquartered staff in New York is the same, or less than, the percentage change in non-headquarters staff company-wide. This commitment should be measured annually on each of the first five anniversaries of the date of the proposed merger’s closing.

In addition, New Charter should be required to provide 90-day advance notice to the Commission, of any planned Time Warner/Charter call center closing, or call center relocation out of New York. This requirement recognizes the importance of providing customer assistance services within New York and should also extend for five years.

Finally, New Charter should be require, within 90 days of the proposed merger, to establish a workforce development pilot program with the State University of New York system to provide a New York State job pipeline to graduates of either two, or four-year institutions. This will help ensure that New York jobs remain a primary focus of New Charter and New York continues to receive the benefits of this transaction going forward.

While these conditions generally mitigate Staff’s concerns regarding potential job losses and service quality decline in New York as a result of the proposed merger, they similarly do not create any incremental net positive benefit and, therefore, produce no incremental value.

CONCLUSION

The above conditions will serve to bring closure to much of the digital divide that exists in certain parts of the State, by deploying advanced network and access to hundreds of thousands of New Yorkers who are anxious for the opportunity to subscribe to the kinds of cutting edge services that New Charter can and should provide. These conditions produce the trifecta of success for the State, its residents and businesses through New Charter's three-fold accomplishment of greater advanced network deployment, greater consumer access and subscription, and greater economic development and growth potential.

Staff has reviewed the proposed benefits and potential detriments of the proposed transaction, both concrete and speculative, and we find that there is no net positive benefit as a result of the proposed merger absent specific commitments and conditions that translate into New York consumers being guaranteed to share promised efficiency gains. To ensure the proposed transaction promotes the public benefit and satisfies the Commission's public interest standard under the PSL, Staff recommends that the Petitioners make certain commitments to mitigate potential detriments and deliver net positive benefits to New York customers. These commitments should address service quality, job retention, universal service, network deployment to unserved/under-served areas and broad infrastructure investment and improvement. Only with these commitments backed by

enforceable[74] conditions set by the Commission, do we believe the merger would promote the public interest and should, therefore, be approved.

Respectfully submitted,

/S/

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[74] The conditions adopted by the Commission should be binding and enforceable. Section 25 of the PSL requires that a company "comply with … every order … adopted" pursuant to the PSL and that any failure to comply may result in a company being required to "forfeit to the people of the State of New York a sum not exceeding one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense." In the event that a company fails to comply with the conditions contained herein, pursuant to PSL §26, "the [C]ommission may direct counsel to the [C]ommission to commence an action or special proceeding in the supreme court in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented."